S was a member of the P group. Under § 1.1502–32(b)(2)(i), P's basis in its S stock is increased to reflect S's $40 gain immediately before the redemption of S's stock.

(c) *Partial redemption.* The facts are the same as in paragraph (a) of this *Example 9,* except that S distributes the land to P in redemption of 20 shares of P's stock in S. Thus, immediately after the redemption, P owns 75% (60 shares/80 shares) of S's outstanding stock, and S's minority shareholder owns 25% (20 shares/80 shares). The redemption does not satisfy the requirements of section 302(b) and is treated under section 302(d) as a distribution to which section 301 applies. The end of the day rule does not apply for purposes of determining whether P and S are members of the same consolidated group immediately after the redemption. Because P owns only 75% of S's stock immediately after the redemption, the distribution is not an intercompany distribution described in § 1.1502–13(f)(2)(i). Thus, P may not exclude any amount of the distribution that is a dividend, and P's basis in S's stock is not reduced under § 1.1502–32(b)(2)(iv). P may be entitled to a dividends received deduction under section 243(c) (but see section 1059(e)). For the reasons discussed in paragraph (b) of this *Example 9,* S's gain under section 311(b) must be reported under the end of the day rule in S's taxable year ending June 30, during which S was a member of the P group.

(d) *Distribution of loss property.* The facts are the same as in paragraph (a) of this *Example 9,* except that the land distributed by S to P has a fair market value of $60 rather than $140. The end of the day rule applies for purposes of determining the taxable year in which S must take into account its realized loss on the distribution of the land. Thus, under the end of the day rule, S's loss on the distribution of the land, which occurs simultaneously with S's ceasing to be a member, is taken into account in S's taxable year that ends as a result of the redemption. However, the end of the day rule does not apply for other purposes; for example, the rule does not apply in determining whether the transaction is an intercompany distribution or in determining the attributes (as defined in § 1.1502–13(b)(6)) of the loss. Therefore, because S is not a member immediately after the distribution, S's loss on the distribution is not recognized under section 311(a). Under the end of the day rule, the loss is taken into account as a noncapital, nondeductible expense on the P group's consolidated return, and under § 1.1502–32(b)(1)(i), P's basis in its S stock is decreased by $40 immediately before S leaves the group.

Example 10. Extraordinary item of S corporation—(a) *Facts.* On July 1, P purchases all the stock of S, an accrual-basis corporation with an election in effect under section 1362(a). Prior to the sale, S had engaged a consulting firm to find a buyer for S's stock, and the consulting firm's fee was contingent upon the successful closing of the sale of S's stock.

(b) *Analysis.* To the extent S's payment of the success-based fee to its consultants is otherwise deductible, this item is an extraordinary item (see paragraph (b)(2)(ii)(C)(*9*) of this section) that becomes deductible on July 1 simultaneously with the event that terminates S's election as an S corporation. Under paragraph (b)(1)(ii)(B)(*2*) of this section, S's obligation to pay the fee is treated as becoming deductible on June 30 under the previous day rule.

(6) *Effective/applicability date.* Paragraphs (b)(2)(i) and (b)(4) of this section apply to consolidated return years beginning on or after the date these regulations are published as final regulations in the **Federal Register**. Otherwise, this paragraph (b) applies to corporations becoming or ceasing to be members of consolidated groups on or after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2015–05123 Filed 3–5–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 15

[Docket No. CIV 150; AG Order No. 3504–2015]

RIN 1105–AB37

Determination That an Individual Shall Not Be Deemed an Employee of the Public Health Service

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The proposed rule proposes criteria and a process by which the Attorney General or designee may determine that an individual shall not be deemed an employee of the Public Health Service for purposes of coverage under the Federal Tort Claims Act.

DATES: Written comments must be postmarked on or before May 5, 2015, and electronic comments must be sent on or before midnight Eastern time May 5, 2015.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. CIV 150'' on all written and electronic correspondence. Written comments being sent via regular or express mail should be sent to James G. Touhey, Jr., Director, Torts Branch, Civil Division, Department of Justice, Room 8098N National Place Building, 1331 Pennsylvania Avenue NW., Washington, DC 20530. Comments may also be sent electronically through http://*www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. The Department will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. The Department will not accept any file formats other than those specifically listed here.

Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern Time on the day the comment period closes. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: James G. Touhey, Jr., Director, Torts Branch, Civil Division, Department of Justice, Washington, DC 20530, (202) 616–4400.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments. Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Department's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted

within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the ''For Further Information'' paragraph.

Discussion

The Federally Supported Health Centers Assistance Acts of 1992 (Pub. L. 102–501) and 1995 (Pub. L. 104–73) amended section 224 of the Public Health Service Act (42 U.S.C. 233) to make the Federal Tort Claims Act (FTCA) (28 U.S.C. 1346(b), 2671–2680) the exclusive remedy for personal injury or death resulting from the performance of medical, surgical, dental or related functions by federally supported health centers and their employees, to the extent the centers and employees have been deemed by the Public Health Service, Department of Health and Human Services, to be eligible for FTCA coverage. Section 233(i) of title 42 provides that the Attorney General, in consultation with the Secretary of Health and Human Services (Secretary), may on the record determine, after notice and an opportunity for a full and fair hearing, that an individual physician or other licensed or certified health care practitioner who is an officer, employee, or contractor of an entity described in 42 U.S.C. 233(g)(4) shall not be deemed to be an employee of the Public Health Service for purposes of 42 U.S.C. 233 if ''treating such individual as such an employee would expose the Government to an unreasonably high degree of risk of loss'' based on certain prescribed circumstances. This proposed rule proposes that the determination may be made based on one or more of the following statutory criteria: (1) The individual does not comply with the policies and procedures that the entity has implemented pursuant to 42 U.S.C. 233(h)(1); (2) the individual has a history of claims filed against him or her as provided for under 42 U.S.C. 233 that is outside the norm for licensed or certified health care practitioners within the same specialty; (3) the individual refused to reasonably cooperate with the Attorney General in defending against any such claim; (4) the individual provided false information relevant to the individual's performance of his or her duties to the Secretary, the Attorney General, or an applicant for or recipient of funds under title 42 chapter 6A; or (5) the individual was the subject of disciplinary action taken by a state medical licensing authority or a state or national professional society.

The proposed rule proposes a process for making such a determination. The first step, pursuant to § 15.13(a), is a determination by the ''initiating official,'' who is a Deputy Assistant Attorney General of the Department of Justice's Civil Division, that treating an individual as an employee of the Public Health Service may expose the Government to an unreasonably high degree of risk of loss. Section 15.13(a) requires the initiating official, after consultation with the Secretary of the Department of Health and Human Services, to provide notice to the individual in question that an administrative hearing will be held to determine whether treating the individual as an employee of the Public Health Service for purposes of 42 U.S.C. 233(g) would expose the United States to an unreasonably high degree of risk of loss. Following a period for discovery and depositions, to the extent determined appropriate by an administrative law judge under § 15.15, the hearing is then conducted by the administrative law judge in the manner prescribed in § 15.14. After the hearing is conducted and the record is closed, § 15.16 requires the administrative law judge to submit written findings of fact, conclusions of law, and a recommended decision to the ''adjudicating official,'' who is the Assistant Attorney General for the Department of Justice's Civil Division. Section 15.17(b) then gives the parties 30 days to submit certain additional materials, including exceptions to the administrative law judge's recommended decision, to the adjudicating official, who then must make a final agency determination of whether treating the individual as an employee of the Public Health Service for purposes of 42 U.S.C. 233(g) would expose the United States to an unreasonably high degree of risk of loss. Section 15.18 provides that an individual who is dissatisfied with the determination may seek rehearing within 30 days after notice of the determination is sent, and § 15.20 allows individuals who have been determined to expose the United States to an unreasonably high degree of risk of loss to apply for reinstatement after a period of time. Consistent with 42 U.S.C. 1320a–7e(a) and 45 CFR 60.3, 60.5(h) and 60.16, the rule also provides for the Department to notify the National Practitioner Data Bank (NPDB), a confidential information clearinghouse created by Congress with primary goals of improving health care quality and protecting the public, of the issuance of a final order deeming an individual not to be an employee of the Public Health Service under this rule.

This proposed rule would add a new subpart B in part 15 of title 28, Code of Federal Regulations, containing the regulations of the Department of Justice governing such a determination.

The Department invites comments on any issues relating to the proposed rule.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this proposed rule and, by approving it, certifies that it would not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department.

Executive Orders 12866 and 13563: Regulatory Planning and Review

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review.''

