docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at https://www.regulations.gov. To do so, go to https://www.regulations.gov, type USCG–2023–0081 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using https://www.regulations.gov, call or email the person in the FOR FURTHER INFORMATION CONTACT section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the https://www.regulations.gov Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to https://www.regulations.gov will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

§ 165.T07–0081 Safety Zone: Tall Ships America; Tampa Bay, St Petersburg, FL.

The Coast Guard is establishing a temporary moving safety zone on the waters of Tampa Bay, around a Tall ships America Parade of sail in St Petersburg, Florida on March 30, 2023. The safety zone will extend 100 yards from the beam of the ships as they transit from the muster point in approximate position 27°43.54′ N 082°36.38′ W to the moorings at Port St Pete, St Petersburg, FL in approximate position 27°45.34′ N 082°37.15′ W. The safety Zone is necessary to protect the public, wooden sailing vessels and their crews from the hazards associated with transiting the area. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port St. Petersburg or a designated representative.


Micheal P. Kahle,
Captain, U.S. Coast Guard, Captain of the Port Saint Petersburg.

[FR Doc. 2023–03422 Filed 2–16–23; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS
Copyright Office

37 CFR Parts 201 and 205 [Docket No. 2023–1]

Ex Parte Communications

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is issuing a notice of proposed rulemaking to establish procedures governing the use of ex parte communications in informal rulemakings. The proposed rule defines ex parte communications, instructs the public on how to request an ex parte meeting with the Office, sets forth the responsibilities of parties after an ex parte meeting, and identifies impermissible ex parte communications.

DATES: Comments on the proposed rule must be made in writing and received by the U.S. Copyright Office no later than 11:59 p.m. Eastern Time on April 3, 2023.

ADDRESSES: For reasons of Government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov.

Specific instructions for submitting comments are available on the Copyright Office website at https://copyright.gov/rulemaking/ex-parte-communications. If electronic submission of comments is not feasible due to lack of access to a computer or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT:
Rhea Eftihia, Assistant to the General Counsel, by email at meft@copyright.gov, or by telephone at 202–707–8350 or Melinda Kern, Attorney-Advisor, by email at mkern@copyright.gov, or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

Statutory Background

The Copyright Office conducts rulemakings consistent with the Administrative Procedure Act (“APA”) rules governing informal rulemakings.1 An informal rulemaking includes a notice-and-comment period, which gives the public an opportunity to respond to an agency’s proposed regulatory action. Unlike formal rulemakings, informal rulemakings do not require on-the-record hearings or trial-type procedures,2 such as the presentation of evidence.

While the APA sets forth certain requirements for informal rulemakings,3 it does not prohibit agencies from engaging in what are commonly referred to as “ex parte communications.”4 The term “ex parte” is a bit of a misnomer in this context. In other legal contexts, the term means “[o]n or from one party only, usually without notice to or argument from the adverse party,”5 and usually refers to communications with a court by one party. In the rulemaking context, an ex parte communication is a “[w]ritten or oral communication[] regarding the substance of an

3. Id. at 553.
4. See Home Box Off., Inc. v. FCC, 567 F.2d 9, 57 (D.C. Cir. 1977) (finding ex parte communications in informal rulemakings “completely appropriate” when they “do not frustrate judicial review or raise serious questions of fairness”); Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc., 435 U.S. 519, 524 (1978) (noting that under the APA, “[a]gencies are free to grant additional procedural rights in the exercise of their discretion”); see also Sierra Club v. Costle, 657 F.2d 298, 401–02 (D.C. Cir. 1981) (noting that Congress declined to extend the ex parte prohibition applicable to formal rulemakings to informal rulemakings despite being urged to do so); cf. 5 U.S.C. 557(d) (prohibiting ex parte communications in formal rulemaking proceedings).
anticipated or ongoing rulemaking between ... agency personnel and interested persons; and that are not placed in the rulemaking docket at the time they occur." As informal rulemakings are not adversarial proceedings, there is normally no "adverse party."

