

the **Federal Register**. 39 CFR 111.3. As an additional reference, the Postal Service developed Publication 52, *Hazardous, Restricted, and Perishable Mail*.

On July 28, 2014, as part of a continuing initiative to reduce the size of the DMM, the Postal Service removed from that publication the detailed mailing standards relating to hazardous, restricted, and perishable materials. In place of these detailed provisions, revised DMM 601.8.0 advised that mailing standards specific to hazardous, restricted, and perishable mail would be incorporated into Publication 52, and could be found on the Postal Explorer website at *pe.usps.com*. The Postal Service subsequently promulgated new regulations incorporating an edition of Publication 52 by reference into 39 CFR 113.2. See 83 FR 1189 (2018).

The Postal Service, in consultation with the Office of the Federal Register, has determined that clarification of the status of Publication 52 would be helpful, particularly in order to ensure that changes to Publication 52 are comprehensively noticed in the **Federal Register**. To that end, the Postal Service hereby makes certain changes to its rules.

First, DMM section 601.8.1 is amended to clarify that the substantive mailability rules in Publication 52, as in effect and available on the Postal Service's website at any given time, are incorporated by reference into that DMM section.

Second, 39 CFR 211.2(a) will be amended to clarify that Publication 52 contains regulations of the Postal Service. In connection with this change, language in 39 CFR 211.2(a) regarding publication in the **Federal Register** and Code of Federal Regulations will be moved to more clearly express the intent that any regulations of the Postal Service may, where appropriate, be published in those outlets. Moreover, 39 CFR 211.2(a)(3) is expanded somewhat to clarify that Publications and Memoranda of Policy may also qualify as regulations, and that status as regulations depends not on the formal designation of a document, but on its statement of binding rules of future effect beyond those stated elsewhere in Postal Service regulations.

Third, 39 CFR part 113, which includes the incorporation by reference of Publication 52 (39 CFR 113.2), is removed. The temporary rules in 39 CFR 113.3 regarding COVID-19 related Category B infectious substances are duplicative of rules in Publication 52, and so it is unnecessary to maintain such rules in the Code of Federal Regulations. Compare 85 FR 23745 with

Postal Bulletin 22544 (Apr. 23, 2020), at 6–7 (amending Publication 52 appendix C, USPS Packaging Instruction 6C).

**List of Subjects**

*39 CFR Part 111*

Administrative practice and procedure, Postal Service.

*39 CFR Part 113*

Administrative practice and procedure, Hazardous substances, Postal service.

*39 CFR Part 211*

Administrative practice and procedure, Postal Service.

Accordingly, for the reasons stated, the Postal Service amends 39 CFR parts 111, 113, and 211 as follows:

**PART 111—[AMENDED]**

■ 1. The authority citation for 39 CFR part 111 is revised to read as follows:

**Authority:** 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) as follows:

**Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)**

\* \* \* \* \*

**600 Basic Standards for All Mailing Services**

**601 Mailability**

\* \* \* \* \*

**8.0 Hazardous, Restricted, and Perishable Mail**

**8.1 General**

Effective July 7, 2014, all content applicable to hazardous, restricted, or perishable mail was removed and incorporated into Publication 52, *Hazardous, Restricted, and Perishable Mail*. The contents of Publication 52, as in effect and available on the Postal Service website at the relevant time, are incorporated by reference into this section.

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**PART 113—[REMOVED]**

■ 3. Under the authority of 39 U.S.C. 401(2), remove part 113.

**PART 211—APPLICATION OF REGULATIONS**

■ 4. The authority citation for part 211 is revised to read as follows:

**Authority:** 39 U.S.C. 201, 202, 205, 401–404, 406, 407, 410, 411, 413, 414, 416, 1001–1011, 1201–1209, 2008–2010, 2201, 2601–2605, 2901–2902, 3001–3018, 3201–3220, 3401–3406, 3621–3629, 3631–3633, 3641, 3654, 3681–3685, 3691, 5001–5007, 5401–5403, 5601–5605; 39 U.S.C. note.

