

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);

- 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 (Pub. L. 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 application of those requirements would be inconsistent with the CAA; and

- Does not provide 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).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where 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).

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

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

Dated: June 28, 2021.

**Cheryl Newton,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 2021–14152 Filed 7–1–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

**[EPA–R04–OAR–2021–0322; FRL–10025–78–Region 4]**

### Air Quality Designations; NC: Redesignation of the Brunswick County 2010 Sulfur Dioxide Unclassifiable Area

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a submission by the State of North Carolina, through the Department of Air Quality (DAQ), on April 23, 2021, to redesignate the Brunswick County, North Carolina, unclassifiable area (hereinafter referred to as the “Brunswick County Area” or “Area”) to attainment/unclassifiable for the 2010 1-hour primary sulfur dioxide (SO<sub>2</sub>) national ambient air quality standard (hereinafter referred to as the “2010 SO<sub>2</sub> 1-hour NAAQS”). Because EPA now has sufficient information to determine that the Brunswick County Area is attaining the 2010 1-hour SO<sub>2</sub> national ambient air quality standards (NAAQS), the Agency is proposing to approve the State’s redesignation request, thereby redesignating the Area from unclassifiable to attainment/unclassifiable for the 2010 1-hour SO<sub>2</sub> NAAQS.

**DATES:** Comments must be received on or before August 2, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0322 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally

not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Adams can be reached by telephone at (404) 562–9009 or via electronic mail at [adams.evan@epa.gov](mailto:adams.evan@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Clean Air Act (CAA or Act) establishes a process for air quality management through the establishment and implementation of the NAAQS. On June 2, 2010, EPA revised the primary SO<sub>2</sub> NAAQS, establishing a new 1-hour SO<sub>2</sub> standard of 75 parts per billion (ppb). *See* 75 FR 35520 (June 22, 2010).<sup>1</sup> After the promulgation of a new or revised NAAQS, EPA is required to designate all areas of the country pursuant to section 107(d)(1)–(2) of the CAA. For the 2010 1-hour SO<sub>2</sub> NAAQS, designations were based on EPA’s application of the nationwide analytical approach to, and technical assessment of, the weight of evidence for each area, including but not limited to available air quality monitoring data and air quality modeling results. In advance of designating the Brunswick County Area, EPA issued updated designations guidance through a March 20, 2015, memorandum from Stephen D. Page, Director, U.S. EPA, Office of Air Quality Planning and Standards, to Regional Air Division Directors, U.S. EPA Regions 1–10, titled “Updated Guidance for Area Designations for the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard.” This document contains the factors that EPA evaluated in determining the appropriate designations and associated boundaries when designating the Brunswick County Area, including: (1) Air quality characterization via ambient monitoring or dispersion modeling results; (2) emissions-related data; (3) meteorology; (4) geography and topography; and (5)

<sup>1</sup> On February 25, 2019 (effective April 17, 2019), EPA issued a decision to retain the existing NAAQS for SO<sub>2</sub>. *See* 84 FR 9866 (March 18, 2019).

jurisdictional boundaries.<sup>2,3</sup> The guidance also referenced EPA's non-binding Monitoring Technical Assistance Document (Monitoring TAD)<sup>4</sup> and Modeling Technical Assistance Document (Modeling TAD),<sup>5</sup> which contain scientifically sound recommendations on how air agencies should conduct such monitoring or modeling.

EPA completed the first set of initial area designations for the 2010 1-hour SO<sub>2</sub> NAAQS in 2013 (Round 1). Pursuant to a March 2, 2015, consent decree and court-ordered schedule,<sup>6</sup> EPA finalized a second set of initial area designations for the 2010 1-hour SO<sub>2</sub> NAAQS in 2016 (Round 2). The March 2, 2015, consent decree identified the following emissions criteria such that EPA must designate, in Round 2, an area surrounding any stationary source which had: (a) Annual emissions in 2012 exceeding 16,000 tons of SO<sub>2</sub>, or (b) both an annual average emissions rate of at least 0.45 pounds of SO<sub>2</sub> per one million British thermal units, according to EPA's Clean Air Markets Division Database, and annual emissions of at least 2,600 tons of SO<sub>2</sub> in 2012. North Carolina had one source, the Capital Power Incorporated (CPI) Southport Cape Fear facility in Brunswick County, that met these Round 2 criteria.