Office’s Prior Handling of Ex Parte Communications in Rulemakings

In the past, the Office has engaged in a limited number of ex parte communications with interested parties to discuss targeted issues related to the merits of a rulemaking. For example, in response to stakeholder requests, the Office provided interested parties the opportunity to engage in ex parte communications during the seventh and eighth triennial section 1201 rulemaking. It offered interested parties this opportunity in certain other rulemakings, including those pertaining to royalty reporting practices under section 111 and those implementing the Orrin G. Golidale Music Modernization Act and the Copyright Alternative in Small-Claims Enforcement ("CASE") Act of 2020. Generally, the Office communicated the availability of ex parte meetings in a Federal Register notice and posted more detailed instructions regarding the ex parte meeting process on the associated rulemaking’s web page.

Office required parties to submit a request identifying the names of all proposed attendees and the party or parties on whose behalf each attendee is appearing, and following the meeting, to generate a written summary of the discussion for the rulemaking record. Although not every agency has a regulation governing ex parte communications, the Administrative Conference of the United States ("ACUS"), an independent federal agency "whose statutory mission is to identify ways to improve the procedures by which federal agencies protect the public interest and determine the rights, privileges, and obligations of private persons," recommends that each agency that conducts informal rulemakings should adopt such a policy. ACUS also gives direction on how agencies can best manage ex parte communications in the context of informal rulemaking proceedings, including how agency personnel should respond to requests to engage in ex parte communications; what qualifies as an ex parte communication (i.e., implementing the MAA’s blanket license); 83 FR 65747, 65753–54 (Dec. 21, 2018) (identifying guidelines for ex parte communications in MLC and DLC designation proceedings); 82 FR 58153, 58154 (Dec. 11, 2017) (identifying guidelines for ex parte communications pertaining to proposed amendments to royalty reporting practices under section 111); see also U.S. Copyright Office, Copyright Alternative in Small-Claims Enforcement (CASE) Act of 2020 Rulemakings. [79 FR 35988, 35993 (June 25, 2014) (reflecting Administrative Conference of the United States Recommendation 2014–4; “Ex Parte Communications in Informal Rulemaking).]


II. Proposed Rule

The Office is proposing new regulations to memorialize its practices regarding ex parte communications in informal rulemakings, as well as additional guidance for parties seeking to engage in such communications. It has used the ACUS’s recommendations and other agencies’ comparable rules as guidance in proposing its regulatory text.

In proposing this rule, the Office recognizes that ex parte communications benefit the agency by informing it of stakeholders’ positions while fostering a complete and transparent rulemaking record. Ex parte communications may help provide a complete regulatory record in several ways. First, the communications may "facilitate a more candid and potentially interactive dialogue of key issues," such as questions about facts or law. Parties may also wish to share sensitive information with the Office through an ex parte meeting rather than a public comment, which “may be an indispensable avenue to obtain the information necessary to develop sound, workable policies." Additionally, when rulemaking parties submit written comments, questions may arise that require further correspondence between the submitter and the Office. As the Office has previously stated, ex parte communications “are intended to provide an opportunity for participants to clarify evidence and/or arguments substantive vs. non-substantive inquiries); and the appropriate procedures to ensure that ex parte communications and their corresponding letters are made available to the public as part of the rulemaking docket. Further, ACUS has made suggestions on the following subjects: (i) the manner in which ex parte communications between an agency and informal rulemaking parties should be disclosed on the rulemaking docket; (ii) the requirements that ex parte meeting parties file a letter with the Office that summarizes the meetings; and (iii) how ex parte communications provided post-deadline or containing new documentary materials are treated by the agency.

Id.
made in prior written submissions and to respond to questions from the Office on those matters.” These communications allow the Office to supplement, but do not substitute for, the pre-existing regulatory record and help ensure it has all the information necessary to build out a complete record.

The purpose of this rule is to make information about the Office’s ex parte communication process broadly available to ensure procedural fairness to the public and rulemaking parties. Rather than following the past practice of providing formal notice to request ex parte communications in specific rulemakings, the proposed rule will make these communications available more generally across its rulemakings. This will allow the public and rulemaking parties more opportunities to inform the Office on complex legal, factual, or technical issues that may arise during a rulemaking proceeding. The rule also contemplates that ex parte communications will aid in efficient rulemaking proceedings by allowing rulemaking parties to respond to late-breaking issues. For these reasons, the Office is proposing and inviting public comments on the following rule.

Applicability

The proposed rule would apply to both written and oral communications between the Office and rulemaking parties that deal with substantive issues in ongoing rulemakings. Allowing both written and oral communications ensures that all methods of communication are covered to provide the greatest level of access by rulemaking parties.

