



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R10-OAR-2018-0796; FRL-9987-76-Region 10]**

#### **Air Plan Approval; WA; Updates to Materials Incorporated by Reference**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; administrative change.

**SUMMARY:** The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the Washington State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the Washington State Department of Ecology (Ecology) and approved by the EPA. In this action, the EPA is also notifying the public of corrections to typographical errors and rearranging the contents for clarity. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

**DATES:** This action is effective [**insert date of publication in the Federal Register**].

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, WA 98101, or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt, EPA Region 10, (206) 553-0256,

hunt.jeff@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The SIP is a living document which a state revises as necessary to address its unique air pollution problems. Therefore, the EPA from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, the EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between the EPA and the Office of the Federal Register (OFR) (62 FR 27968). The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997 **Federal Register** document. On March 20, 2013, the EPA published a **Federal Register** beginning the new IBR procedure for Washington (78 FR 17108). The EPA subsequently published updates to the IBR material for Washington on December 8, 2014 (79 FR 72548) and April 12, 2016 (70 FR 21470). Since the publication of the last IBR update, the EPA approved and incorporated by reference the changes listed below.

**A. Added Regulations**

**TABLE 2 – ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON**

**DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION**

- Washington Administrative Code, Chapter 173–400, General Regulations for Air Pollution Sources, section 173-400-025 (Adoption of Federal Rules). For more information, see 81 FR 69385 (October 6, 2016).

**TABLE 4 – ADDITIONAL REGULATIONS APPROVED FOR THE BENTON CLEAN AIR**

## AGENCY (BCAA) JURISDICTION

- Washington Administrative Code, Chapter 173–400, General Regulations for Air Pollution Sources, section 173-400-025 (Adoption of Federal Rules). For more information, see 81 FR 69385 (October 6, 2016).

## TABLE 8 – ADDITIONAL REGULATIONS APPROVED FOR THE SOUTHWEST CLEAN AIR AGENCY (SWCAA) JURISDICTION

- Southwest Clean Air Agency, SWCAA 400, General Regulations for Air Pollution Sources, sections 400-036 (Portable Sources from Other Washington Jurisdictions), 400-072 (Small Unit Notification for Selected Source Categories), 400-106 (Emission Testing and Monitoring at Air Contaminant Sources), 400-130 (Use of Emission Reduction Credits), 400-131 (Deposit of Emission Reduction Credits Into Bank), 400-136 (Maintenance of Emission Reduction Credits in Bank), 400-800 (Major Stationary Source and Major Modification in a Nonattainment Area), 400-810 (Major Stationary Source and Major Modification Definitions), 400-820 (Determining if a New Stationary Source or Modification to a Stationary Source is Subject to These Requirements), 400-830 (Permitting Requirements), 400-840 (Emission Offset Requirements), 400-850 (Actual Emissions - Plantwide Applicability Limitation (PAL)), 400-860 (Public Involvement Procedures), Appendix A (SWCAA Method 9 Visual Opacity Determination Method), and Appendix B (Description of Vancouver Ozone and Carbon Monoxide Maintenance Area Boundary). For more information, see 82 FR 17136 (April 10, 2017).
- Washington Administrative Code, Chapter 173–400, General Regulations for Air

Pollution Sources, sections 173-400-117 (Special Protection Requirements for Federal Class I Areas), 173-400-118 (Designation of Class I, II, and III Areas), and 173-400-560 (General Order of Approval). For more information, see 82 FR 17136 (April 10, 2017).

B. Revised Regulations

TABLE 1 – REGULATIONS APPROVED STATEWIDE

- Washington Administrative Code, Chapter 173-476, Ambient Air Quality Standards, sections 173-476-020 (Applicability), 173-476-150 (Ambient Air Quality Standard for Ozone), and 173-476-900 (Table of Standards). For more information, see 81 FR 69385 (October 6, 2016).