EPA evaluated the Brunswick County Area, using the five factors identified previously, during the Round 2 designations. This evaluation is discussed further in Section III of this notice. The CPI Southport facility, located on the coast of southeastern North Carolina in the southeastern portion of Brunswick County, was an

electric power generation plant with two electric generating units (EGUs) that were permitted to combust a variety of solid fuels, including coal, woody biomass fuels, and tire derived fuel. CPI was included in the list of facilities to be designated pursuant to the March 2, 2015, Consent Decree.<sup>7</sup>

EPA's March 20, 2015, guidance specified the designation category definitions to be used in the Round 2 designations. Specifically, EPA defined a "nonattainment" area as an area that EPA has determined violates the 2010 1-hour SO<sub>2</sub> NAAQS based on the most recent three years of quality-assured, certified ambient air quality monitoring data or an appropriate modeling analysis, or that EPA has determined contributes to a violation in a nearby area; and defined an "attainment" area as an area that EPA has determined meets the 2010 1-hour SO<sub>2</sub> NAAQS and does not contribute to a violation of the NAAQS in a nearby area based on either: (a) The most recent three years of ambient air quality monitoring data from a monitoring network in an area that is sufficient to be compared to the NAAQS per EPA interpretations in the Monitoring TAD, or (b) an appropriate modeling analysis.

As discussed further in Section III of this notice, EPA was unable to determine whether the Brunswick County Area met the definition of a nonattainment area or the definition of an attainment area based on the available information at the time of the Round 2 designations. As a result, EPA designated the Brunswick County Area as unclassifiable in the Round 2 designations published on July 12, 2016.<sup>8</sup> The Area includes all six townships (Lockwood Folly Township, Northwest Township, Shallotte Township, Smithville Township, Town Creek Township, Waccamaw Township) within the jurisdictional boundary of

Brunswick County. Detailed rationale, analyses, and other information supporting EPA's original Round 2 designation for this Area can be found in the Round 2 designation's technical support document (TSD) for North Carolina. All supporting materials for the original 2010 1-hour SO<sub>2</sub> NAAQS designation for the Brunswick County Area, including the TSD, can be found on EPA's SO<sub>2</sub> designations website.<sup>9</sup>

After reviewing North Carolina's redesignation request under CAA section 107(d)(3)(D) and all available information, EPA is proposing to redesignate the Brunswick County Area from unclassifiable to attainment/unclassifiable for the 2010 1-hour SO<sub>2</sub> standard based on a valid ambient SO<sub>2</sub> design value that adequately characterizes the SO<sub>2</sub> air quality in the Brunswick County Area. See Sections II and III below for more information on the criteria to redesignate unclassifiable SO<sub>2</sub> areas and the rationale for this proposed action.

## II. What are the criteria for redesignating an area from unclassifiable to attainment/unclassifiable?

Section 107(d)(3)(A) of the CAA provides that the Administrator may notify the Governor of any state that the designation of an area should be revised "on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate."<sup>10</sup> The Act further provides in section 107(d)(3)(D) that even if the Administrator has not notified a state Governor that a designation should be revised, the Governor of any state may, on the Governor's own motion, submit a request to revise the designation of any area, and the Administrator must approve or deny the request. In keeping with CAA section 107(d)(3)(A), areas that are redesignated to attainment/unclassifiable<sup>11</sup> must meet the

<sup>2</sup> The 2015 memorandum is available at <https://www.epa.gov/sites/production/files/2016-04/documents/20150320so2designations.pdf>.

<sup>3</sup> This designation guidance has since been supplemented by a July 22, 2016, designation guidance memorandum from Stephen D. Page, Director, U.S. EPA, Office of Air Quality Planning and Standards, to Regional Air Division Directors, U.S. EPA Regions 1–10. The 2016 memorandum is available at <https://www.epa.gov/sites/production/files/2016-07/documents/areadesign.pdf>.

<sup>4</sup> The version of the EPA's "SO<sub>2</sub> NAAQS Designations Source-Oriented Monitoring Technical Assistance Document" (Monitoring TAD) available at the time of the Round 2 designations action was released in December 2013. The current version of the Monitoring TAD was released in February 2016 and superseded the version released in December 2013.

<sup>5</sup> "Sulfur Dioxide (SO<sub>2</sub>) National Ambient Air Quality Standards Designations Modeling Technical Assistance Document," August 2016 draft, available at <https://www.epa.gov/sites/production/files/2016-06/documents/so2modelingtad.pdf>. EPA released earlier drafts of this document in May 2013 and February 2016.

<sup>6</sup> See *Sierra Club et. al. v. McCarthy*, Civil Action No. 3:13-cv-3953-SI (N.D. Cal.) and 79 FR 31325 (June 2, 2014).