The proposed rule, however, does not apply to communications relating to non-substantive issues (e.g., questions about the Copyright Office’s procedures or a rulemaking’s status). Non-substantive issues would not normally influence an agency’s decision-making, inhibit transparency, or be unfair to other interested parties. If, however, a communication contains both non-substantive and substantive issues, the Office will require the parties to submit a summary of the substantive issues discussed to be included as part of the rulemaking record.

The proposed rule does not apply to communications to the Office on substantive issues prior to the publication of a Federal Register notice regarding the same issues. Such communications may be beneficial in helping the Office “gather essential information, craft better regulatory proposals, and promote consensus building among interested persons.” The rule also does not apply to communications made by Congress, Federal departments and agencies, the Judiciary, or foreign, state, or local governments. The Office has occasionally received such communications in rulemakings, which have been included in the rulemaking record, even if submitted after the written comment period has closed. Finally, the proposed rule does not apply to communications required by law.

The Office will not require comments made on its website or social media pages (e.g., the Office’s blog, Twitter page, etc.) to comply with this proposed rule. While such communications could arguably fall within the proposed definition of “ex parte communication,” the Office’s regulatory team does not monitor these pages for substantive issues related to ongoing rulemakings. Moreover, these comments will not be considered as part of the rulemaking record. Parties who wish to submit comments into the rulemaking record must comply with instructions included in a proposed rule’s Federal Register notice.

Meeting Requests, Format, and Written Summary

The proposed rule sets forth the requirements for parties who wish to request an ex parte meeting, for how those meetings will be conducted, and the timing and substance of the written summary that must be submitted after the meeting for the rulemaking record. Under the rule, all requests for ex parte meetings normally must be submitted by email. The Office understands, however, that all parties may not have the same resources or ability to file a request by email and allows them to contact the Office for special instructions if requesting a meeting by email is not feasible.

All meeting requests must be sent to either the Office employee(s) whose contact information is listed in the Federal Register for the document that the party wishes to discuss or to the Assistant to the Office’s General Counsel. The Office believes that having requests sent to these specified individual(s) will dissuade rulemaking parties from trying to engage in unauthorized ex parte communications through other Office employees. Moreover, an ex parte meeting request must identify the names of all proposed attendees, the name of the party on whose behalf each attendee is appearing, and the rulemaking that will be discussed in the meeting. Providing this information helps the Office understand what interests and arguments may be discussed and enables it to efficiently arrange meeting dates and times.

The proposed rule also provides information on permissible formats for ex parte meetings. To ensure the greatest possible public access, the proposed rule allows meetings to be held in-person, telephonically, virtually (e.g., using Zoom, Microsoft Teams, or similar online platforms), or through some hybrid combination of these formats. Allowing participation through various formats provides all rulemaking parties with the same opportunity to engage in discussions with the Office and further the Office’s goal of providing a fair rulemaking process. While parties’ preferences regarding the format will be considered, the Office will make the final decision regarding the appropriate format for each ex parte meeting.

The proposed rule also makes clear that joint ex parte meetings are

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19 79 FR 35988, 35994 (reflecting ACUS recommendation and citing Memorandum on Regulatory Reform, 31 Weekly Comp. Pres. Doc. 363 (Mar. 4, 1995), https://www.govinfo.gov/content/pkg/WCPD-1995-03-13/pdf/WCPD-1995-03-13-Pg363.pdf (directing agencies to “review all . . . administrative ex parte rules and eliminate any that restrict communication prior to the publication of a proposed rule—other than rules requiring the simple disclosure of the time, place, purpose, and participants of meetings”).

20 The Office notes that the ACUS’s recommendation did “not address unique issues that may arise in connection with communications between agencies and members of Congress, foreign governments, or state and local governments.” Id.


22 For example, the Office may pause or restrict the availability of in-person meetings due to circumstances that effect public health and safety (e.g., the COVID–19 pandemic) or based on the availability of Office employees.
permitted. Rulemaking parties with similar or differing interests may appear together in meetings with the Office. This can help make the rulemaking process more efficient and promote more open dialogue on unresolved issues, for example by providing meeting parties with an opportunity to reach an agreement or consensus on an outstanding issue.

