

## 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 XX—West Virginia

#### § 52.2520 [Amended]

■ 2. In § 52.2520, the table in paragraph (c) is amended by:

■ a. Removing the table heading “[45 CSR] Series 39 Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Oxides” and the entries “Section 45–39–1” through “Section 45–39–90”;

■ b. Removing the table heading “[45 CSR] Series 41 Control of Annual Sulfur Dioxides Emissions” and the entries “Section 45–41–1” through “Section 45–41–90”.

[FR Doc. 2018–02463 Filed 2–7–18; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[FRL–9973–51–OAR]

RIN 2060–AM75

#### Issuance of Guidance Memorandum, “Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act”

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

**ACTION:** Issuance and withdrawal of guidance memorandums.

**SUMMARY:** The Environmental Protection Agency (EPA) is notifying the public that it has issued the guidance memorandum titled “Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act”. The EPA is also withdrawing the memorandum titled “Potential to Emit for MACT Standards—Guidance on Timing Issues.”

**DATES:** Effective on February 8, 2018.

**ADDRESSES:** You may view this guidance memorandum electronically at: <https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elineth Torres or Ms. Debra Dalcher, Policy and Strategies Group, Sector Policies and Programs Division (D205–

02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–4347 or (919) 541–2443, respectively; and email address: [torres.elineth@epa.gov](mailto:torres.elineth@epa.gov) or [dalcher.debra@epa.gov](mailto:dalcher.debra@epa.gov), respectively.

**SUPPLEMENTARY INFORMATION:** On January 25, 2018, the EPA issued a guidance memorandum that addresses the question of when a major source subject to a maximum achievable control technology (MACT) standard under CAA section 112 may be reclassified as an area source, and thereby avoid being subject thereafter to major source MACT and other requirements applicable to major sources under CAA section 112. As is explained in the memorandum, the plain language of the definitions of “major source” in CAA section 112(a)(1) and of “area source” in CAA section 112(a)(2) compels the conclusion that a major source becomes an area source at such time that the source takes an enforceable limit on its potential to emit (PTE) hazardous air pollutants (HAP) below the major source thresholds (*i.e.*, 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP). In such circumstances, a source that was previously classified as major, and which so limits its PTE, will no longer be subject either to the major source MACT or other major source requirements that were applicable to it as a major source under CAA section 112.

A prior EPA guidance memorandum had taken a different position. *See* Potential to Emit for MACT Standards—Guidance on Timing Issues.” John Seitz, Director, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, (May 16, 1995) (the “May 1995 Seitz Memorandum”). The May 1995 Seitz Memorandum set forth a policy, commonly known as “once in, always in” (the “OIAI policy”), under which “facilities may switch to area source status at any time until the ‘first compliance date’ of the standard,” with “first compliance date” being defined to mean the “first date a source must comply with an emission limitation or other substantive regulatory requirement.” May 1995 Seitz Memorandum at 5. Thereafter, under the OIAI policy, “facilities that are major sources for HAP on the ‘first compliance date’ are required to comply permanently with the MACT standard.” *Id.* at 9.

The guidance signed on January 25, 2018, supersedes that which was

contained in the May 1995 Seitz Memorandum.

The EPA anticipates that it will soon publish a **Federal Register** document to take comment on adding regulatory text that will reflect EPA’s plain language reading of the statute as discussed in this memorandum.

Dated: January 25, 2018.

**Panagiotis E. Tsirigotis,**

*Director, Office of Air Quality Planning and Standards.*

[FR Doc. 2018–02331 Filed 2–7–18; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 27, 54, 73, 74, and 76

[MB Docket No. 17–105; FCC 18–3]

#### Deletion of Rules Made Obsolete by the Digital Television Transition

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) eliminates rules that have been made obsolete by the digital television transition.

**DATES:** These rule revisions are effective on February 8, 2018.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau at [Raelynn.Remy@fcc.gov](mailto:Raelynn.Remy@fcc.gov), or (202) 418–2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Report and Order (Order), FCC 18–3, adopted and released on January 24, 2018. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-18-3A1.docx](https://apps.fcc.gov/edocs_public/attachmatch/FCC-18-3A1.docx). Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission’s copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or calling the Commission’s Consumer and

Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Paperwork Reduction Act of 1995 Analysis

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.