<sup>7</sup> CPI Southport was also subject to EPA's 2015 Data Requirements Rule (DRR) for the 2010 SO<sub>2</sub> 1-hour NAAQS. See <https://www.epa.gov/sites/production/files/2016-06/documents/nc.pdf> for North Carolina's letter and DRR source list, dated January 15, 2016. EPA separately promulgated the DRR which required states to undertake air quality characterization for areas with SO<sub>2</sub> sources meeting certain criteria. Specifically, the DRR required state air agencies to provide additional monitoring or modeling information to characterize air quality in areas associated with sources meeting certain criteria or that have otherwise been listed under the DRR by EPA or state air agencies, or to instead impose federally enforceable emission limitations on those sources restricting their annual SO<sub>2</sub> emissions to less than 2,000 tons per year, or provide documentation that the sources have been shut down, by specified dates. The information generated by implementation of the DRR informed EPA's designations.

<sup>8</sup> See 81 FR 45039 (July 12, 2016, effective September 12, 2016) codified at 40 CFR 81.334.

<sup>9</sup> EPA's SO<sub>2</sub> designations website can be found at <https://www.epa.gov/sulfur-dioxide-designations/epa-completes-second-round-sulfur-dioxide-designations>.

<sup>10</sup> While CAA section 107(d)(3)(E) also lists specific requirements for redesignations, those requirements only apply to redesignations of nonattainment areas to attainment and, therefore, are not applicable in the context of a redesignation of an area from unclassifiable to attainment/unclassifiable.

<sup>11</sup> Historically, EPA has designated most areas that do not meet the definition of nonattainment as "unclassifiable/attainment." EPA has reversed the order of the label to be "attainment/unclassifiable" to better convey the definition of the designation category and so that the category is more easily distinguished from the separate unclassifiable

requirements for attainment areas and, thus, must meet the relevant NAAQS. In addition, the area must not contribute to ambient air quality in a nearby area that does not meet the NAAQS. *See* the definitions for nonattainment area, attainment area, and unclassifiable area in CAA section 107(d)(1)(A)(i)–(iii).

In its designations under the 2010 1-hour SO<sub>2</sub> NAAQS, EPA has generally defined an attainment/unclassifiable area as an area that, based on available information including (but not limited to) appropriate monitoring data and/or modeling analyses, EPA has determined meets the NAAQS and determined that the available information indicates that the area does not likely contribute to ambient air quality in a nearby area that does not meet the NAAQS. EPA is proposing to find that the Brunswick County Area now meets the definition of attainment/unclassifiable based upon a 3-year certified and complete design value of air quality monitoring data that demonstrates attainment, *i.e.*, no violations of the 2010 1-hour SO<sub>2</sub> NAAQS, and the fact that sources in Brunswick County are not contributing to a nearby area that is violating the NAAQS. EPA preliminarily finds this information sufficient for the purposes of redesignating an area from unclassifiable to attainment/unclassifiable. Such redesignations are functionally similar to initial designations and are not subject to CAA section 107(d)(3)(E), which, amongst

other things, requires attainment to be due to permanent and enforceable measures and which requires a demonstration that the area will maintain the NAAQS for 10 years. For the Brunswick County Area, DEQ submitted a request to redesignate the area from unclassifiable to attainment/unclassifiable on April 23, 2021.<sup>12</sup>

### III. What is EPA's rationale for proposing to redesignate the area?

The Brunswick County Area includes the CPI Southport facility, which met the Round 2 criteria as discussed in Section I of this document, and thus, EPA was required to designate the Area in 2016, under the March 2, 2015, court-ordered schedule. After review of all available information at that time, including modeling provided by the State, EPA was unable to determine the Area's attainment status, and therefore, designated Brunswick County in its entirety as unclassifiable in Round 2 of designations for the 2010 1-hour SO<sub>2</sub> primary NAAQS on July 12, 2016. EPA's rationale for the unclassifiable designation is fully explained in the final Round 2 designations TSD.<sup>13</sup> For Brunswick County, DAQ selected the monitoring pathway for purposes of air quality characterization pursuant to EPA's SO<sub>2</sub> Data Requirements Rule (DRR) (80 FR 51052, August 21, 2015).<sup>14</sup> Pursuant to requirements under the DRR to characterize the air quality in the area around CPI Southport, North Carolina

installed an SO<sub>2</sub> monitor in the area of maximum concentration for the CPI Southport facility (in accordance with EPA's Monitoring TAD and 40 CFR parts 50 and 58) and began collecting data on January 1, 2017.<sup>15</sup>