To ensure impartiality to all rulemaking parties, the proposed rule limits what information may be presented in ex parte meetings. Similar to the Office’s previous practices and guidelines on ex parte communications,24 the submission of new documentary materials that are outside of a rulemaking record is not allowed. The Office will not consider or accept these materials without separate prior written approval.

The proposed rule requires that parties participating in ex parte meetings provide the Office with a written summary of the meeting. The written summary must be submitted by email to either the Office employee(s) whose contact information is listed in the corresponding Federal Register document or the Assistant to the General Counsel. If email submission is not feasible, the parties may contact the Office for special instructions regarding the submission process. To ensure prompt and effective disclosure of ex parte meetings, the proposed rule requires the summaries to be submitted within two business days of the meeting. The summary must be submitted by email to either the Office employee(s) whose contact information is listed in the corresponding Federal Register document or the Assistant to the General Counsel. If email submission is not feasible, the parties may contact the Office for special instructions regarding the submission process.

The proposed rule requires that meetings provide the Office with a written summary of the meeting. The written summary must be submitted by email to either the Office employee(s) whose contact information is listed in the corresponding Federal Register document or the Assistant to the General Counsel. If email submission is not feasible, the parties may contact the Office for special instructions regarding the submission process. To ensure prompt and effective disclosure of ex parte meetings, the proposed rule requires the summaries to be submitted within two business days of the meeting (unless otherwise directed or agreed to by the Copyright Office), to contain the same information that is required for the meeting request, and to summarize the arguments made by the party participating in the ex parte communication and the substantive views it expressed in the meeting.

To provide sufficient transparency to the other rulemaking parties and the public, the summary must include enough detail that a non-participating party would understand the substance of the meeting and the issues raised. The Office will not accept or consider summaries that merely list the subject(s) discussed or provide a one- or two-sentence description. If a summary does not comply with these requirements, or contains inaccuracies (e.g., missing attendees, information omitted or characterized incorrectly), the Office will require a corrected letter, which must be submitted within two business days of the Office’s notification. If a party does not provide a corrected letter, the Office may make a notation on the rulemaking’s designated web page noting or describing the deficiency. The Office also may, in its discretion, decline to consider the non-compliant letter as part of the rulemaking record. The proposed rule allows multiple parties to submit a joint summary, if desired. It is the responsibility of the party submitting the summary to ensure that all other meeting parties agree to its viewpoints and contents. If the multiple parties represent conflicting viewpoints, the Office will require each party to submit a separate summary.

These safeguards will bolster the rulemaking process’s transparency and offer fairness to rulemaking parties. The summaries not only provide the public with information regarding the parties engaging in ex parte meetings and the topics discussed, but also provide an adequate, written record of the meetings that the Office may rely on in its decision-making process. Additionally, the meeting summaries should impose a minimal burden on parties, as these procedures have been used without difficulty in past rulemakings.

The proposed rule also permits the Office to impose deadlines on ex parte communications in any particular rulemaking. These deadlines may be separate from deadlines to submit written comments. Ex parte communications, including submission of additional written materials or ex parte meeting requests, made after an imposed deadline normally will be denied by the Office. The Office understands, however, that imposing such restrictions may prevent it from establishing a comprehensive rulemaking record. For this reason, the rule contains limited exceptions, including in circumstances where additional comments are requested by the Office, the comments consist of non-substantive visual aids, or inclusion of the comments in the rulemaking record would be in the interests of justice or fairness (e.g., allowing post-deadline comments to respond to a significant, new, and relevant legal precedent).

Impermissible Communications and Their Effect

The proposed rule sets forth a process to address attempts to circumvent the ex parte communications rules. If a party attempts to engage in an ex parte communication to an Office employee outside of the process described above, the employee must take certain steps. First, they must attempt to prevent the communication. If the employee is unable to prevent the communication, they must advise the person making the communication that it will not be considered part of the rulemaking record. Additionally, they must deliver a copy of the communication, or if it was delivered orally, draft and deliver a summary of the communication to the Office’s General Counsel.

