

**§ 165.T08–0922 Safety Zone; Ohio River, Miles 0.3–1.5, Pittsburgh, PA.**

(a) *Location.* The following area is a temporary safety zone: all navigable waters of the Ohio River between Mile Marker 0.3 and Mile Marker 1.5.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Pittsburgh (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by phone at 412–221–0807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section is effective from 6 a.m. on November 28, 2022, through 11:59 p.m. on December 3, 2022.

Dated: November 16, 2022

**Justin R. Jolley,**

*Lieutenant Commander, U.S. Coast Guard, Acting, Captain of the Port Marine Safety Unit Pittsburgh.*

[FR Doc. 2022–25416 Filed 11–21–22; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

**RIN 2900–AR31**

### Readjustment Counseling Service Scholarship Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is adding new regulations that govern scholarship programs that will benefit certain health care professionals. This rulemaking implements the mandates of the Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2019 by establishing the Readjustment Counseling Service Scholarship Program (RCSSP). The RCSSP provides educational assistance to individuals who pursue a graduate degree in

psychology, social work, marriage and family therapy, or mental health counseling that meet the education requirements for appointment as a health care professional in one of the aforementioned fields in VA Vet Centers.

**DATES:** This rule is effective December 22, 2022.

**FOR FURTHER INFORMATION CONTACT:** Charles Flora, Social Science Specialist, Readjustment Counseling Services, 810 Vermont Ave. NW, Washington, DC 20420, (202) 461–6525. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:** On November 5, 2021, VA published a proposed rule in the **Federal Register** (86 FR 81094) that would establish the Readjustment Counseling Service Scholarship Program (RCSSP) in 38 CFR 17.545 through 17.553 pursuant to section 502 of Public Law 116–171, the Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2019 (the Act), enacted on October 17, 2020. The Act established new sections 7698 through 7699B and created the RCSSP to serve as an incentive to individuals who are pursuing a graduate degree in psychology, social work, marriage and family therapy, or mental health counseling to fill existing vacancies in Vet Centers that are located in areas that are designated as medically underserved populations and in States with a per capita population of more than five percent veterans according to the National Center for Veterans Analysis and Statistics and the Bureau of the Census (42 U.S.C. 254b(b)(3)).

VA provided a 60-day comment period, which ended on January 4, 2022. VA received two comments on the proposed rule. One comment was supportive of the rule. We thank the commenter for their support and do not make any changes based on the comment.

The other comment was supportive of the rule but expressed concern about the amount of funding for psychology doctoral students and the supervision requirements in the rule. VA stated in proposed § 17.549(c) that VA would fund RCSSP for social work, marriage and family therapy, professional mental health counseling, and psychology graduate students for a maximum of two years. The commenter suggested that VA increase the RCSSP funding period for psychology students to be commensurate with their increased experience, training, and value and to account for the fact that the other occupations only require a two-year degree whereas a psychology degree is

five years, thereby leaving psychology participants with potentially significant debt compared to their counterparts in the other occupations. The commenter was concerned that psychology students could be dissuaded from participating in the RCSSP if they will still carry significant debt after graduation.

VA has considered the issues presented by the commenter, however, we reiterate from the proposed rule that the two-year limit on funding is intended to equalize the award and obligated service requirements across all four health care professions. VA believes that the two-year limit will provide full parity across the four disciplines to all scholarship awardees and provide for the equitable recruitment of individuals in the four health care professions. In this regard, the Act requires a six-year period of obligated service following the completion of the program of study. 38 U.S.C. 7699(c)(2). Therefore, VA believes it would be inequitable to fund two years for certain participants and five for others when all participants will have the same six-year period of obligated service. VA also does not believe that the two-year period for the scholarship will dissuade psychology graduates from participating in the RCSSP. We are not making any changes based on this comment.

The commenter also had concerns regarding supervision. Because VA health care professionals may be licensed in any State and not every Vet Center employs professionals from each of the professions, proposed § 17.549(b) stated that when determining which Vet Center a scholarship recipient would be placed to carry out their service obligation, VA would consider the size and professional makeup of the current Vet Center staff to ensure appropriate supervision as required by VA professional qualification standards and for State licensure. The commenter was concerned that the unintended result of the proposed rule could be that the Vet Centers with the greatest need for additional mental health professionals will be left out because of inadequate staffing levels to supervise a scholarship recipient. The commenter acknowledged that each participant requires supervision by another professional in the same discipline who is also licensed in the State they seek to gain licensure in order to obtain their license and stated that it is important that the individual requirements of each State's licensing board be considered when placing scholarship recipients. The commenter further stated that any potential solution must prioritize State licensure for the scholarship recipient

and high-quality care for veterans. The commenter encouraged VA to allow scholarship recipients to be supervised by another VA health care professional or even a community health care professional if no appropriate supervisor is available at a Vet Center. The commenter also recommended that VA split a scholarship recipient's service obligation between two sites; one site with appropriately licensed health care professionals for the scholarship recipient to gain State licensure and another in a medically underserved veteran dense community as required in § 17.549(b).