On April 23, 2021, North Carolina submitted a letter to EPA requesting that the entirety of Brunswick County be redesignated to attainment/unclassifiable based on the newly available monitoring information, which demonstrates attainment of the 2010 1-hour SO<sub>2</sub> NAAQS. To evaluate North Carolina's redesignation request, EPA considered the design value for the air quality monitor in Brunswick County by assessing the most recent three consecutive years (*i.e.*, 2018–2020) of quality-assured, certified ambient air quality data in the EPA Air Quality System (AQS) using data from a monitor that was sited and operated in accordance with 40 CFR parts 50 and 58. Procedures for using monitored air quality data to determine whether a violation has occurred are provided in 40 CFR part 50 Appendix T, as revised in the 2010 1-hour SO<sub>2</sub> NAAQS rulemaking. As noted previously, the 2010 1-hour SO<sub>2</sub> NAAQS is met when the design value is 75 ppb or less. Table 1, below, contains the most recent three years of ambient SO<sub>2</sub> monitoring data available and shows that the Area is attaining the 2010 1-hour SO<sub>2</sub> NAAQS with a design value of 54 ppb for the period 2018–2020.<sup>16</sup>

TABLE 1—2010 SO<sub>2</sub> NAAQS MONITORING DATA FOR THE BRUNSWICK COUNTY AREA

AQS ID	Monitor site	2018 99th percentile (ppb)	2019 99th percentile (ppb)	2020 99th percentile (ppb)	2018–2020 design value (ppb)
370190005 .....	Southport .....	55 *	60	46	54

\* Brunswick County SO<sub>2</sub> monitoring measurements for the third quarter (July, August, and September) of 2018 did not meet the data completeness requirement of 75% data capture. However, a valid design value for 2018 to 2020 was obtained using the data substitution procedures in 40 CFR part 50, Appendix T, Section 3(c)(ii)(B).

Additionally, on March 31, 2020, the CPI Southport facility ceased operation, and the DAQ rescinded the facility's operating permit effective April 1, 2021.<sup>17</sup> After reviewing North Carolina's

request under CAA section 107(d)(3)(D) and all available information, EPA is proposing to find that the three years of monitored ambient SO<sub>2</sub> data from 2018–2020 adequately characterize the SO<sub>2</sub> air

quality in Brunswick County and demonstrate attainment of the 2010 1-hour SO<sub>2</sub> NAAQS in the Area. Additionally, there is no evidence of monitored or modeled violations in the

category. *See* 83 FR 1098 (January 9, 2018) and 83 FR 25776 (June 4, 2018). EPA reserves the "attainment" category for when EPA redesignates a nonattainment area that has attained the relevant NAAQS and has an approved maintenance plan.

<sup>12</sup> This redesignation request is included in the docket for this proposed action.

<sup>13</sup> The final Round 2 designations TSD can be found at [https://www.epa.gov/sites/production/files/2016-07/documents/r4\\_nc\\_final\\_designation\\_tsd\\_06302016.pdf](https://www.epa.gov/sites/production/files/2016-07/documents/r4_nc_final_designation_tsd_06302016.pdf).

<sup>14</sup> Data Requirements Rule for the 2010 1-Hour Sulfur Dioxide (SO<sub>2</sub>) Primary National Ambient Air Quality Standard (NAAQS), Final Rule, 80 FR 51052, August 21, 2015 (<https://www.govinfo.gov/>

[content/pkg/FR-2015-08-21/pdf/2015-20367.pdf](https://www.epa.gov/sites/production/files/2016-07/documents/north_carolina_source_characterization.pdf)). In accordance with the DRR, 40 CFR part 51, subpart BB, through a letter dated June 30, 2016, North Carolina notified EPA that the State chose to characterize peak 1-hour SO<sub>2</sub> concentrations for CPI through air quality monitoring. *See* [https://www.epa.gov/sites/production/files/2016-07/documents/north\\_carolina\\_source\\_characterization.pdf](https://www.epa.gov/sites/production/files/2016-07/documents/north_carolina_source_characterization.pdf).

<sup>15</sup> The monitor is located at the site of maximum concentration based on modeling following the procedures in EPA SO<sub>2</sub> Monitoring TADs. More details on the analyses used to support the monitor placement are contained in the state's 2016 annual

monitoring annual network plan located in the docket for this proposed action.