■ 5. Amend § 211.2 by revising the introductory text to paragraph (a) and paragraphs (a)(2) and (3) to read as follows:

**§ 211.2 Regulations of the Postal Service.**

(a) The regulations of the Postal Service consist of the following, any of which may, but are not required to, be published in the **Federal Register** and the Code of Federal Regulations:

\* \* \* \* \*

(2) The *Mailing Standards of the United States Postal Service, Domestic Mail Manual*; the *Postal Operations Manual*; the *Administrative Support Manual*; the *Employee and Labor Relations Manual*; the *Financial Management Manual*; the *International Mail Manual*; those portions of Chapter 2 of the former *Postal Service Manual* and chapter 7 of the former *Postal Manual* retained in force; and Publication 52, *Hazardous, Restricted, and Perishable Mail*; and

(3) Headquarters Circulars, Management Instructions, Regional Instructions, Handbooks, Memoranda of Policy, Publications, delegations of authority, and other regulatory issuances and directives of the Postal Service or the former Post Office Department, to the extent that such documents state binding rules of future effect beyond those stated in other regulations of the Postal Service then in effect.

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**Joshua J. Hofer,**  
*Attorney, Ethics & Legal Compliance.*

[FR Doc. 2021–20425 Filed 9–24–21; 8:45 am]

**BILLING CODE 7710–12–P**

**POSTAL SERVICE**

**39 CFR Part 233**

**Mail Screening Regulations**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** On August 20, 2021, The Postal Service amended its regulations regarding the screening of mail to be consistent with aviation regulations regarding the transportation of mail via aircraft; continue to enhance the security and ensure the safety of all persons and property onboard aircraft carrying mail; and prevent and deter the

carriage of unauthorized explosives, incendiaries, or other destructive substances or items in the mail or in postal products transported onboard aircraft. This final rule is being published for the sole purpose of correcting a citational error, and no substantive changes have been made to the regulation as published on August 20, 2021.

**DATES:** This rule is effective October 27, 2021.

**FOR FURTHER INFORMATION CONTACT:** Amber Jordan, Inspector Attorney, [arjordan@uspis.gov](mailto:arjordan@uspis.gov), (202) 268-7812.

**SUPPLEMENTARY INFORMATION:** On May 24, 2021 (86 FR 27823), the Postal Service published a proposed rule to update Postal Service regulations regarding the screening of mail. The circumstances which created the need for the update were as follows: (1) 39 CFR 233.11 was published as a final rule on February 28, 1996; (2) since the publication of 39 CFR 233.11, no updates had been made; (3) after February 28, 1996, changes were made to 49 U.S.C. 44901 requiring the screening of all items, including United States mail, transported via aircraft; and (4) an update is required to ensure it is consistent with title 49 of the Code of Federal Regulations as it pertains to mail being transported via aircraft.

The regulations published on August 20, 2021 (86 FR 38413), modified the Postal Service regulations regarding the screening of mail to make said regulations: (1) More consistent with aviation regulations regarding the transportation of mail via aircraft; (2) continue to enhance the security and ensure the safety of all persons and property onboard aircraft carrying mail; and (3) continue to prevent and deter the carriage of unauthorized explosives, incendiaries, or other destructive substances or items in the mail or in postal products transported onboard aircraft. This final rule amends the regulations as published on August 20, 2021, in order to correct a citational error.

#### List of Subjects in 39 CFR Part 233

Law enforcement, Postal Service.

For the reasons stated in the preamble, the Postal Service amends 39 CFR part 233 as follows:

#### PART 233—INSPECTION SERVICE AUTHORITY

■ 1. The authority citation for 39 CFR part 233 continues to read as follows:

**Authority:** 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005(e)(1), 3012, 3017, 3018; 12 U.S.C. 3401–

3422; 18 U.S.C. 981, 983, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–208, 110 Stat. 3009; Secs. 106 and 108, Pub. L. 106–168, 113 Stat. 1806 (39 U.S.C. 3012, 3017); Pub. L. 114–74, 129 Stat. 584.

■ 2. Revise § 233.11 to read as follows:

#### § 233.11 Mail screening.

(a) *Screening of mail transported by aircraft*—(1) *Authority.* Pursuant to 39 U.S.C. 5401, the Postal Service is authorized to provide for the safe and expeditious transportation of mail by aircraft and may make such rules, regulations, and orders consistent with part A of subtitle VII of title 49 [49 U.S.C. 40101 *et seq.*], or any order, rule, or regulation made by the Secretary of Transportation thereunder, as may be necessary for such transportation, except as otherwise provided in 39 U.S.C. 5402.

(2) *Purpose.* To prevent and deter the carriage of unauthorized explosives, incendiaries, or other destructive substances or items in the mail or in postal products onboard aircraft and to ensure the security and safety of all persons and property onboard aircraft carrying mail.

(3) *Policy.* Mail of sufficient weight to pose a hazard to aviation may, without a search warrant or the sender's or addressee's consent, be screened by any means capable of identifying explosives, nonmailable firearms, or other dangerous contents in the mails that are destructive or could endanger life or property.