We agree with the commenter that the requirement for recipients to receive supervision from a licensed staff within their respective professions who has the necessary State license, as a condition for their own licensure, is a critical point for the consideration of the potential location of the obligated service. VA would assist the participants in making certain that they have all of the resources needed to obtain a State license. We note that proposed § 17.549(b) does not require a certain level of staffing in a Vet Center, but does require that the Vet Center have adequate staff for the purposes of supervision of participants. This requirement will ensure that all recipients can utilize their experience at the Vet Center toward obtaining their desired State license.

Regarding the commentor's recommendation that the participant be supervised by a health care professional that is not in the same health care profession as the participant, we respectfully disagree with this recommendation. It is both a VA and a requirement in some States for some of the disciplines that the health care professional be supervised by an individual within the same health care profession. Having a supervisor that is not in the same health care profession may lead to the participant not being able to obtain a State license and thus making them in violation of their agreement. VA would also not allow participants to be supervised by health care professionals in the community as these individuals are not VA employees appointed under 38 U.S.C. 7306, 7401, 7405, 7406, 7408, or title 5, U.S. Code.

We also agree with the commenter that the goal of the RCSSP is to help fill vacancies in medically underserved communities. However, we believe that splitting locations of assignment for the scholarship participant would defeat the purpose of the RCSSP, which is to provide mental health care professionals to Vet Centers that are in medically underserved areas or in States with a

per capita population of more than five percent veterans. Splitting the locations of assignment would reduce the amount of time a participant would provide vital health care services to a Vet Center location in these areas. In addition, the rapid turnover in order to accommodate two locations could negatively impact services to veterans by undermining active case coordination. We are not making any changes based on this comment.

The commenter also encouraged VA to advertise the VA Health Professional Scholarship Program (HPSP) to psychology students who are newly eligible and requested VA educate Veterans Integrated Services Network (VISN) and VA medical facility directors on the importance of offering Education Debt Reduction Program (EDRP) funds to psychologists. However, the HPSP and EDRP are beyond the scope of the proposed rule. We are not making any changes based on this comment.

VA is making a technical correction to § 17.549(b) for clarity. Proposed paragraph (b) stated when determining which Vet Center a scholarship recipient will be placed to carry out their service obligation, VA will consider the priority criteria in paragraph (a) of this section and the size and professional makeup of the current Vet Center staff to ensure that the Vet Center staff has health care professionals that are licensed to supervise participants of the RCSSP from the same health care profession as required by VA professional qualification standards for licensure for each of the four professions. We note that the text as proposed may be confusing as to whether the supervision of a health care professional from the same health care profession is a VA or State requirement. To clearly provide that the supervision is both a VA and a requirement of some States for some disciplines, we are now stating that the supervision requirements are required by VA professional qualification standards and a requirement of some State licensure boards for some disciplines for each of the four professions. No other changes to the meaning of this paragraph are intended by this change.

VA is making a technical correction to § 17.549(c)(2) for clarity. Proposed paragraph (c)(2) stated in part that psychology graduates are required to undergo a one-year residency at either an American Psychology Association (APA) or Canadian Psychological Association (CPA) accredited internship program prior to qualifying for full time VA employment. We are clarifying that the one-year residency at either an APA

or CPA should have instead stated a one-year internship. This technical correction will change the term residency to internship to make the term consistent throughout paragraph (c)(2). No other changes to the meaning of this paragraph are intended by this change.

VA is also making technical edits to § 17.553(b) for clarity. Proposed paragraph (b) stated that "except as provided in paragraph (d) of this section, a participant of the RCSSP will be liable to the United States for the amount that has been paid to or on behalf of the participant under the agreement if any of the following occurs: Liability under paragraph (b) of this section is in lieu of any service obligation arising under the agreement." We are eliminating the reference to paragraph (b) in the last sentence of this paragraph because liability applies to all of § 17.553. In addition, we are moving the last sentence of paragraph (b) to now be the first sentence of the paragraph for clarity. Paragraph (b) will now state that liability under this section is in lieu of any service obligation arising under the agreement. Except as provided in paragraph (d) of this section, a participant of the RCSSP will be liable to the United States for the amount that has been paid to or on behalf of the participant under the agreement if any of the following occurs. No other changes to the meaning of this paragraph are intended by this change.