### Synopsis

1. In this Order, we make non-substantive, editorial revisions to parts 27, 54, 73, 74, and 76 of the Commission's rules as part of our continuing efforts to modernize our media regulations and eliminate unnecessary rules.<sup>1</sup> These revisions delete rule provisions that are without current legal effect and are therefore obsolete.<sup>2</sup>

2. We delete rules that impose consumer notification and station interference protection obligations relating to the analog-to-digital transition for full power television broadcast stations (DTV transition), which concluded on June 12, 2009. In particular, we delete §§ 27.20, 54.418, 73.616(a) and the accompanying Note, 73.674, 73.3526(e)(11)(iv), 73.3527(e)(13) and 76.1630 of the Commission's rules, which are without current legal effect and obsolete. We also delete the Note to § 73.625(a)(1), which sets forth outdated DTV principal community coverage minimum field strength requirements applicable to certain television broadcast licensees.

3. In addition, we delete rules that were adopted in conjunction with full power analog television broadcasting, which is no longer permitted. Specifically, we delete §§ 73.607, 73.610, 73.611, 73.671(d), 73.6011, 73.6016, and 74.705 of the Commission's rules, which are without current legal effect and obsolete. In addition, we amend § 73.606 of our rules by deleting the Table of Allotments applicable to full power analog television broadcast service and cross-referencing § 73.622(i), which sets forth the Post-Transition Table of DTV

Allotments and is the "successor regulation" to § 73.606.<sup>3</sup>

4. The rule revisions adopted in this Order are non-substantive, editorial revisions. Because these revisions merely eliminate provisions that are no longer effective and thus obsolete, we find good cause to conclude that notice and comment procedures are unnecessary and would not serve any useful purpose. For the same reason, and to expedite the elimination of such obsolete references for the benefit of the public, we find good cause to make these rule revisions effective upon publication in the **Federal Register**.

5. Because these rule changes do not require notice and comment, the Regulatory Flexibility Act does not apply.

6. The Commission will send a copy of the Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

7. Accordingly, *it is ordered* that, effective upon publication in the **Federal Register**, parts 27, 54, 73, 74, and 76 of the Commission's rules *are amended* pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and in sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), 553(d)(3).

### List of Subjects

47 CFR Parts 27 and 54

Communications, Communications common carriers, Telecommunications.

47 CFR Parts 73 and 74

Communications, Television.

47 CFR Part 76

Cable television, Communications, Television.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary.*

### Final Rules

For the reasons discussed in the preamble, the Federal Communications

<sup>3</sup> Section 73.606 (the analog TV Table of Allotments) is referenced in the statutory definition of a "qualified noncommercial educational television station" that qualifies for must carry rights, although the statute also refers to "any successor regulation" to § 73.606. The "successor regulation" to § 73.606 is § 73.622(i), the Post-Transition Table of DTV Allotments. During the post-incentive auction transition process, the Commission has explained that it will not use a codified Table of Allotments to implement post-auction channel changes and that the Media Bureau intends to initiate a proceeding to amend § 73.622 of the rules to reflect all new full power channel assignments as well as NCE status in a revised Table of Allotments.

Commission amends 47 CFR parts 27, 54, 73, 74, and 76 as follows:

### PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 1. The authority citation for part 27 continues to read as follows:

**Authority:** 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

#### § 27.20 [Removed]

■ 2. Remove § 27.20.

### PART 54—UNIVERSAL SERVICE

■ 3. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

#### § 54.418 [Removed]

■ 4. Remove § 54.418.

### PART 73—RADIO BROADCAST SERVICES

■ 5. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 309, 310, 334, 336, and 339.

■ 6. Revise § 73.606 to read as follows:

#### § 73.606 Table of allotments.

The table of allotments set forth in § 73.622(i) contains the channels designated for the listed communities in the United States, its Territories, and possessions. Channels designated with an asterisk are assigned for use by noncommercial educational broadcast stations only.

#### §§ 73.607, 73.610, and 73.611 [Removed]

■ 7. Remove §§ 73.607, 73.610, and 73.611.