(b) *Screening of surface transported mail*—(1) *Authority.* Pursuant to 39 U.S.C. 404, the Postal Service has specific power to provide for, among other things, the handling of mail. Mail may be screened without a search warrant or the sender's or addressee's consent in exigent circumstances to identify explosives or other dangerous contents in the mails.

(2) *Purpose.* To prevent and deter the carriage of unauthorized explosives or other dangerous content in the mail or in postal products transported via surface transportation providers and to ensure the security and safety of all persons and property associated with mail usage, processing, handling, and transportation.

(3) *Policy.* When the Chief Postal Inspector or designee determines there is a credible threat that certain mail may contain a bomb, explosives, or other material that could endanger life or property, including nonmailable firearms, the Chief Postal Inspector or designee may, without a search warrant or the sender's or addressee's consent, authorize the screening of such mail by

any means capable of identifying explosives, nonmailable firearms, or other dangerous contents in the mails.

(c) *Mail screening restrictions.* Screening of mail authorized by paragraphs (a) and (b) of this section is subject to the following restrictions:

(1) *No unreasonable delay.* The mail must be screened in a manner which does not unreasonably delay its delivery.

(2) *Authorization to screen mail.* The mail screening may be conducted by Postal Service employees or persons not employed by the Postal Service, as authorized by the Chief Postal Inspector, under such instruction that requires compliance with this part and protects the security of the mail. No information obtained from this mail screening may be disclosed unless authorized by this part.

(3) *Mail of insufficient weight to pose a threat.* Mail of insufficient weight to pose a hazard to air transportation, surface transportation, or to contain firearms must be excluded from such screening.

(4) *Additional limitations.* The screening must be within the limits of this section and conducted without opening mail that is sealed against inspection or revealing the contents of correspondence within mail that is sealed against inspection.

(d) *Identified threatening pieces of mail*—(1) *Hazardous mail.* Mail, sealed or unsealed, reasonably suspected of posing an immediate danger to life or limb or an immediate substantial danger to property as a result of screening or other information may, without a search warrant, be detained, opened, removed from postal custody, processed, and treated, but only to the extent necessary to determine and eliminate the danger. Such mail must be processed in accordance with the instructions promptly furnished by the Inspection Service.

(2) *Indeterminate mail.* After screening, mail sealed against inspection that presents doubts about whether its contents are hazardous, that cannot be resolved without opening, must be reported to the Postal Inspection Service. Such mail must be processed in accordance with the instructions promptly furnished by the Inspection Service.

(3) *Mandatory reporting.* Any person who opens mail sealed against inspection, in accordance with paragraph (d)(1) or (2) of this section, is required to provide a complete written and sworn statement regarding the detention, screening, opening, and treatment of the mail piece, as well as the circumstances surrounding its

identification as a possible threat. The statement is required to be signed by the person purporting to act under this section and promptly forwarded to the Chief Postal Inspector. Any person purporting to act under this section who does not report his or her action to the Chief Postal Inspector under the requirements of this section, or whose action is determined after investigation not to have been authorized, is subject to disciplinary action or criminal prosecution or both.

**Ruth Stevenson,**

*Chief Counsel, Ethics & Legal Compliance.*

[FR Doc. 2021-20574 Filed 9-24-21; 8:45 am]

BILLING CODE 7710-12-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2020-0254; FRL-8727-02-R9]

### Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; West Mojave Desert, California

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve portions of state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA or “Act”) requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS or “standards”) in the Los Angeles-San Bernardino Counties (West Mojave Desert), California ozone nonattainment area (“West Mojave Desert” or WMD). The SIP revisions address the “Severe-15” nonattainment area requirements for the 2008 ozone NAAQS, including the requirements for emissions inventories, attainment demonstration, reasonable further progress, reasonably available control measures, and contingency measures, among others; and establishes motor vehicle emissions budgets. The EPA is approving the SIP revisions as meeting all the applicable ozone nonattainment area requirements, except for the contingency measures requirement, for which the EPA is deferring action.

