

subscribers per Accounting Period, prorated in the case of a Student Plan subscription in effect for only part of an Accounting Period. A Bundled Subscription Offering containing a Family Plan with one or more Active Subscriber(s) shall be treated as having 1.75 Active Subscribers. A Bundled Subscription Offering containing a Student Plan with an Active Subscriber shall be treated as having 0.5 Active Subscribers. For the purposes of calculating per-subscriber rates and royalty floors under this section, Artificial Accounts shall not be counted as subscribers, Active Subscribers, or End Users.

■ 4. Revise subpart D to read as follows:

Subpart D—Promotional Offerings, Free Trial Offerings and Certain Purchased Content Locker Services

Sec.

385.30 Scope.

385.31 Royalty rates.

§ 385.30 Scope.

This subpart establishes rates and terms of royalty payments for Promotional Offerings, Free Trial Offerings, and certain Purchased Content Locker Services provided by subscription and nonsubscription digital music Service Providers in accordance with the provisions of 17 U.S.C. 115.

§ 385.31 Royalty rates.

(a) *Promotional Offerings.* For Promotional Offerings of audio-only Eligible Interactive Streams and Eligible Limited Downloads of sound recordings embodying musical works that the Sound Recording Company authorizes royalty-free to the Service Provider, the royalty rate is zero.

(b) *Free Trial Offerings.* For Free Trial Offerings, the royalty rate is zero.

(c) *Certain Purchased Content Locker Services.* For every Purchased Content Locker Service for which the Service Provider receives no monetary consideration, the royalty rate is zero.

David P. Shaw,

Chief Copyright Royalty Judge.

David R. Strickler,

Copyright Royalty Judge.

Steve Ruwe,

Copyright Royalty Judge.

Approved by:

Dr. Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2022-28316 Filed 12-29-22; 8:45 am]

BILLING CODE 1410-72-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 39

RIN 2900-AR71

Statutory Increase in Operations and Maintenance Grant Funding

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern Federal grants to establish, expand, improve, or operate and maintain veterans' cemeteries. This final rule implements new statutory amendments to increase the maximum amount of grants to States and Tribal Organizations to operate and maintain veterans' cemeteries as authorized by section 2206 of the "Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020" (the Act). Effective on January 5, 2021, the maximum amount of operation and maintenance grants increased from \$5 million to \$10 million. This final rule implements that statutory change. Additionally, VA is revising the date by which the list of approved pre-applications is prioritized for fiscal year funding from August 15 to October 1 each year.

DATES: This rule is effective December 30, 2022.

FOR FURTHER INFORMATION CONTACT:

George Eisenbach, Director of Veterans Cemetery Grants Program, National Cemetery Administration (41E), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Telephone: (202) 632-7369. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: This final rule amends 38 CFR part 39 to conform with statutory amendments made by section 2206 of Public Law 116-315, the "Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020" (the Act). The Act amended Section 2408(f)(2) of title 38, United States Code (U.S.C.) to increase the maximum amount of grants VA could award for operating and maintaining Veterans' cemeteries from \$5 million to \$10 million.

To implement this authority, VA is revising regulatory text to replace "\$5 million" with "\$10 million" every place it appears in 39 CFR 39.3 and 39.80. Specifically, VA is revising the information for Priority Group 4 operation and maintenance grants in existing 38 CFR 39.3(c) to update the reference to the maximum grant awards

to be made in any fiscal year from \$5 million to \$10 million. Similarly, we are revising the grant award information in § 39.80(a)(2) and (b) to clarify that operations and maintenance grants for Priority Group 4 projects must not result in a payment of more than \$10 million.

In § 39.3(d), VA is replacing "By August 15 of each year" with "By October 1 of each year" to align the date for finalizing the prioritization of preapplications to the beginning of the fiscal year in which the associated final grant applications will be eligible for award. The August 15 date is not required by statute, but instead was a self-imposed deadline for finalizing the priority listing of preapplications when the grant program was first established. Since then, the number of preapplications has grown, and VA needs the additional time to conduct the final prioritization. VA publishes this date in regulation to ensure transparency and awareness of the process within the interested grant community.

Preapplications are accepted and evaluated on a rolling basis; however, only those preapplications that were received on or before July 1 of the current fiscal year are eligible for consideration in the prioritization process for the upcoming/next fiscal year. The preapplication process serves as a means to determine whether the proposed project conforms to statutory and regulatory requirements. If the preapplication is conforming, VA notifies the State or Tribal Organization that the preapplication has been found to meet the requirements, and the proposed project is included in the prioritization.

