



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2016-0016; FRL-9954-16-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Motor Vehicle Inspection and Maintenance, Clean Screen Program and the Low Emitter Index, On-Board Diagnostics, and Associated Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving three State Implementation Plan (SIP) revisions submitted by the State of Colorado. The revisions involve amendments to Colorado's Regulation Number 11 "Motor Vehicle Emissions Inspection Program." The revisions address the implementation of the Low Emitter Index (LEI) component of Regulation No. 11's Clean Screen Program, the implementation of the On-Board Diagnostics (OBD) component of Regulation No. 11, and several other associated revisions. The EPA is approving these SIP revisions in accordance with the requirements of section 110 of the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification Number EPA-R08-OAR-2016-0016. All documents in the docket are listed on the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically

through <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202-1129.

EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6479, russ.tim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In this action, the EPA is approving SIP revisions to Colorado's Regulation No. 11 (hereafter "Reg. No. 11") contained in three submittals from Colorado. The State's submittals were dated June 11, 2008, March 15, 2013, and March 3, 2014. Much of the content of the revisions involved minor updates to several sections of Reg. No. 11 and deletion of obsolete language. Those revisions of greater significance involved: (1) Colorado's 2007 revisions to Reg. No. 11 for the implementation of the LEI portion of the Clean Screen Program contained in Reg. No. 11; (2) Colorado's 2012 revisions to Reg. No. 11 for the implementation of the OBD test requirements contained in Reg. No. 11 along with the Seven Model Year Emissions Test Exemption provisions; and (3) Colorado's 2013 revisions to Reg. No. 11, Appendix A, Incorporation by Reference of Technical Materials, the addition of new Technical Information/Requirements, and minor revisions to Appendix B.

On August 12, 2016, the EPA published a notice of proposed rulemaking (NPR) which proposed to approve the State's three Reg. No. 11 SIP revision requests and in addition, provided

a thorough evaluation of the changes, additions, and deletions to Reg. No. 11 contained in each of the three SIP revision submittals. *See* 81 FR 53370. The details of Colorado's three SIP submittals and the rationale for the EPA's proposed action to approve the SIP revision materials are explained in the NPR and will not be restated here. The EPA notes that the NPR's public comment period closed on September 12, 2016 and we did not receive any comments.

II. Final Action

The EPA is taking final action to approve the following revisions to Reg. No. 11 that were discussed in our August 12, 2016 NPR (81 FR 53370) and as provided below:

a.) The sections of Reg. No. 11 that were revised with the State's June 11, 2008 submittal:

1.) Part A, section II: Modify definition number 15 "Clean Screened Vehicle" to reflect the addition of the LEI; modify definition number 17 "Colorado '94" to clarify the use of the BAR 90 test analyzer systems for use after 1994; and add a new definition "Low Emitting Vehicle Index." Renumber definitions number 18 and higher.

2.) Part C, section XII: Modify section XHIA.3 regarding the requirements and procedures to clean screen an eligible vehicle and add section XIIE.4 regarding low emitting vehicles and the LEI.

3.) Part F, section VI: Renumber section VI.B as VI.C; add new section VI.B.1 which requires the development of the LEI each year; add new section VI.B.2 which establishes the 98% minimum passing criteria for the LEI; and add new section VI.B.3 which allows the Colorado Department of Public Health and Environment (CDPHE) to use a greater than 98% passing criteria if needed to equate to a second remote sensing device reading.

4.) Appendix A, Technical Specifications, Attachment 1: Sections of Attachment 1 of the Technical Specifications contain the specifications for the PDF 1000 Scanner; some sections were unreadable and a full, retyped PDF 1000 Scanner section was provided.

5.) Appendix A, Technical Specifications, Attachment 2: Sections of Attachment 2 of the Technical Specifications contain the specifications for the Thermal Transfer Printer; some sections were unreadable and a full, retyped Thermal Transfer Printer section was provided.