#### § 73.616 [Amended]

■ 8. Amend § 73.616 by removing paragraph (a), redesignating paragraphs (b) through (f) as paragraphs (a) through (e), and removing the note to § 73.616.

#### § 73.625 [Amended]

■ 9. Amend § 73.625(a)(1) by removing the note to the paragraph.

#### § 73.671 [Amended]

■ 10. Amend § 73.671 by removing and reserving paragraph (d).

#### § 73.674 [Removed]

■ 11. Remove § 73.674.

#### § 73.3526 [Amended]

■ 12. Amend § 73.3526 by removing paragraph (e)(11)(iv).

<sup>1</sup> *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, 32 FCC Rcd 4406 (MB 2017).

<sup>2</sup> We delegate authority to the Media Bureau to make conforming amendments to other Commission rules that cross-reference the rule sections deleted in this Order.

**§ 73.3527 [Amended]**

■ 13. Amend § 73.3527 by removing and reserving paragraph (e)(13).

**§§ 73.6011 and 73.6016 [Removed]**

■ 14. Remove §§ 73.6011 and 73.6016.

**PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES**

■ 15. The authority citation for part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.

**§ 74.705 [Removed]**

■ 16. Remove § 74.705.

**PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE**

■ 17. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

**§ 76.1630 [Removed]**

■ 18. Remove § 76.1630.

[FR Doc. 2018-02552 Filed 2-7-18; 8:45 am]

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 218**

[Docket No. 170831846-8105-02]

RIN 0648-BH21

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Testing and Training Activities Conducted in the Eglin Gulf Test and Training Range in the Gulf of Mexico**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** Upon application from the United States Air Force (USAF), 96th Civil Engineer Group/Environmental Planning Office (96 CEG/CEIEA) at Eglin Air Force Base (hereafter referred to as Eglin AFB), NMFS is issuing regulations under the Marine Mammal Protection Act (MMPA) for the taking of marine

mammals incidental to conducting testing and training activities in the Eglin Gulf Test and Training Range (EGTTR) in the Gulf of Mexico over the course of five years. These regulations allow NMFS to issue a Letter of Authorization (LOA) for the incidental take of marine mammals during the specified testing and training activities carried out during the rule's period of effectiveness, set forth the permissible methods of taking, set forth other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, and set forth requirements pertaining to the monitoring and reporting of the incidental take. The specific activities are classified as military readiness activities.

**DATES:** Effective February 13, 2018 through February 12, 2023.

**ADDRESSES:** To obtain an electronic copy of the USAF 96 CEG/CEIEA's LOA application or other referenced documents, visit the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm>. Documents cited in this rule may also be viewed, by appointment, during regular business hours, at 1315 East-West Highway, SSMC III, Silver Spring, MD 20912.

**FOR FURTHER INFORMATION CONTACT:** Rob Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:****Availability**

A copy of the 96 CEG/CEIEA's application, NMFS proposed rule (82 FR 61372; December 27, 2017), the USAF's *Eglin Gulf Test and Training Range Environmental Assessment* (Navy 2015) and NMFS Finding of No Significant Impact (FONSI) may be obtained by visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm>. Documents cited in this rule may also be viewed, by appointment, during regular business hours, at the aforementioned address (see **ADDRESSES**).

**Background**

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity, as well as monitoring

and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this rule and any subsequent LOA pursuant to those regulations. As directed by this legal authority, this final rule contains mitigation, monitoring, and reporting requirements.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the Secretary sets forth permissible methods of taking and other means of effecting the least practicable impact on the species or stock and its habitat. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

The National Defense Authorization Act for Fiscal Year 2004 (Section 319, Pub. L. 108-136, November 24, 2003) (NDAA of 2004) removed the "small numbers" and "specified geographical region" limitations indicated earlier and amended the definition of harassment as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA, 16 U.S.C. 1362(18)(B)): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

**National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review the proposed action (*i.e.*, the issuance of regulations and an LOA) with respect to potential impacts on the human environment.

Accordingly, NMFS has adopted the USAF's *Eglin Gulf Test and Training Range Environmental Assessment* and after an independent evaluation of the document found that it included adequate information analyzing the effects on the human environment of