TABLE 2 – ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON

DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION

- Washington Administrative Code, Chapter 173-400, General Regulations for Air Pollution Sources, sections 173-400-110 (New Source Review (NSR) for Sources and Portable Sources) and 173-400-112 (Requirements for New Sources in Nonattainment Areas – Review for Compliance with Regulations). For more information, see 81 FR 66823 (September 29, 2016).
- Washington Administrative Code, Chapter 173-400, General Regulations for Air Pollution Sources, sections 173-400-040 (General Standards for Maximum Emissions), 173-400-050 (Emission Standards for Combustion and Incineration Units), 173-400-060 (Emission Standards for General Process Units), 173-400-070 (Emission Standards for Certain Source Categories), 173-400-105 (Records, Monitoring, and Reporting),

173-400-111 (Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources), 173-400-116 (Increment Protection), 173-400-171 (Public Notice and Opportunity for Public Comment), 173-400-710 (Definitions), 173-400-720 (Prevention of Significant Deterioration (PSD)), 173-400-730 (Prevention of Significant Deterioration Application Processing Procedures), 173-400-740 (PSD Permitting Public Involvement Requirements), 173-400-810 (Major Stationary Source and Major Modification Definitions), 173-400-830 (Permitting Requirements), 173-400-840 (Emission Offset Requirements), and 173-400-850 (Actual Emissions Plantwide Applicability Limitation (PAL)). For more information, see 81 FR 69385 (October 6, 2016).

**TABLE 3 – ADDITIONAL REGULATIONS APPROVED FOR THE ENERGY FACILITIES SITE EVALUATION COUNCIL (EFSEC) JURISDICTION**

- Washington Administrative Code, Chapter 463-78, General and Operating Permit Regulations for Air Pollution Sources, sections 463-78-005 (Adoption by Reference), 463-78-010 (Purpose), 463-78-020 (Applicability), 463-78-030 (Additional Definitions), 463-78-095 (Permit Issuance), and 463-78-120 (Monitoring and Special Report). For more information, see 82 FR 24531 (May 30, 2017).

**TABLE 4 – ADDITIONAL REGULATIONS APPROVED FOR THE BENTON CLEAN AIR AGENCY (BCAA) JURISDICTION**

- Washington Administrative Code, Chapter 173-400, General Regulations for Air Pollution Sources, sections 173-400-040 (General Standards for Maximum Emissions),

173-400-050 (Emission Standards for Combustion and Incineration Units), 173-400-060 (Emission Standards for General Process Units), 173-400-070 (Emission Standards for Certain Source Categories), 173-400-105 (Records, Monitoring, and Reporting), 173-400-111 (Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources), 173-400-171 (Public Notice and Opportunity for Public Comment), 173-400-810 (Major Stationary Source and Major Modification Definitions), 173-400-830 (Permitting Requirements), 173-400-840 (Emission Offset Requirements), and 173-400-850 (Actual Emissions Plantwide Applicability Limitation (PAL)). For more information, see 81 FR 69385 (October 6, 2016).

**TABLE 8 – ADDITIONAL REGULATIONS APPROVED FOR THE SOUTHWEST CLEAN AIR AGENCY (SWCAA) JURISDICTION**

- Southwest Clean Air Agency, SWCAA 400, General Regulations for Air Pollution Sources, sections 400-010 (Policy and Purpose), 400-020 (Applicability), 400-030 (Definitions), 400-040 (General Standards for Maximum Emissions), 400-050 (Emission Standards for Combustion and Incineration Units), 400-060 (Emission Standards for General Process Units), 400-070 (General Requirements for Certain Source Categories), 400-074 (Gasoline Transport Tanker Registration), 400-081 (Startup and Shutdown), 400-091 (Voluntary Limits on Emissions), 400-105 (Records, Monitoring and Reporting), 400-109 (Air Discharge Permit Applications), 400-110 (Application Review Process for Stationary Sources (New Source Review)), 400-111 (Requirements for New Sources in a Maintenance Plan Area), 400-112 (Requirements for New Sources in Nonattainment

Areas), 400-113 (Requirements for New Sources in Attainment or Nonclassifiable Areas), 400-114 (Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source), 400-116 (Maintenance of Equipment), 400-151 (Retrofit Requirements for Visibility Protection), 400-161 (Compliance Schedules), 400-171 (Public Involvement), 400-190 (Requirements for Nonattainment Areas), 400-200 (Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques), 400-205 (Adjustment for Atmospheric Conditions), and 400-210 (Emission Requirements of Prior Jurisdictions). For more information, see 82 FR 17136 (April 10, 2017). We note that we are correcting a typographical error in Table 8 to exclude SWCAA 400-113(5) from the SIP consistent with the original proposal and final rule preamble.