**DATES:** This rule is effective on October 27, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2020-0254. 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:** Tom Kelly, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3856, or by email at [kelly.thomasp@epa.gov](mailto:kelly.thomasp@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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

#### I. Summary of the Proposed Action

On May 10, 2021, the EPA proposed to approve, under CAA section 110(k)(3), and to conditionally approve, under CAA section 110(k)(4), two SIP submittals from the California Air Resources Board (CARB) addressing planning obligations for the West Mojave Desert<sup>1</sup> as a Severe-15 nonattainment area for the 2008 ozone NAAQS.<sup>2</sup> The first, submitted June 2, 2017, includes attainment plans prepared by the Antelope Valley Air Quality Management District (AVAQMD) and the Mojave Desert Air Quality Management District (MDAQMD) (collectively, “Districts”), an accompanying staff report prepared by CARB (“CARB Staff Report”), and other supporting documents.<sup>3</sup> We refer

<sup>1</sup> 86 FR 24809 (May 10, 2021). The West Mojave Desert consists of the northeast portion of Los Angeles County and the southwest portion of San Bernardino County. For a precise definition of the boundaries of the West Mojave Desert 2008 ozone nonattainment area, see 40 CFR 81.305.

<sup>2</sup> In accordance with CAA section 181(a)(1), 40 CFR 51.1102 and 51.1103(a), nonattainment areas classified as Severe-15 must attain the NAAQS within 15 years of the effective date of the nonattainment designation.

<sup>3</sup> “AVAQMD Federal 75 ppb Ozone Attainment Plan (Western Mojave Desert Nonattainment Area),” adopted on March 21, 2017, “MDAQMD Federal 75 ppb Ozone Attainment Plan (Western Mojave Desert Nonattainment Area),” adopted on February 27, 2017, and “CARB Review of the Mojave Desert AQMD and Antelope Valley AQMD Federal 75 ppb Ozone Attainment Plans for the Western Mojave Desert Nonattainment Area,” released April 21, 2017.

to all the documents submitted to the EPA on June 2, 2017, as the “2016 WMD Attainment Plan.”

The second submittal, sent on December 11, 2018, is the “2018 Updates to the California State Implementation Plan” (“2018 SIP Update”).<sup>4</sup> CARB adopted the 2018 SIP Update on October 25, 2018. CARB developed the 2018 SIP Update in response to the court’s decision in *South Coast II*<sup>5</sup> vacating the 2008 Ozone SIP Requirements Rule (“2008 Ozone SRR”)<sup>6</sup> with respect to the use of an alternate baseline year for demonstrating reasonable further progress (RFP), and to address contingency measure requirements in the wake of the decision by the Ninth Circuit Court of Appeals in *Bahr v. EPA* (“*Bahr*”).<sup>7</sup> The 2018 SIP Update includes updates for eight different California ozone nonattainment areas. We have previously approved portions of the 2018 SIP Update related to other nonattainment areas.<sup>8</sup> For the West Mojave Desert, the 2018 SIP Update includes an RFP demonstration using the required 2011 baseline year and revised motor vehicle emission budgets for the 2008 ozone NAAQS.<sup>9</sup>

In our proposed rule, we provided background information on the ozone standards,<sup>10</sup> area designations, and

<sup>4</sup> Letter dated December 5, 2018, from Richard Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, and electronically transmitted to the EPA’s State Planning Electronic Collaboration System on December 11, 2018.

<sup>5</sup> *South Coast Air Quality Management District v. EPA*, 882 F.3d 1138 (D.C. Cir. 2018). The term “*South Coast II*” is used in reference to the 2018 court decision to distinguish it from a decision published in 2006 also referred to as “*South Coast*.” The earlier decision involved a challenge to the EPA’s Phase 1 implementation rule for the 1997 ozone NAAQS. *South Coast Air Quality Management Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006).

<sup>6</sup> 2008 Ozone SRR, 80 FR 12264, 12283 (March 6, 2015).

<sup>7</sup> *Bahr v. EPA*, 836 F.3d 1218 (9th Cir. 2016). In this case, the court rejected the EPA’s longstanding interpretation of CAA section 172(c)(9) as allowing for early implementation of contingency measures. The court concluded that a contingency measure must take effect at the time the area fails to make RFP or attain by the applicable attainment date, not before. See also *Sierra Club v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021), reaching a similar decision. These cases are addressed below in Section III.G of this document.

<sup>8</sup> See, e.g., 84 FR 11198 (March 25, 2019) (final approval of the San Joaquin Valley portion of the 2018 SIP Update) and 84 FR 52005 (October 1, 2019) (final approval of the South Coast portion of the 2018 SIP Update).

<sup>9</sup> CARB withdrew the 2016 WMD Attainment Plan RFP demonstration in a letter dated December 18, 2019, from Richard Corey, Executive Officer, CARB, to Michael Stoker, Regional Administrator, EPA Region IX.

<sup>10</sup> The 1-hour ozone NAAQS is 0.12 parts per million (ppm) (one-hour average), the 1997 ozone

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