Based on the rationale set forth in the **SUPPLEMENTARY INFORMATION** to the proposed rule and in this final rule, VA is adopting the proposed rule with the technical changes discussed in this rule.

#### **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](http://www.regulations.gov).

## Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The RCSSP will solely be operated and administered within VA. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

## 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 would have no such effect on State, local, and tribal governments, or on the private sector.

## Paperwork Reduction Act (PRA)

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. This final rule includes provisions constituting a new collection of information under the Paperwork Reduction Act of 1995 that require approval by the OMB. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review. OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Sections 17.548 and 17.551 contain a new collection of information. OMB has filed a comment on the information collection that was submitted in conjunction with the proposed rule in accordance with 5 CFR 1320.11(c) with a control number of 2900–0899. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing a collection of information or

take such other action as is directed by OMB.

This information would be collected for applicants who wish to participate in the RCSSP. The information would also be collected for those individuals who are selected to participate in the RCSSP and who must sign an agreement between VA and the eligible individual. This agreement would hold the eligible individual accountable for upholding the terms and conditions of the agreement and alert the eligible individual of the consequences of a breach in the agreement.

VA estimates that there will be 50 applicants per year with five selected participants from the 50 applicants. The estimated average burden per response for applicants is three hours and for selected participants is 1.6 hours. VA estimates the annual cost to all respondents will be \$4,277 per year (158 burden hours × \$27.07 per hour). VA used the Bureau of Labor Statistics (BLS) median hourly wage for hourly wage for “all occupations” of \$27.07 per hour. This information is available at [https://www.bls.gov/oes/current/oes\\_nat.htm#13-0000](https://www.bls.gov/oes/current/oes_nat.htm#13-0000).

## Assistance Listing

There are no Assistance Listing numbers and titles for this final rule.

## Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as 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 17

Administrative practice and procedure, Health care, Health facilities, Health professions, Scholarships and fellowships.

## Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on October 27, 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.

## Consuela Benjamin,

*Regulations Development Coordinator, 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 17 as set forth below:

## PART 17—MEDICAL

■ 1. The general authority citation for part 17 continues, and an entry for §§ 17.545 through 17.553 is added in numerical order, to read as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

\* \* \* \* \*

Sections 17.545 through 17.553 are also issued under 38 U.S.C. 7698, 7699, 7699A, and 7699B.

\* \* \* \* \*

■ 2. Add an undesignated center heading and §§ 17.545 through 17.553 immediately following § 17.539 to read as follows:

Sec.

\* \* \* \* \*

### *Readjustment Counseling Service Scholarship Program*

17.545 Purpose.

17.547 Eligibility.

17.548 Application procedures.

17.549 Award procedures.

17.551 Agreement and obligated service.

17.553 Failure to comply with terms and conditions of agreement.

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### *Readjustment Counseling Service Scholarship Program*

#### **§ 17.545 Purpose.**

The purpose of §§ 17.545 through 17.553 is to establish the Readjustment Counseling Service Scholarship Program (RCSSP) as part of VA's Educational Assistance Program. For purposes of the RCSSP, the term Vet Center has the meaning given that term in 38 U.S.C. 1712A(h).

#### **§ 17.547 Eligibility.**

An individual is eligible to participate in the RCSSP if the individual meets the following requirements:

(a) Is accepted for enrollment or be currently enrolled on a full-time basis in a program of study at an accredited educational institution, school, or training program leading to a terminal doctorate degree in psychology, or a terminal masters degree in social work, marriage and family therapy, or mental health counseling that would meet the education requirements for appointment to a position in one of those fields under 38 U.S.C. 7402(b); and

(b) Enters into an agreement with the Secretary under § 17.551.

#### **§ 17.548 Application procedures.**

(a) *Availability.* VA will make awards under the RCSSP only when VA determines it is necessary to assist in alleviating shortages of psychologists, social workers, marriage and family therapists, or mental health counseling

professionals in Vet Centers. VA's determination of the number of RCSSP scholarships to be awarded in a fiscal year is subject to the availability of appropriations.

(b) *Application-general*. Each individual desiring a RCSSP scholarship must submit an accurate and complete application, including a signed written acceptance agreement.

(c) *VA's duties*. VA will notify applicants prior to acceptance in the RCSSP of the following information:

(1) A fair summary of the rights and liabilities of an individual whose application is approved by VA and whose acceptance agreement is consummated by VA; and

(2) A full description of the terms and conditions that apply to participation in the RCSSP and service in VA.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0899.)