TABLE 9 – ADDITIONAL REGULATIONS APPROVED FOR THE SPOKANE REGIONAL CLEAN AIR AGENCY (SRCAA) JURISDICTION

- Spokane Regional Clean Air Agency, Regulation I, Article VI – Emissions Prohibited, sections 6.05 (Particulate Matter and Preventing Particulate Matter from Becoming Airborne), 6.14 (Standards for Control of Particulate Matter on Paved Surfaces), and 6.15 (Standards for Control of Particulate Matter on Unpaved Roads). For more information, see 81 FR 21470 (April 12, 2016).

C. Removed Regulations

TABLE 3 – ADDITIONAL REGULATIONS APPROVED FOR THE ENERGY FACILITIES SITE EVALUATION COUNCIL (EFSEC) JURISDICTION

- Washington Administrative Code (WAC) 463-39-100 (Registration) and WAC 173-400-151 (Retrofit Requirements), as adopted by reference in WAC 463-78-005. For more information, see 82 FR 24531 (May 30, 2017).

TABLE 8 – ADDITIONAL REGULATIONS APPROVED FOR THE SOUTHWEST CLEAN AIR AGENCY (SWCAA) JURISDICTION

- Southwest Clean Air Agency, SWCAA 400, General Regulations for Air Pollution Sources, sections 400-052 (Stack Sampling of Major Combustion Sources), 400-090 (Voluntary Limits on Emissions), 400-100 (Registration and Operating Permits), and 400-101 (Sources Exempt from Registration Requirements). For more information, see 82 FR 17136 (April 10, 2017).
- Washington Administrative Code, Chapter 173-400, General Regulations for Air Pollution Sources, sections 173-400-010 (Policy and Purpose), 173-400-020 (Applicability), 173-400-030 (Definitions), 173-400-040 (General Standards for Maximum Emissions), 173-400-050 (Emission Standards for Combustion and Incineration Units), 173-400-060 (Emission Standards for General Process Units), 173-400-070 (Emission Standards for Certain Source Categories), 173-400-081 (Startup and Shutdown), 173-400-091 (Voluntary Limits on Emissions), 173-400-100 (Registration), 173-400-105 (Records, Monitoring and Reporting), 173-400-107 (Excess Emissions), 173-400-110 (New Source Review (NSR)), 173-400-112 (Requirements for New Sources in Nonattainment Areas), 173-400-113 (Requirements for New Sources in Attainment or Unclassifiable Areas), 173-400-151 (Retrofit Requirements for Visibility Protection), 173-400-161 (Compliance

Schedules), 173-400-171 (Public Involvement), 173-400-190 (Requirements for Nonattainment Areas), 173-400-200 (Creditable Stack Height & Dispersion Techniques), 173-400-205 (Adjustment for Atmospheric Conditions), and 173-400-210 (Emission Requirements of Prior Jurisdictions). For more information, see 82 FR 17136 (April 10, 2017).

TABLE 9 – ADDITIONAL REGULATIONS APPROVED FOR THE SPOKANE REGIONAL CLEAN AIR AGENCY (SRCAA) JURISDICTION

- Spokane Regional Clean Air Agency, Regulation I, Article VI – Emissions Prohibited, section 6.16 (Motor Fuel Specifications for Oxygenated Gasoline). In a final action dated June 29, 2005, the EPA approved the request to remove section 6.16 as a control measure for the Spokane carbon monoxide maintenance area (70 FR 37269, page 37271). As discussed in the preamble for that action, the Spokane Regional Clean Air Agency repealed section 6.16 on September 1, 2005, with a commitment approved as part of the maintenance plan they would re-adopt section 6.16 should the Spokane area violate the carbon monoxide National Ambient Air Quality Standards. As part of our March 20, 2013 action beginning the new IBR procedure for Washington, the EPA inadvertently included section 6.16 as an active control measure under 40 CFR 52.2470(c). The EPA is now correcting that typographical error.

D. Revised Source-Specific Requirements

- As part of the EPA's approval of the second 10-year carbon monoxide limited maintenance plan for the Spokane area, we removed the associated order and amendment for the former

Kaiser Aluminum and Chemical Corporation's aluminum reduction plant located in Mead, Washington from the incorporation by reference because the facility had been shut down, dismantled, and the operating permit had been revoked. For more information, see 81 FR 45417 (July 14, 2016).