The consequence for parties that engage, or attempt to engage, in an impermissible ex parte communication will be that the communication will not be considered as part of the rulemaking record. While other agencies have chosen to impose harsher sanctions or penalties on parties that engage in impermissible ex parte communications,24 at this time the

24 See, e.g., 12 CFR 1081.110(d) (requiring a party that engages in impermissible ex parte communication in adjudicatory proceedings before the Consumer Financial Protection Bureau “to show cause why the party’s claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation” and allowing Director or hearing officer “to the extent not prohibited by law, [to] censure, suspend, or revoke the privilege to practice before the Bureau of any person who makes, or solicits the making of, an unauthorized ex parte communication”); 16 CFR 1025.68(g) (subjecting Consumer Product Safety Commission rulemaking participants to “any appropriate sanction or sanctions, including but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication”); 24 CFR 100.215(c) (identifying similar sanctions found within the Department of Housing and Urban Development hearings on civil rights matters); 40 CFR 304.25(d) (requiring that a party who engages in impermissible ex parte communication before the Environmental Protection Agency for certain arbitration procedures to “show cause why that party’s arguments or claim should not be denied, disregarded, or otherwise adversely affected on account of such violation”); 47 CFR 1.1216(d) (identifying that parties that violate the Federal Communications Commission ex parte communication guidelines “may be subject to admonishment, monetary forfeiture, or to having his or her claim or interest in the proceeding dismissed, denied, disregarded, or otherwise adversely affected,” but that “such alternative or additional sanctions as may be appropriate also may be imposed”); 49 CFR 1102.2(f) (permitting Continued
Office believes that its proposed rule provides enough of a deterrent and further penalties are not necessary. The Office, however, is open to considering comments on what types of sanctions, if any, should be deemed appropriate with respect to different types of "ex parte" violations and the agency’s authority to impose them.

List of Subjects
37 CFR Part 201
Copyright, General provisions.
37 CFR Part 205
Copyright, Legal processes.

Proposed Regulations
For the reasons set forth in the preamble, the U.S. Copyright Office proposes amending 37 CFR parts 201 and 205 as follows:

PART 201—GENERAL PROVISIONS
1. The authority citation for part 201 continues to read as follows:
2. Amend § 201.1 by adding paragraph (d) to read as follows:

§ 201.1 Communication with the Copyright Office.
* * * * *
(d) Requests for an ex parte meeting. The rules governing ex parte communications in informal rulemakings, including methods to request ex parte meetings, are found in 37 CFR 205.24.
* * * * *

PART 205—LEGAL PROCESSES
3. The authority citation for part 205 continues to read as follows:
4. Add subpart D, consisting of § 205.24, to read as follows:

Subpart D—Ex Parte Communications
Sec. 205.24 Ex Parte communications in informal rulemakings.