The EPA notes that Part F, section III.A.2 of Reg. No. 11 was also provided with the State's June 11, 2008 submittal. This section contains IM240¹ test light duty vehicle emissions cutpoints for 1996 and newer vehicles (all in grams per mile). The carbon monoxide (CO), hydrocarbon (HC), and nitrogen oxides (NO_x) entries for calendar year 2006 are incorrect as the State had previously provided an August 8, 2006 SIP revision submittal to remove these 2006 cutpoints (i.e., HC 0.6, CO 10.0, and NO_x 1.5). The EPA approved the removal of these 2006 cutpoints on December 20, 2012 (77 FR 75388).

b.) The sections of Reg. No. 11 that were revised with the State's March 15, 2013 submittal:

1.) Part A, section I: Minor wording changes to add new language and remove obsolete language in sections I.B, I.C.3, I.C.3.a, I.C.3.b, I.C.3.c, I.C.4, I.C.7, I.C.7.c, I.C.8, and I.C.9.b.

2.) Part A, section II: A new definition number 20 was added entitled "Colorado On-Board Diagnostic (OBD) Test Analyzer System;" a new definition number 22 was added entitled "Diagnostic Trouble Code (DTC);" and definitions number 23 to 43 were renumbered. A new definition number 44 was added and entitled "On-Board Diagnostics II (OBD or OBDII) Test" and definitions numbered 45 to 52 were renumbered.

¹ See 40 CFR part 51, subpart S for a complete description of EPA's IM240 test. The IM240 test is essentially an enhanced motor vehicle emissions test to measure mass tailpipe emissions while the vehicle follows a computer generated driving cycle trace for 240 seconds and while the vehicle is on a dynamometer.

3.) Part A, section IV: Section IV. D was removed which involved obsolete language and section IV.E was renumbered IV.D and also had obsolete language removed.

4.) Part B, section IX: Section IX was added and is entitled “Approval of the Colorado On-Board Diagnostic (OBD) Test Analyzer System.” Also, Part B, section X was added and is entitled “The Colorado On-Board Diagnostic (OBD) Test Analyzer System.”

5.) Part C, title: The title was modified by removing “Chlorofluorocarbon Leak Detection” and adding “On-Board Diagnostics (OBD).”

6.) Part C, section I.C.3: This involved minor language changes to clarify data transmission and analyzer requirements.

7.) Part C, section II.A: This section was renumbered from II.A through II.F to instead become II.A.1 through II.A.11. Minor clarification language was added along with revised references to sections in Part C.

8.) Part C, section II.G: This section was renumbered to II.B and clarifying language was added regarding OBD testing. Sections II.G.1 through II.G.6 were renumbered II.B.1 through II.B.6. Section II.B.4 had clarifying language added regarding applicable vehicles that were unable to be tested with the IM240 test would then be OBD tested.

9.) Part C, section II.C: A new section II.C (II.C 1 through II.C.9) was added which specifies which vehicles are to be OBD tested and the requirements and testing procedures for an OBD test.

10.) Part C, section III.A: This section had clarifying language added and sections III.B and III.C were removed as they addressed the model year 1996 and newer visual inspection procedures. The remaining applicable portions of section III.C were then renumbered III.B. Sections III.D and III.E were renumbered to III.C and III.D.

11.) Part C, section IV: The prior section IV was renumbered section V and the provisions of the existing section V were deleted. The new section IV addressed the requirements for applicable vehicles (1996 through those vehicles that had reached their 11th model year of age) to be evaluated with and OBD test.

12.) Part C, prior section IV: The existing section IV was renumbered section V and also modified with clarifying language regarding the requirement for a full retest of vehicles which previously had a missing or malfunctioning gas cap.

13.) Part C, section VIII.A.2: A new section VIII.A.2 was added which states that vehicles in their model years seven through ten need to meet the OBD passing criteria in Part F, section VII. Sections VIII.A.2 through VIII.A.4 were renumbered VIII.A.3 through VIII.A.5.

14.) Part C, sections VIII.B.1, VIII.B.2, and VIII.B.3: These sections had minor wording changes and deletion of obsolete language.

15.) Part C, sections VIII.D.A through VIII.D.E: These sections were renumbered VIII.D.1 through VIII.D.5.

16.) Part C, sections IX.G and X.A: These sections had minor clarifying language added.