The Department of Justice has determined that this proposed rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this proposed rule has been reviewed by the Office of Management and Budget.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this proposed rule and believes that its benefits would justify its costs. As an initial matter, the Department does not expect that the proposed rule would have systemic or large-scale costs, because it is only the

exceptional provider who would be subject to a de-deeming proceeding or determination; proceedings under this proposed rule would be rare and would not affect the overwhelming majority of patients, providers, or health centers. The costs associated with the proposed rule, then, would come in the individual instances of its application. A de-deeming administrative process would impose certain limited litigation-like costs, but §§ 15.14 and 15.15 provide flexibility that will enable the parties and administrative law judge to avoid unduly burdensome costs when those costs are unnecessary. In the event that an individual is ultimately determined to expose the United States to an unreasonably high degree of risk of loss, there will be certain costs and benefits to patients, providers, and health centers. A provider who is deemed not to be a member of the Public Health Service may be required to obtain his or her own medical malpractice insurance (as may the health center, for matters involving the provider that are determined not to be covered by the FTCA) or leave the practice. If the individual leaves the practice, the employing center may incur costs of replacing him or her with a new provider. The Department expects that substantial benefits will arise from such replacements, as any individual who is replaced will be one who has been determined to create an unreasonably high degree of risk of loss. It is thus likely that the individual's replacement will provide reduced risks of loss for the United States and better care for patients. While there may be instances in which an individual who presented such a risk of loss cannot be replaced, possibly resulting in impaired access to care for medically underserved health center patients, the Department believes that these costs are substantially outweighed by the benefits of implementing this authority.

The Department is unable to quantify these costs at this time, as the authority to deem a provider not a member of the Public Health Service has not previously been used. However, based on the expectation that the authority will be used sparingly and only for providers who expose the United States to an unreasonably high degree of risk of loss, the Department has concluded that the net benefits of improved patient care and reduced costs of malpractice will outweigh these possible costs.

Executive Order 13132: Federalism

This proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Department of Justice has determined that this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This proposed rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This proposed rule would not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This proposed rule would not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices; significant adverse effects on competition, employment, investment, productivity, or innovation; or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 28 CFR Part 15

Claims, Government contracts, Government employees, Health care, Immunization, Nuclear energy.

For the reasons set forth in the preamble, the Attorney General proposes to amend part 15 of title 28 of the Code of Federal Regulations as follows:

PART 15—CERTIFICATIONS, DECERTIFICATIONS, AND NON–DEEMING DETERMINATIONS FOR PURPOSES OF THE FEDERAL TORT CLAIMS ACT

■ 1. The authority citation for part 15 is revised to read as follows:

Authority: 5 U.S.C. 301, 554, 556, 557, and 8477(e)(4); 10 U.S.C. 1054, 1089; 22 U.S.C. 2702, 28 U.S.C. 509, 510, and 2679; 38 U.S.C. 7316; 42 U.S.C. 233, 2212, 2458a, and 5055(f); and sec. 2, Pub. L. 94–380, 90 Stat. 1113 (1976).

■ 2. The heading for part 15 is revised to read as set forth above.

■ 3. Add a heading for subpart A to read as follows:

Subpart A—Certification and Decertification in Connection With Certain Suits Based Upon Acts or Omissions of Federal Employees and Other Persons

§§ 15.1, 15.2, 15.3, and 15.4 [Designated as Subpart A]

■ 4. Designate §§ 15.1 through 15.4 as subpart A.

§§ 15.5, 15.6, 15.7, 15.8, 15.9, and 15.10 [Added and Reserved]

■ 5. Add reserved §§ 15.5 through 15.10 to newly designated subpart A.

■ 6. Add subpart B to read as follows:

Subpart B—Determination of Individuals Deemed Not To Be Employees of the Public Health Service

Sec.

15.11 Purpose.
15.12 Definitions.
15.13 Notice of hearing.
15.14 Conduct of hearing.
15.15 Discovery.
15.16 Recommended decision.
15.17 Final agency determination.
15.18 Rehearing.
15.19 Effective date of a final agency determination.
15.20 Reinstatement.

§ 15.11 Purpose.

(a) The purpose of this regulation is to implement the notice and hearing procedures applicable to a determination by the Attorney General or his designee under 42 U.S.C. 233(i) that an individual shall not be deemed an employee of the Public Health Service for purposes of 42 U.S.C. 233(g).