<sup>16</sup> North Carolina early certified the Southport monitor 2018–2020 air quality data in AQS on January 13, 2021. *See* Table 2 in North Carolina's April 23, 2021, redesignation request.

<sup>17</sup> The DAQ's April 1, 2021 letter rescinding Air Quality Permit No. 05884T21 and the January 20, 2021, certified letter from Mr. Frank Hayward, General Manager, CPI USA North Carolina, LLC—Southport Plant to Mr. Brad Newland, P.E., Regional Air Quality Supervisor, Wilmington Regional Office, NC Division of Air Quality, requesting permit rescission are located in the docket for this proposed action.

surrounding counties such that the source is contributing to any nearby area that does not meet the NAAQS. EPA is therefore proposing to approve North Carolina's redesignation request and redesignate the Brunswick County Area from unclassifiable to attainment/unclassifiable based on the currently available information that demonstrates attainment of the 2010 1-hour SO<sub>2</sub> NAAQS.

#### IV. Proposed Action

EPA is proposing to approve North Carolina's April 23, 2021, request to redesignate the Brunswick County Area from unclassifiable to attainment/unclassifiable for the 2010 1-hour SO<sub>2</sub> NAAQS. As discussed in prior sections, this proposed action is based on the currently available monitoring data for the Brunswick County Area that demonstrate attainment of the 2010 1-hour SO<sub>2</sub> primary NAAQS. If finalized, approval of the redesignation request would change the legal designation for this Area, found at 40 CFR part 81, from unclassifiable to attainment/unclassifiable for the 2010 1-hour SO<sub>2</sub> primary NAAQS.

#### V. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment/unclassifiable is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment/unclassifiable does not create any new requirements. Accordingly, this proposed action merely proposes to redesignate an area to attainment/unclassifiable and does not impose additional requirements. For that reason, this proposed 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);
- 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 (Pub. L. 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 application of those requirements would be inconsistent with the CAA; and
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

This proposed action does not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: June 28, 2021.

**John Blevins,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2021-14179 Filed 7-1-21; 8:45 am]

**BILLING CODE 6560-50-P**

#### DEPARTMENT OF STATE

#### 48 CFR Parts 615 and 652

**[Public Notice: 10574]**

**RIN 1400-AE60**

#### Department of State Acquisition Regulation; Access to Contractor Records

**AGENCY:** Department of State.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of State (DOS) is proposing an amendment to the Department of State Acquisition Regulation (DOSAR), to add a new contract clause relating to Department requests for examination of contractor records.

**DATES:** The Department of State will accept comments on this proposed rule until August 31, 2021.

**ADDRESSES:** You may submit comments by any of the following methods:

- **E-mail:** [Grayad@state.gov](mailto:Grayad@state.gov). You must include the RIN in the subject line of your message.

- **Mail (paper or CD-ROM submissions):** Ms. Annette Gray, Policy Division, Office of the Procurement Executive, A/OPE, 2201 C Street NW, Suite 3200, State Annex Number 15, Washington, DC 20520.

- Persons with access to the internet may view this interim rule and submit comments by visiting: <http://www.regulations.gov>, and searching for docket number DOS-2021-0007.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tandra Jones, Office of the Procurement Executive, A/OPE, 1735 North Lynn Street, Room 442, Arlington, VA 22209. Telephone 703-875-6643.

**SUPPLEMENTARY INFORMATION:** The Department proposes to add 48 CFR part 615, section 615.209-70, *Examination of Records*, and 48 CFR part 652, section 652.209-70, *Examination of Records*, to the Department of State Acquisition Regulation (DOSAR).

#### What is the authority for this proposed rule?

Title 41 of the U.S. Code, section 4706, provides that the head of an executive agency, acting through an authorized representative, may, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to 41 U.S.C. chapter 35 with respect to a contract or subcontract, examine all records of the contractor or subcontractor related to:

(A) The proposal for the contract or subcontract;

(B) the discussions conducted on the proposal;

(C) pricing of the contract or subcontract; or

(D) performance of the contract or subcontract.

The Federal Acquisition Regulation (FAR), 48 CFR 15.209(b), *Solicitation provisions and contract clauses*, states (in summary) that, when contracting by negotiation, except as provided in section 15.209(b)(2),<sup>1</sup> the contracting officer shall insert the clause at section 52.215-2, Audit and Records-Negotiation, in solicitations and contracts except those for: (1) Acquisitions not exceeding the simplified acquisition threshold; (2) The acquisition of utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection

<sup>1</sup> Paragraph (b)(2) relates to contracts using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).