#### **§ 17.549 Award procedures.**

(a) *Priority*. In selecting individuals to participate in the RCSSP, VA will give priority to the following individuals:

(1) An individual who agrees to be employed by Vet Centers located in communities that are:

(i) Designated as a medically underserved population under section 330(b)(3) of the Public Health Service Act (42 U.S.C. 254b(b)(3)); and

(ii) In States with a per capita population of more than five percent veterans according to the National Center for Veterans Analysis and Statistics and the Bureau of the Census.

(2) A veteran.

(b) *Placement criteria*. When determining which Vet Center a scholarship recipient will be placed to carry out their service obligation, VA will consider the priority criteria in paragraph (a) of this section and the size and professional makeup of the current Vet Center staff to ensure that the Vet Center staff has health care professionals that are licensed to supervise participants of the RCSSP from the same health care profession as required by VA professional qualification standards and a requirement of some State licensure boards for some disciplines for each of the four professions.

(c) *Amount of funds*. VA will provide a scholarship to individuals who participate in the RCSSP to cover the actual costs of such individuals obtaining a terminal degree in psychology, social work, marriage and family therapy, or professional mental health counseling for a maximum of two years. If a participant completes their

terminal degree in less than two years, the period of obligated service remains unchanged.

(1) Social work, marriage and family therapy, and professional mental health counseling are master level programs that require approximately a two-year period for achieving the terminal degree. VA will fund RCSSP social work, marriage and family therapy, and professional mental health counseling participants for a maximum of two years.

(2) Psychology is a doctoral level program requiring approximately five years for completion of the terminal academic degree. In addition, psychology graduates are required to undergo a one-year internship at either an American Psychology Association (APA) or Canadian Psychological Association (CPA) accredited internship program prior to qualifying for full time VA employment. VA will fund psychology participants for the last two years of their five-year academic training to obtain a terminal doctorate degree. VA will not provide funding for the one-year APA or CPA internship under the RCSSP.

(d) *Payment of funds*. All such payments to scholarship participants are exempt from Federal taxation. The payments will consist of the actual cost of:

(1) Tuition and required fees;

(2) Other educational expenses, including books and laboratory equipment; and

(3) A monthly stipend, for the duration of the scholarship award. The Secretary may determine the amount of the stipend paid to participants, but that amount may not exceed the maximum amount provided for in 38 U.S.C. 7613(b).

#### **§ 17.551 Agreement and obligated service.**

(a) *Agreement*. Each participant who accepts funds from the RCSSP will enter into an agreement with VA where the participant agrees to the following:

(1) Maintain enrollment, attendance, and an acceptable level of academic standing as defined by the school;

(2) Obtain a terminal degree in psychology, social work, marriage and family therapy, or professional mental health counseling; and

(3) Be employed as a full-time VA employee at a Vet Center for a period of six-years as a psychologist, social worker, marriage and family therapist, or professional mental health counselor following the completion of such program of study.

(4) Psychologists must complete a one-year internship at either an American Psychological Association

(APA) or Canadian Psychological Association (CPA) accredited program. Obtaining an APA or CPA accredited internship requires that an individual participate in the Association of Psychology Postdoctoral and Internship Centers (APPIC) process. If a scholarship participant does not participate in an APA or CPA accredited internship, they are in breach of their agreement.

(b) *Obligated service*—(1)

*Determination of service*

*commencement date*. VA will notify the participant of the commencement date of the period of obligated service no later than 60 days before such date.

(2) *Commencement date of obligated service*—(i) *General*. A participant's period of obligated service will begin on the date the participant begins full-time permanent employment at a Vet Center as a psychologist, social worker, marriage and family therapist, or professional mental health counselor, but no later than 180 days after the date that the participant completes a terminal degree in one of the identified disciplines. Psychology participants will commence their period of obligated service no later than 180 days after completion of their one-year APA or CPA internship, which requires completion of all academic requirements to obtain a terminal doctorate degree.

(ii) *Independent practice*. Upon receipt of the terminal degree, participants will enter VA employment at the entry level until full licensure at the independent practice level has been attained. Independent practice licensure is a requirement for all scholarship participants. Non-licensed psychologists, social workers, marriage and family therapists, and professional mental health counselors are required to serve under the supervision of a licensed health care professional of their profession and must be independently licensed by a State within the time frame specified in VA qualification standards.

(iii) *VA monitoring of participants*. VA will actively assist and monitor participants to ensure State licenses are obtained in a minimal amount of time following graduation and the required period of supervision for their profession. If a participant fails to obtain their terminal degree or fails to obtain licensure in a State at the independent practice level no later than 180 days after the required period of supervision for their profession, the participant is considered to be in breach of the acceptance agreement.