## **II. EPA Action**

In this action, the EPA is announcing the update to the IBR material as of November 1, 2018. The EPA is also correcting minor typographical errors in subsection 52.2470(c), including removing SRCAA, Regulation I, section 6.16 and SWCAA 400-113(5), as discussed above. This action also corrects the EPA's approval date for the Energy Facilities Site Evaluation Council's incorporation by reference of WAC 173-400-060, which was inadvertently omitted in our May 30, 2017 final action (82 FR 24531). Lastly, the EPA is rearranging the content of subsection 52.2470(e) to organize the actions by pollutant and type for clarity. The EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

### **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 previously EPA-approved regulations promulgated by Washington and federally-effective prior to November 1, 2018. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 10 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**

#### **A. General Requirements**

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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, August 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 this action does not involve technical standards; 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, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area.

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 Washington regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

**B. Submission to Congress and the Comptroller General**

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 rule 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. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

**C. Petitions for Judicial Review**

The EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Washington SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, the EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this “Identification of plan” update action for Washington.

**List of Subjects in 40 CFR Part 52**

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

Dated: November 21, 2018.

Michelle L. Pirzadeh,  
Acting Regional Administrator,  
Region 10.

40 CFR part 52 is amended 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 WW - Washington**

2. Section 52.2470 is amended by:

a. Revising paragraph (b);

b. In paragraph (c):

i. Revising entry 173-400-060 in Table 3.

ii. Revising entry 400-113 in Table 8.

iii. Removing entry 6.16 from Table 9.

c. In paragraph (e):

i. Amending Table 2 by moving the entry at the end of the table “Particulate Matter (PM<sub>10</sub>) 2nd 10-Year Limited Maintenance Plan” for the Spokane area after the entry “Particulate Matter (PM<sub>10</sub>) 2nd 10-Year Limited Maintenance Plan” for the Kent, Seattle, and Tacoma area.

ii. Removing the undesignated heading “Recently Approved Plans” in Table 2.

The revisions read as follows:

**§52.2470 Identification of plan.**

\* \* \* \* \*

(b) *Incorporation by reference.* (1) Material listed as incorporated by reference in paragraphs (c) and (d) of this section with an EPA approved date of November 1, 2018, was approved for

incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The material incorporated is as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates on or after November 1, 2018, will be incorporated by reference in the next update to the SIP compilation.

(2)(i) EPA Region 10 certifies that the rules and regulations provided by the EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules and regulations which have been approved as part of the State Implementation Plan as of November 1, 2018.

(ii) EPA Region 10 certifies that the following source-specific requirements provided by the EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State source-specific requirements which have been approved as part of the State Implementation Plan as of November 1, 2018.

(3) Copies of the materials incorporated by reference may be inspected at the EPA Region 10, 1200 Sixth Ave, Seattle, WA 98101; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(c) \* \* \*

**TABLE 3—ADDITIONAL REGULATIONS APPROVED FOR THE ENERGY FACILITIES SITE EVALUATION COUNCIL (EFSEC) JURISDICTION**

[See the SIP-approved provisions of WAC 463-78-020 for jurisdictional applicability]

State citation	Title/subject	State effective	EPA approval date	Explanations
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		<b>date</b>		
* * * * *				
<b>Washington Administrative Code, Chapter 173-400 Regulations Incorporated by Reference in WAC 463-78-005</b>				
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173-400-060	Emission Standards for General Process Units	2/10/05	5/30/17, 82 FR 24531	
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**TABLE 8 – ADDITIONAL REGULATIONS APPROVED FOR THE SOUTHWEST CLEAN AIR AGENCY (SWCAA) JURISDICTION**

[Applicable in Clark, Cowlitz, Lewis, Skamania and Wahkiakum counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction, Indian reservations and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and facilities subject to the applicability sections of WAC 173-405-012, 173-410-012, and 173-415-012]

<b>State / local citation</b>	<b>Title/subject</b>	<b>State / local effective date</b>	<b>EPA approval date</b>	<b>Explanations</b>
<b>Southwest Clean Air Agency Regulations</b>				
<b>SWCAA 400 – General Regulations for Air Pollution Sources</b>				
* * * * *				
400-113	Requirements for New Sources in Attainment or Nonclassifiable Areas	10/09/16	04/10/17, 82 FR 17136	Except: 400-113(5).
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[FR Doc. 2018-27774 Filed: 2/7/2019 8:45 am; Publication Date: 2/8/2019]