(b) Section 233(i) of title 42 provides that the Attorney General, in consultation with the Secretary of Health and Human Services, may on the record determine, after notice and an opportunity for a full and fair hearing, that an individual physician or other licensed or certified health care practitioner who is an officer, employee, or contractor of an entity described in 42 U.S.C. 233(g)(4) shall not be deemed to be an employee of the Public Health Service for purposes of 42 U.S.C. 233 if treating such individual as such an employee would expose the Government to an unreasonably high degree of risk of loss.

§ 15.12 Definitions.

As used in this regulation:

(a) *Attorney General* means the Attorney General of the United States or any designee of the Attorney General to whom authority has been delegated to conduct a hearing and to make a determination pursuant to section 233(i) of title 42, United States Code.

(b) *Adjudicating official* means the Assistant Attorney General for the Civil Division.

(c) *Entity* means an entity described in 42 U.S.C. 233(g)(4).

(d) *Health and Human Services* means the Department of Health and Human Services or a division or component of the Department of Health and Human Services.

(e) *Individual* means an individual physician or other licensed or certified health care practitioner who is or was an officer, employee, or contractor of an entity described in 42 U.S.C. 233(g)(4).

(f) *Initiating official* means a Deputy Assistant Attorney General of the Civil Division of the Department of Justice or, except for responsibilities that the initiating official must perform personally, his or her designee.

(g) *Parties* means an *Individual,* as defined in paragraph (e) of this section, and the *Initiating official,* as defined in paragraph (f) of this section.

(h) *Public Health Service* means the Public Health Service or a division or component of the Public Health Service.

(i) *Secretary* means the Secretary of the Department of Health and Human Services or the Secretary's designee.

(j) *Unreasonably high degree of risk of loss* is a determination based on consideration of one or more of the following criteria—

(1) The individual does not comply with the policies and procedures that the entity has implemented pursuant to 42 U.S.C. 233(h)(1);

(2) The individual has a history of claims filed against him or her as provided for under 42 U.S.C. 233 that is outside the norm for licensed or certified health care practitioners within the same specialty;

(3) The individual refused to reasonably cooperate with the Attorney General in defending against any such claim;

(4) The individual provided false information relevant to the individual's performance of his or her duties to the Secretary, the Attorney General, or an applicant for or recipient of funds under title 42, chapter 6A, United States Code; or

(5) The individual was the subject of disciplinary action taken by a state medical licensing authority or a state or national professional society.

§ 15.13 Notice of hearing.

(a) Whenever the initiating official personally concludes that treating an individual as an employee of the Public Health Service may expose the Government to an unreasonably high degree of risk of loss, the initiating official, after consultation with the Secretary, shall notify the individual that an administrative hearing will be conducted for the purpose of determining whether treating the individual as an employee of the Public Health Service for purposes of 42 U.S.C. 233(g) would expose the United States to an unreasonably high degree of risk of loss.

(b) The notice of hearing shall be in writing and shall be sent by registered or certified mail to the individual at the individual's last known address, or to the individual's attorney in the event the Attorney General has received written notice that the individual has retained counsel.

(c) The notice shall contain:

(1) A statement of the nature and purpose of the hearing;

(2) The name of the administrative law judge;

(3) A statement of the nature of the action proposed to be taken; and

(4) A statement of the time, date, and location of the hearing.

(d) The hearing shall be initiated not sooner than 60 days of the date on the written notice of hearing.

§ 15.14 Conduct of hearing.

(a) An administrative law judge appointed in accordance with 5 U.S.C. 3105 shall preside over the hearing.

(b) If the administrative law judge appointed is unacceptable to the individual, the individual shall inform the Attorney General within 14 days of the notification of the reasons for his or her position. The Attorney General may select another administrative law judge, or affirm the initial selection. In either case, the official shall inform the individual of the reasons for the decision.

(c) The administrative law judge shall have the following powers:

(1) Administer oaths and affirmations;

(2) Issue subpoenas authorized by law;

(3) Rule on offers of proof and receive relevant evidence;

(4) Take depositions or have depositions taken when the ends of justice would be served;

(5) Regulate the course of the hearing;

(6) Hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution;

(7) Inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;

(8) Dispose of procedural requests or similar matters;

(9) Make or recommend decisions;

(10) Require and, in the discretion of the administrative law judge, adopt proposed findings of fact, conclusions of law, and orders.