17.) Part F, section V: This section was retitled “Visible Smoke.”

18.) Part F, section VII: A new section VII was added (sections VII.A through VII.F) which stated the required OBD diagnostic inspection test passing criteria.

19.) Part G: This part had previously contained obsolete high-emitting vehicle identification pilot project language which was removed and Part G was retitled “Reserved.”

c.) The sections of Reg. No. 11 that were revised with the State’s March 3, 2014 submittal:

1.) Part A, section I.C.3.c: This section was revised to clarify that the seven year new vehicle exemption, which excused vehicles from an emissions test for seven years and was

previously adopted by the Colorado Air Quality Control Commission (AQCC) in December 2012, would take effect on January 1, 2015. Also, this exemption would apply retroactively to existing vehicles in their fourth, fifth, and sixth years of service.

2.) Part A, sections I.C.8, I.C.9, and I.C.10: These sections were revised to clarify ambiguous, contradictory and obsolete Reg. No. 11 language concerning the issuance of and duration periods for “Verification of Emissions Test” exemption windshield stickers issued by motor vehicle dealers. Part A, section I.C.8 was further clarified to note that vehicles in their fourth, fifth, and sixth years of service would have the seven year exemption applied retroactively.

3.) Part A, section I.C.3 and Part C, sections III and IV: These sections were revised to clarify that the seven-year new vehicle exemption from emissions testing, OBD testing requirements and procedures, and other changes made to Reg. No. 11 by the AQCC in December 2012, would go into effect January 1, 2015. In addition, the visual inspection procedures for 1996 and newer vehicles would be retained through December 2014.

4.) Part C, section C VIII.B.3: This section was revised to codify in Reg. No. 11 the vehicle emissions repair cost waiver amount of \$715. The AQCC has previously directed the CDPHE to change the amount from \$450 to \$715 in November 2002, which was done. However, at that time, the AQCC had declined to note the changed repair amount in the text of Reg. No. 11.

5.) Part C, section VIII.D.4: This section was revised regarding the qualifying criteria for an economic hardship waiver for a vehicle failing its emissions test. Section VIII.D.4 was further revised to allow the economic hardship waiver to apply to households owning two vehicles rather than restricting hardship waivers to households owning only one vehicle.

6.) Appendix A of Reg. No. 11 was revised as follows:

a.) Appendix A was revised to remove the text of three technical document attachments and to note that the documents are available at CDPHE's Emissions Technical Center Procedures Manual. The technical documents are incorporated by reference into Reg. No. 11. Appendix A. The technical documents that are incorporated by reference into Reg. No. 11 are: Attachment I "PDF 1000 Scanner," Attachment II "Thermal Transfer Printer," and Attachment III "Colorado Automobile Dealers Transient Mode Test Analyzer System."

b.) Updated Attachment IV, entitled "Colorado Department of Public Health and Environment Specification for Colorado 97 Analyzer," to reflect technological changes to data specifications, communications protocols, and forms generation.

c.) To include a new Attachment V "*Test Analyzer Specification for On-board Diagnostics*" for licensed fleets who self-inspect their own vehicles. Note: Part B section X required this Test Analyzer Specification to be in place by December 31, 2013.

7.) Appendix B of Reg. No. 11 was revised as follows: Attachment II; the "Calibration Span Gas" labels were updated to reflect the current version of the State-official labels.

8.) Overall revised formatting and other non-substantive changes were made throughout Reg. No. 11.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Colorado Air Quality Control Commission, Regulation Number

11 revisions as discussed in section II, Final Action, of this preamble. Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 8 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this final action merely approves some state law as meeting federal requirements; this final action does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, Feb. 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian Country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: September 21, 2016.

Shaun L. McGrath,
Regional Administrator,
Region 8.