(3) *Location and position of obligated service*. VA reserves the right to make

final decisions on the location and position of the obligated service. A participant who receives an RCSSP must be willing to relocate to another geographic location to carry out their service obligation in accordance with the participant's agreement. The requirement for participants to receive supervision from a licensed staff within their respective professions, as a condition for their own licensure, is a critical point for the consideration of the potential location of the obligated service.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0899.)

#### **§ 17.553 Failure to comply with terms and conditions of agreement.**

(a) *Liquidated damages.* Except as provided in paragraph (b) of this section, a participant of the RCSSP who fails to accept payment or instructs the educational institution in which the participant is enrolled not to accept payment, in whole or in part, of a scholarship under the agreement entered into under § 17.551 will be liable to the United States for liquidated damages in the amount of \$1,500.

(b) *Liability during program of study.* Liability under this section is in lieu of any service obligation arising under the agreement. Except as provided in paragraph (d) of this section, a participant of the RCSSP will be liable to the United States for the amount that has been paid to or on behalf of the participant under the agreement if any of the following occurs:

(1) The participant fails to maintain an acceptable level of academic standing in the educational institution in which the participant is enrolled, as determined by the educational institution;

(2) The participant is dismissed from the educational institution for disciplinary reasons; or

(3) The participant voluntarily terminates the program of study in the educational institution before the completion of the program of study for which the RCSSP was awarded.

(c) *Liability during period of obligated service.* Except as provided in paragraph (d) of this section, if a participant of the RCSSP does not complete their period of obligated service, the United States will be entitled to recover from the participant an amount determined in accordance with the following formula:  $A = 3\Phi(t - s/t)$ , where:

(1) 'A' is the amount the United States is entitled to recover;

(2) 'Φ' is the sum of:

(i) The amounts paid under this subchapter to or on behalf of the participant; and

(ii) The interest on such amounts, which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

(3) 't' is the total number of months in the period of obligated service of the participant; and

(4) 's' is the number of months of such period served by the participant.

(d) *Limitation on liability for reductions-in-force.* Liability will not arise under paragraph (c) of this section if the participant fails to maintain employment as a VA employee due to a staffing adjustment.

(e) *Repayment period.* The participant will pay the amount of damages that the United States is entitled to recover under this section in full to the United States no later than one year after the date of the breach of the agreement.

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BILLING CODE 8320-01-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA-R08-OAR-2022-0103; FRL-9624-02-R8]

### **Air Plan Approval; Colorado; Reg 3 NSR and APEN Updates**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval of regulatory amendments submitted by the State of Colorado on May 13, 2020. The revisions make limited amendments to the State's New Source Review (NSR) and Air Pollution Emission Notices (APEN). The EPA is taking this action pursuant to the Clean Air Act (CAA).

**DATES:** This rule is effective on December 22, 2022.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2022-0103. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., 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 <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

#### **FOR FURTHER INFORMATION CONTACT:**

Kevin Leone, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado 80202-1129, telephone number (303) 312-6227, email address [leone.kevin@epa.gov](mailto:leone.kevin@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document "we," "us," and "our" means the EPA.

## **I. Background**

The background for this action is discussed in detail in our March 23, 2022 proposed rulemaking (87 FR 16439). In that document we proposed to approve revisions to Colorado's minor source NSR permitting program. Specifically, EPA proposed to approve revisions to Regulation Number 3 (Stationary Source Permitting and Air Pollution Emission Notice Requirements), including Part A (General Provisions Applicable to Reporting and Permitting), Part B (Construction Permits), and Part C (Operating Permits).

We invited comment on all aspects of our proposal and provided a 30-day comment period. The comment period ended on April 22, 2022. We received comments on our proposed rulemaking. The comments and our responses are listed below.

## **II. Response to Comments**

On April 22, 2022, the EPA received comments from The Center for Biological Diversity, henceforth referred to as "commenter."

*Comment:* Commenter asserts, "EPA must disapprove the Colorado permitting program because it excludes emissions prior to operations such as drilling, fracking, and completion which may cause or contribute to violations of the NAAQS." In support of this assertion, commenter offers three arguments. First, Commenter states that EPA has not supported its approval of the State's revised definition of "Commencement of Operation" with modeling data to demonstrate that the revised definition will not cause or contribute to NAAQS violations. Commenter states that such modeling is required by EPA regulations to be included in State Implementation Plan (SIP) submittals. Second, Commenter states that available evidence indicates that "pre-production" emissions from