This change from August 15 to October 1 for finalizing the prioritization list expands VA's timeframe for conducting the prioritization of preapplications by approximately 45 calendar days. This does not affect a grant applicant's ability or opportunity to submit a final grant application for the fiscal year in which it is eligible for award and does not affect timeframes for awarding grants. Applicants may begin preparing final grant applications at any time and may submit the final application at any time. The October 1 date is merely the announcement of the priority of proposed projects based on preapplications and reflects the order in which those projects will be awarded and funded. Additionally, publishing this date in regulation is primarily informational for grant applicants and is not related to any subsequent deadlines that would affect applicants. VA works with grant applicants throughout the

final application process to award grants based on priority and available funding in accordance with 38 CFR part 39.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(B) to publish this rule without prior opportunity for public comment and dispense with the 30-day delay for the effective date of a rule under 5 U.S.C. 553(d)(3). Pursuant to section 553(b)(B) of the Administrative Procedure Act, general notice and opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” Pursuant to section 553(d)(3), an agency may “for good cause found” dispense with the 30-day delay in the effective date of a rule. Because the increased grant amount is authorized by law and effective immediately, the Secretary finds that it is unnecessary to delay issuance of this rule for the purpose of soliciting prior public comment or to delay the rule’s effective date. By statute, Congress has imposed a cap on the amount that VA expends for operation and maintenance grants, and VA regulations provide that VA will award operations and maintenance grants up to, but not exceeding, that cap. VA is not changing its policy of awarding operation and maintenance grants up to the statutory cap, but merely updating the regulation to reflect the statutory cap now in effect. *See Hadson Gas Sys. v. FERC*, 75 F.3d 680, 684 (D.C. Cir. 1996) (finding that the act of amending regulatory language to reflect statutory changes does not require an agency to engage in notice and comment with respect to unchanged aspects of the regulatory scheme).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and

promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Assistance Listing

The Catalog of Federal Domestic Assistance program number and title for this final rule is 64.203, Veterans Cemetery Grants Program.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 39

Cemeteries, Grant Programs—veterans, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on December 22, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans

Affairs amends 38 CFR part 39 as set forth below:

PART 39—AID FOR THE ESTABLISHMENT, EXPANSION, AND IMPROVEMENT, OR OPERATION AND MAINTENANCE, OF VETERANS CEMETERIES.

■ 1. The authority citation for Part 39 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 2408, 2411, 3765.

Subpart A—General Provisions

■ 2. Amend § 39.3 by revising paragraphs (c) and (d) to read as follows:

§ 39.3 Priority list.

* * * * *

(c) Grants for projects within Priority Group 4 will be awarded in any fiscal year only after grants for all project applications under Priority Groups 1, 2, and 3 that are ready for funding have been awarded. Within Priority Group 4, projects will be ranked in priority order based upon VA’s determination of the relative importance of proposed improvements and the degree to which proposed Operation and Maintenance Projects achieve NCA national shrine standards of appearance. No more than \$10 million in any fiscal year will be awarded for Operation and Maintenance Projects under Priority Group 4.

(d) By October 1 of each year, VA will make a list prioritizing all preapplications that were received on or before July 1 of that year and that were approved under § 39.31 or § 39.81, ranking them in their order of priority within the applicable Priority Group for funding during the fiscal year. Preapplications from previous years will be re-prioritized each year and do not need to be resubmitted.

(Authority: 38 U.S.C. 501, 2408)

■ 3. Amend § 39.80 by revising paragraphs (a)(2) and (b) to read as follows:

§ 39.80 General requirements for a grant.

(a) * * *

(2) Its project must be ranked sufficiently high within Priority Group 4 as defined in § 39.3 for the applicable fiscal year so that funds are available for the project, and a grant for the project must not result in payment of more than the \$10 million total amount permissible for all Operation and Maintenance Projects in any fiscal year;

* * * * *

(b) VA may approve under § 39.85 any Operation and Maintenance Project grant application up to the amount of the grant requested once the

requirements under paragraph (a) of this section have been satisfied, provided that sufficient funds are available, and that total amount of grants awarded during any fiscal year for Operation and Maintenance Projects does not exceed \$10 million. In determining whether sufficient funds are available, VA shall consider the project's ranking in Priority Group 4; the total amount of funds available for cemetery grant awards in Priority Group 4 during the applicable fiscal year; and the prospects of higher-ranking projects being ready for the award of a grant before the end of the applicable fiscal year.