(11) Take other action authorized by agency rule consistent with this subchapter;

(12) All powers and duties reasonably necessary to perform the functions enumerated in paragraphs (c)(1) through (11) of this section.

(d) The administrative law judge may call upon the parties to consider:

(1) Simplification or clarification of the issues;

(2) Stipulations, admissions, agreements on documents, or other understandings that will expedite conduct of the hearing;

(3) Limitation of the number of witnesses and of cumulative evidence;

(4) Such other matters as may aid in the disposition of the case.

(e) At the discretion of the administrative law judge, parties or witnesses may participate in hearings by video conference.

(f) All hearings under this part shall be public unless otherwise ordered by the administrative law judge.

(g) The hearing shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act).

(h) The initiating official shall have the burden of going forward with the evidence and shall generally present the government's evidence first.

(i) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules designed to assure production of the most credible evidence available and to subject testimony to cross-examination shall be applied where reasonably necessary by the administrative law judge. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(j) During the time a proceeding is before an administrative law judge, all motions shall be addressed to the administrative law judge and, if within

his or her delegated authority, shall be ruled upon. Any motion upon which the administrative law judge has no authority to rule shall be certified to the adjudicating official with a recommendation. The opposing party may answer within such time as may be designated by the administrative law judge. The administrative law judge may permit further replies by both parties.

§ 15.15 Discovery.

(a) At any time after the initiation of the proceeding, the administrative law judge may order, by subpoena if necessary, the taking of a deposition and the production of relevant documents by the deponent. Such order may be entered upon a showing that the deposition is necessary for discovery purposes, and that such discovery could not be accomplished by voluntary methods. Such an order may also be entered in extraordinary circumstances to preserve relevant evidence upon a showing that there is substantial reason to believe that such evidence could not be presented through a witness at the hearing. The decisive factors for a determination under this subsection, however, shall be fairness to all parties and the requirements of due process. A deposition may be taken orally or upon written questions before any person who has the power to administer oaths and shall not exceed one day of seven hours.

(b) Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds upon which objections are made. The questions propounded and the answers thereto, together with all objections made (but not including argument or debate), shall be reduced to writing and certified by the person before whom the deposition was taken. Thereafter, the person taking the deposition shall forward the deposition and one (1) copy thereof to the party at whose instance the deposition was taken and shall forward one (1) copy to the representative of the other party.

(c) A deposition may be admitted into evidence as against any party who was present or represented at the taking of the deposition, or who had due notice thereof, if the administrative law judge finds that there are sufficient reasons for admission and that the admission of the evidence would be fair to all parties and comport with the requirements of due process.

§ 15.16 Recommended decision.

Within a reasonable time after the close of the record of the hearings conducted under § 15.14, the administrative law judge shall submit written findings of fact, conclusions of law, and a recommended decision to the adjudicating official. The administrative law judge shall promptly make copies of these documents available to the parties and the Secretary.

§ 15.17 Final agency determination.

(a) In hearings conducted under § 15.14, the adjudicating official shall make the final agency determination, on the basis of the record, findings, conclusions, and recommendations presented by the administrative law judge.

(b) Prior to making a final agency determination, the adjudicating official shall give the parties an opportunity to submit the following, within thirty (30) days after the submission of the administrative law judge's recommendations:

(1) Proposed findings and determinations;

(2) Exceptions to the recommendations of the administrative law judge;

(3) Supporting reasons for the exceptions or proposed findings or determinations; and

(4) Final briefs summarizing the arguments presented at the hearing.

(c) All determinations made by the adjudicating official under this rule shall constitute final agency actions. After a final agency determination under this rule that an individual shall not be deemed to be an employee of the Public Health Service, such individual will be deemed not to be an employee of the Public Health Service except pursuant to § 15.20.

§ 15.18 Rehearing.

(a) An individual dissatisfied with a final agency determination under § 15.17 may, within 30 days after the notice of the final agency determination is sent, request the adjudicating official to re-review the record, and may present additional evidence that is appropriate and pertinent to support a different decision.