40 CFR part 52 is amended to read as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart G--Colorado

2. In §52.320, the table in paragraph (c) is amended by:

a. Revising the entries “I. Applicability”; “II. Definitions”; “IV. Clean Screen/Remote Emissions Sensing”; and “IX. Approval of the Colorado On-Board Diagnostic (OBD) Test Analyzer System”.

b. Adding the entry “X. The Colorado On-Board Diagnostic (OBD) Test Analyzer System” in numerical order.

c. Revising the center heading to “5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part C, Inspection Procedures and Requirements for Exhaust Emissions, Fuel Evaporation Control, Visible Smoke Emissions, Emissions Control Systems, On-Board Diagnostics (OBD); and Practices to Ensure Proper Emissions Related Adjustments and Repairs” and the entries “I. Pre-inspection Requirements”; “II. Exhaust Emissions Inspection Procedures”; “III. Emissions Control Systems Inspection Procedures”; “IV. On-Board Diagnostic Inspection Procedures”; “V. Evaporative Fuel Control Inspection Procedures”; “VIII. Certification of Emissions Control”; “IX. Adjustment Procedures”; “X. Emissions Related Repairs”; and “XII. Clean Screen Inspection Program Procedures”.

d. Revising the entries “V. Visible Smoke” and “VI. Clean Screen Program Maximum Allowable Emissions Limits”.

e. Adding the entry “VII. On-Board Diagnostic Inspection Passing Criteria” in numerical order.

f. Revising the entries “Appendix A, Specifications for Colorado 94 Analyzer” and “Appendix B, Standards and Specifications for the Suppliers of Span and Calibration Gases”.

The additions and revisions read as follows:

§52.320 Identification of plan.

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(c) * * *

Title	State effective date	EPA effective date	Final Rule citation/date	Comments
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5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part A, General Provisions, Area of Applicability, Schedules for Obtaining Certification of Emissions Control, Definitions, Exemptions, and Clean Screening/Remote Sensing				
I. Applicability	2/15/2013 12/30/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
II. Definitions	8/30/2007 2/15/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
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IV. Clean Screen/Remote Emissions Sensing	2/15/2013	[Insert date 30 days after	[Insert Federal Register	

		date of publication in the Federal Register]	citation], [Insert date of publication in the Federal Register]	
5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part B, Standards and Procedures for the Approval, Operation, Gas Span Adjustment, Calibration and Certification of the Division Approved Test Analyzer Systems for Use in the Basic and Enhanced Areas and Test Analyzer Systems for Licensed Dealers in the Enhanced Area				
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IX. Approval of the Colorado On-Board Diagnostic (OBD) Test Analyzer System	2/15/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
X. The Colorado On-Board Diagnostics (OBD) Test Analyzer System	2/15/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part C, Inspection Procedures and Requirements for Exhaust Emissions, Fuel Evaporation Control, Visible Smoke Emissions, Emissions Control Systems, On-Board Diagnostics (OBD); and Practices to Ensure Proper Emissions Related Adjustments and Repairs				
I. Pre-inspection Requirements	2/15/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the	

			Federal Register]	
II. Exhaust Emissions Inspection Procedures	2/15/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
III. Emissions Control Systems Inspection Procedures	2/15/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
IV. On-Board Diagnostic II Inspection Procedures	2/15/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
V. Evaporative Fuel Control Inspection Procedures	2/15/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
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VIII. Certification of Emissions Control	2/15/2013 12/30/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
IX. Adjustment Procedures	2/15/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
X. Emissions Related Repairs	2/15/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
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XII. Clean Screen Inspection Program Procedures	8/30/2007	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
* * *	* * *	* * *	* * *	* * *
5 CCR 1001-13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part F, Maximum Allowable Emissions Limits for Motor Vehicle Exhaust, Evaporative and Visible Emissions for Light-Duty and Heavy-Duty				

Vehicles

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V. Visible Smoke	2/15/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]			
VI. Clean Screen Program Maximum Allowable Emissions Limits	8/30/2007	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]			
VII. On-Board Diagnostic Inspection Passing Criteria	2/15/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]			
5 CCR 1001-13, Regulation Number 11, Appendices						
Appendix A, Specifications for Colorado 94 Analyzer	8/30/2007 12/30/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]			

Appendix B, Standards and Specifications for the Suppliers of Span and Calibration Gases	12/30/2013	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
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[FR Doc. 2016-25295 Filed: 10/20/2016 8:45 am; Publication Date: 10/21/2016]