(Authority: 38 U.S.C. 501, 2408)

[FR Doc. 2022-28334 Filed 12-29-22; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0107; FRL-9426-02-R9]

Air Plan Approval; Arizona; Maricopa County; Power Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Maricopa County Air Quality Department's (MCAQD or County) portion of the Arizona State Implementation Plan (SIP). The revision addresses Arizona's reasonably available control technology (RACT) SIP obligations for the Phoenix-Mesa ozone nonattainment area that is classified as Moderate nonattainment for the 2008 ozone national ambient air quality standards (NAAQS). We are approving a local rule that regulates emissions of oxides of nitrogen (NO_x) and particulate matter (PM) from power plants under the Clean Air Act (CAA or the Act).

DATES: This rule is effective January 30, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2022-0107. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly

available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT:

Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at gong.kevin@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to the EPA.

Table of Contents

- I. Proposed Action and Interim Final Determination
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Proposed Action and Interim Final Determination

On February 8, 2022 (87 FR 7069), the EPA proposed to approve MCAQD Rule 322 “Power Plant Operations,” as amended on June 23, 2021, and submitted by the Arizona Department of Environmental Quality (ADEQ) to the EPA on June 30, 2021.¹ The MCAQD regulates a portion of the Phoenix-Mesa ozone nonattainment area that is classified as Moderate for the 2008 8-hour ozone national ambient air quality standard (40 CFR 81.303). Maricopa County's “Analysis of Reasonably Available Control Technology For The 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP),” adopted December 5, 2016, submitted June 22, 2017 (the “2016 RACT SIP”), found that there were major sources of NO_x within the Maricopa County portion of the Phoenix-Mesa ozone nonattainment area subject to Rule 322. Accordingly, this rule must establish RACT levels of control for applicable major sources of NO_x.

Rule 322 regulates emissions from electricity steam generating units, cogeneration steam units, and turbines. It also includes related recordkeeping,

¹ In our February 8, 2022 proposed rule, we inadvertently cited the submittal date for this submittal as June 24, 2021, which was the date that the letters from the County and State transmitting these materials were signed. The date that these materials were received in the EPA's SPeCS for SIPs system was June 30, 2021.

reporting, and monitoring requirements. The version of Rule 322 that we are acting on in this rule (i.e., the version adopted on June 23, 2021, and submitted to the EPA on June 30, 2021) corrects several deficiencies in a previous version of Rule 322 that was adopted by MCAQD on November 2, 2016, and submitted to the EPA on June 22, 2017, and that resulted in the EPA's disapproval published in the **Federal Register** in February 2020.² The EPA has determined that this revised version of Rule 322 corrects the deficiencies in the 2017 submitted version related to flawed cost effectiveness analyses and the lack of enforceable operational restrictions in the rule itself and, further, that it meets the EPA's criteria for RACT for this source category.

We proposed to approve Rule 322 because we determined that it complies with the relevant CAA requirements in CAA sections 110, 182(b)(2), 182(f), and 193. Our proposed action contains more information on Rule 322 and our evaluation of the SIP revision. On the same day, we also made an interim final determination (87 FR 7042) that the submittal from the ADEQ corrected SIP deficiencies from a previous submittal, allowing us to defer the imposition of sanctions resulting from our disapproval of a previously submitted version of Rule 322 (85 FR 43692, July 20, 2020).

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received five comments. Four of these comments were from members of the public and were generally supportive of our proposed action or were not germane. The fifth comment was submitted by Air Law for All, Ltd. on behalf of the Center for Biological Diversity and the Sierra Club (the commenter from here on referred to as “ALFA” or “the commenter”).

Low Use Exemptions and RACT

ALFA asserts that Rule 322's annual operational limits cannot be used to exempt units from RACT for short-term ozone standards, that Rule 322's limits on operation are used to “artificially inflate the annualized cost-effectiveness of NO_x controls to justify not installing RACT-level technology,” and that Rule 322 uses a long-term annual average to circumvent the installation of overall RACT level controls.

We do not agree with the commenter's assertions. As discussed further below,

² See EPA Region IX, “Technical Support Document for Maricopa County Air Quality Department Rule 322, Power Plant Operations,” January 2022; 87 FR 7070 (February 8, 2020).