§ 205.24 Ex Parte communications in informal rulemakings.
(a) General. The rules governing ex parte communications in informal rulemakings are intended to provide an opportunity for rulemaking parties to clarify evidence or arguments made in prior written submissions, to respond to assertions or requests made by other parties, or to respond to questions from the Copyright Office on any of those matters.
(b) Applicability. (1) An ex parte communication is a written or oral communication regarding the substance of an ongoing rulemaking between a Copyright Office employee and a member of the public that must be included in the rulemaking record, as described in this section.
(2) An ex parte communication does not include the following:
(i) Communications made prior to the publication of a proposed rule or non-substantive inquiries, such as those regarding the status of a rulemaking or the Copyright Office’s procedures;
(ii) Communications made by members of Congress, Federal departments and agencies, the Judiciary, foreign governments, or state and local governments; or
(iii) Communications required by law.
(3) To the extent that communications made on Copyright Office web pages, including social media pages, would be considered ex parte communications under paragraph (b)(1) of this section, such communications are not subject to the rules described in this section and will not be considered as part of the rulemaking record.
(c) Process. (1) Submitting an ex parte meeting request.
(i) A party may request an in-person, telephonic, virtual, or hybrid ex parte meeting to discuss aspects of a notification of inquiry, notice of public hearing, proposed rule, or final rule by submitting a written request to either—
(A) The Copyright Office employee listed as the contact for further information in the Federal Register for the notification of inquiry, notice of public hearing, proposed rule, or final rule that the party wishes to discuss; or
(B) The Copyright Office’s Assistant to the General Counsel. The current contact information for this employee can be obtained by contacting the Copyright Office.
(ii) The Copyright Office permits ex parte meetings in informal rulemakings. At its discretion. When ex parte meetings are permitted, the Office will determine the most appropriate format (e.g., in-person, telephonic, virtual, or hybrid) for each meeting, but will consider the requesting party’s preferences in making that determination.
(iii) The request should be submitted by email. If email submission of an ex parte meeting request is not feasible, a party may contact the Copyright Office for special instructions.
(2) Ex parte meeting request content. An ex parte meeting request must identify the following information:
(i) The names of all proposed attendees;
(ii) The party or parties on whose behalf each attendee is appearing; and
(iii) The rulemaking that will be discussed.
(3) Ex parte meeting summary.
(i) Unless otherwise directed by the Copyright Office, within two business days after an ex parte meeting, attendees must email the Copyright Office employee identified in paragraph (c)(1)(i)(A) or (B) of this section a letter detailing the information identified in paragraph (c)(2) of this section and summarizing the meeting’s discussion. The letter must summarize the substance of the views expressed and arguments made at the meeting in such a way that a non-participating party would understand the scope of issues discussed. Merely listing the subjects discussed or providing a short description will not be sufficient. If email submission of the letter is not feasible, an attendee may contact the Copyright Office for special instructions.
(B) Meeting attendees representing different groups may submit a joint summary letter, but if the groups represent conflicting viewpoints, the groups must submit separate summary letters.
(C) If a party’s ex parte meeting summary letter does not comply with paragraph (c)(3)(i) of this section or contains inaccuracies, the Copyright Office shall notify the ex parte meeting attendee and request a corrected letter. Unless otherwise directed by the Copyright Office, the attendee must submit the corrected letter within two business days of receiving such notification from the Office.
(D) If the ex parte meeting attendee does not provide a corrected letter under paragraph (c)(3)(i) of this section, the Copyright Office may add a notation on its website noting or describing the deficiency. The Copyright Office may also, in its discretion, decline to consider the noncompliant letter as part of the rulemaking record.
(d) Publication of ex parte communications. Ex parte meeting letters and comments will be made publicly available on the Copyright Office’s website.
(e) Impermissible communications. (1) General; attempts to circumvent the ex parte communication process. If a party
ENVIRONMENTAL PROTECTION AGENCY

AIR PLAN APPROVAL; TEXAS; OIL AND NATURAL GAS REASONABLY AVAILABLE CONTROL TECHNOLOGY IN THE DALLAS-FORT WORTH AND HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREAS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve the July 20, 2021 revisions to the Texas State Implementation Plan (SIP) concerning Reasonably Available Control Technology (RACT) requirements covered by the 2016 Oil and Natural Gas Control Techniques Guidelines (CTG or CTGs) for Dallas-Fort Worth (DFW) and the Houston-Galveston-Brazoria (HGB) nonattainment areas (NAAs) for the 2008 8-hour ozone National Air Quality Ambient Air Quality Standards (NAAQS). The DFW area consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties. The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties. These areas were both classified as Serious nonattainment for the 2008 ozone NAAQS on August 23, 2019. These revisions create new RACT rules for oil and gas production and natural gas processing in the DFW and HGB NAAs and make non-substantive changes to reflect the rule applicability for the types of equipment currently required to comply with existing rule requirements but that would be subject to the new requirements upon the compliance date.

DATES: Written comments must be received on or before March 20, 2023.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2021–0525 at https://www.regulations.gov or via email to Ahuja.Anupa@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The 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. The 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, please contact Anupa Ahuja, ahuja.anupa@epa.gov. For the full EPA public comment policy, information about CBI, and general guidance on making effective comments, please visit https://www.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Anupa Ahuja, EPA Region 6 Office, Infrastructure & Ozone Section, 214–665–2701, ahuja.anupa@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via https://www.regulations.gov. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

Ground-level ozone, or smog, which harms human health and the environment, is formed when volatile organic compounds (VOCs) and nitrogen oxides (NOx) interact in the presence of sunlight. Sections 182(b)(2) and (f) of the CAA require that SIPs for ozone nonattainment areas classified as Moderate or above include implementation of RACT for any source covered by a Control Techniques Guidelines (CTG) document issued by the EPA, and for any major source of VOC or NOx located in the nonattainment area. It is worth noting that for some CTG categories, RACT is applicable to minor or area sources. The EPA has defined RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering


Suzanne Wilson,
General Counsel and Associate Register of Copyrights.