(b) The adjudicating official may require that another oral hearing be held on one or more of the issues in controversy, or permit the dissatisfied party to present further evidence or argument in writing, if the adjudicating official finds that the individual has:

(1) Presented evidence or argument that is sufficiently significant to require the conduct of further proceedings; or

(2) Shown some defect in the conduct of the adjudication under this subpart sufficient to cause substantial unfairness or an erroneous finding in that adjudication.

(c) Any rehearing ordered by the adjudicating official shall be conducted pursuant to §§ 15.13 through 15.16.

(d) A determination that an individual may be deemed to be an employee of the Public Health Service for purposes of 42 U.S.C. 233 pursuant to this section shall be distributed in the same manner as provided in § 15.19.

§ 15.19 Effective date of a final agency determination.

(a) A final agency determination under § 15.17 that an individual shall not be deemed to be an employee of the Public Health Service for purposes of 42 U.S.C. 233 shall be provided to the Department of Health and Human Services and sent by certified or registered mail to the individual and to the entity employing such individual if the individual is currently an officer, employee, or contractor of an entity described in 42 U.S.C. 233(g)(4). In the event the individual is no longer an officer, employee, or contractor of such an entity, the determination shall be sent by certified or registered mail to the individual and to the last entity described in 42 U.S.C. 233(g)(4) at which such individual was an officer, employee, or contractor.

(b) A final agency determination shall be effective upon the date the written determination is received by such entity.

(c) An adverse final agency determination shall apply to all acts or omissions of the individual occurring after the date the adverse final determination is received by such entity.

(d) The Attorney General will inform the National Practitioner Data Bank of any final agency determination under § 15.17 that an individual shall not be deemed to be an employee of the Public Health Service for purposes of 42 U.S.C. 233.

§ 15.20 Reinstatement.

(a) No less than five years after the time for rehearing has expired, and no more often than every five years, an individual who has been the subject of a final agency determination under § 15.17 may petition the Attorney General for reconsideration of that determination and reinstatement. The individual bears the burden of proof and persuasion.

(b) In support of the petition for reinstatement, the individual shall submit relevant evidence relating to the period since the original proceedings under this subpart and a statement

demonstrating that treating the individual as an employee of the Public Health Service for purposes of 42 U.S.C. 233(g) would no longer expose the United States to an unreasonably high degree of risk of loss.

(c) Upon receiving a petition for reinstatement, the initiating official shall determine, in the initiating official's unreviewable discretion, whether the petition makes a prima facie case that no longer would expose the United States to an unreasonably high degree of risk of loss. The initiating official's determination that a petition does not make a prima facie case is not subject to further review.

(d) Upon a prima facie case having been made, an administrative law judge shall be appointed in accordance with 5 U.S.C. 3105 and shall conduct such proceedings pursuant to §§ 15.13 through 15.16 as the administrative law judge deems necessary, in his or her sole discretion, to determine whether the individual has established that treating the individual as an employee of the Public Health Service for purposes of 42 U.S.C. 233(g) would no longer expose the United States to an unreasonably high degree of risk of loss, and shall submit written findings of fact, conclusions of law, and a recommended decision to the adjudicating official pursuant to § 15.16.

(e) On a petition for reinstatement, the adjudicating official shall make the final agency determination, on the basis of the record, findings, conclusions, and recommendations presented by the administrative law judge, which shall include the record from the original determination and any petition for rehearing. All determinations made by the adjudicating official under this rule shall constitute final agency actions.

(f) A determination that an individual is reinstated pursuant to this section shall be distributed in the same manner as provided in § 15.19.

Dated: February 25, 2015.

Eric H. Holder, Jr.,

Attorney General.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2014–0528; FRL–9924–04-Region 7]

Approval and Promulgation of Implementation Plans; State of Kansas; Infrastructure SIP Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from the State of Kansas addressing the applicable requirements of Clean Air Act (CAA) section 110 for the 2010 National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide (SO_2), which requires that each state adopt and submit a SIP to support implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as ''infrastructure'' SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before April 6, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2014–0528, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *Email: kemp.lachala@epa.gov.*
3. *Mail:* Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.
4. *Hand Delivery or Courier:* Deliver your comments to Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, Air and Waste Management Division, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2014–0528. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or email information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and should be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219 from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Lachala Kemp, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 11201 Renner Boulevard, Lenexa, KS 66219; *telephone number:* (913) 551–7214; *fax number:* (913) 551–7065; *email address: kemp.lachala@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we refer to EPA. This section provides additional