

to cease and desist from the unlawful conduct and post the required employee notice, as well as a remedial notice. In some instances additional remedies may be appropriately invoked in keeping with the Board's remedial authority.

(b) Any employer that threatens or retaliates against an employee for filing charges or testifying at a hearing concerning alleged violations of the notice-posting requirement may be found to have committed an unfair labor practice. See NLRA Section 8(a)(1) and 8(a)(4), 29 U.S.C. 158(a)(1), (4).

#### § 104.214 What other sanctions may be imposed for noncompliance?

(a) Tolling of statute of limitations. When an employee files an unfair labor practice charge, the Board may find it appropriate to excuse the employee from the requirement that charges be filed within six months after the occurrence of the allegedly unlawful conduct, if the employer has failed to post the required employee notice, unless the employee has received actual or constructive notice that the conduct complained of is unlawful. See NLRA Section 10(b), 29 U.S.C. 160(b).

(b) Knowing noncompliance as evidence of unlawful motive. If an employer has actual or constructive knowledge of the requirement to post the employee notice and fails or refuses to do so, the Board may consider such a willful refusal as evidence of unlawful motive in a case in which motive is an issue.

#### Subpart C—Ancillary Matters

##### § 104.220 What other provisions apply to this part?

(a) The regulations in this part do not modify or affect the interpretation of any other NLRB regulations or policy.

(b)(1) This subpart does not impair or otherwise affect:

(i) Authority granted by law to a department, agency, or the head thereof; or

(ii) Functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(2) This subpart must be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This part creates no right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Signed in Washington, DC, December 16, 2010.

**Wilma B. Liebman,**  
Chairman.

[FR Doc. 2010-32019 Filed 12-21-10; 8:45 am]

BILLING CODE 7545-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 50 and 51

[EPA-HQ-OAR-2010-0891, FRL-9241-9]

RIN 2060-AQ65

#### Reasonable Further Progress Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard

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

**ACTION:** Proposed rulemaking.

**SUMMARY:** The EPA is proposing to revise the Agency's earlier interpretation of its rule regarding requirements for Reasonable Further Progress (RFP) that allowed certain emissions reductions from outside the nonattainment area to be credited toward meeting the RFP requirements for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Specifically, EPA is proposing that States may not take credit for emission reductions from outside the nonattainment area to meet the area's RFP obligations. EPA is also taking comment on whether it would be appropriate for States to rely on emission reductions credit from outside the nonattainment area for RFP obligations.

**DATES:** *Comments.* Comments must be received on or before February 7, 2011.

*Public Hearings.* If anyone contacts us requesting a public hearing on or before January 6, 2011, we will hold a public hearing. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and the public hearing.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2010-0891, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

- *Mail:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA-HQ-OAR-2010-0891, Environmental Protection Agency, 1301 Constitution Ave., NW., Washington, DC 20460. Mail Code: 2822T. Please include two copies if possible.

- *Hand Delivery:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA-HQ-OAR-2010-0891, Environmental Protection Agency in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation will be 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, Air and Radiation Docket and Information Center.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2010-0891. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line 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 information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. 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 e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail 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 be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in <http://www.regulations.gov>. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket and Information Center is in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:** For further general information on this rulemaking, contact Mr. H. Lynn Dail, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, (C539-01), Research Triangle Park, NC 27711, phone number (919) 541-2363, fax number (919) 541-0824 or by e-mail at [dail.lynn@epa.gov](mailto:dail.lynn@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

Entities potentially affected directly by this action include State, local, and Tribal governments. Entities potentially affected indirectly by this rule include owners and operators of sources of emissions [volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>)] that contribute to ground-level ozone concentrations.

###### B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed to be CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying

information (subject heading, **Federal Register** date and page number).

- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

###### C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this notice will be posted at <http://www.epa.gov/air/ozonepollution/actions.html#impl> under “recent actions.”

###### D. What information should I know about possible public hearing?

EPA will hold a public hearing only if a party notifies EPA by January 3, 2011. Further details concerning a public hearing for this proposed rule will be published in a separate **Federal Register** notice. For updates and additional information on a public hearing, please check EPA’s Web site for this rulemaking at <http://www.epa.gov/ozonepollution/actions.html#impl>.

###### E. How is this notice organized?

The information presented in this notice is organized as follows:

##### I. General Information

- Does this action apply to me?
- What should I consider as I prepare my comments for EPA?
- Where can I get a copy of this document and other related information?
- What information should I know about possible public hearings?
- How is this notice organized?

##### II. Can emissions reductions from sources located outside the nonattainment area boundary be used to meet RFP requirements?

- Background
- NRDC’s Petition for Reconsideration of the August 2009 RFP Rule on Credits for Outside Reductions
- EPA’s Proposed Approach to Relying on Credits From Outside the Nonattainment

Area to Meet the RFP Obligations and Response to the Request for Reconsideration

- Statutory and Executive Order Reviews
  - Executive Order 12866: Regulatory Planning and Review
  - Paperwork Reduction Act
  - Regulatory Flexibility Act
  - Unfunded Mandates Reform Act
  - Executive Order 13132—Federalism
  - Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
  - Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  - Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - National Technology Transfer and Advancement Act
  - Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  - Determination Under Section 307(d)
- Statutory Authority
- List of Subjects

## II. Can emissions reductions from sources located outside the nonattainment area boundary be used to meet RFP requirements?

### A. Background

Under EPA’s Phase 2<sup>1</sup> Rule, certain emission reductions from sources located outside a nonattainment area could be credited toward meeting the 1997 ozone NAAQS RFP requirement. In the preamble to that rule, EPA stated that credit could be taken for VOC and NO<sub>x</sub> emission reductions within 100 kilometers (km) and 200 km, respectively, outside the nonattainment area under certain circumstances. In addition, if a regional NO<sub>x</sub> control strategy were in place in a State, NO<sub>x</sub> reductions within that State beyond 200 km could be credited toward meeting the RFP target. In all cases, areas had to include a demonstration that the emissions from outside the nonattainment area had an impact on ozone air quality levels within the nonattainment area. EPA explained that where data indicated that emissions reductions from sources outside a nonattainment area improved ozone air quality within the nonattainment area, it was appropriate to allow States to take RFP credit for such reductions from outside the nonattainment area. This interpretation was consistent with the policy EPA had established under the 1-hour ozone standard “Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM<sub>10</sub> NAAQS,” December

<sup>1</sup> See Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2 (70 FR 71612, November 29, 2005).

29, 1997.<sup>2</sup> For a more complete discussion of EPA's rationale for applying this interpretation in the Phase 2 Rule, see 70 FR at 71647-49.

On January 27, 2006, the Natural Resources Defense Council (NRDC) filed a petition for review of EPA's Phase 2 Ozone Implementation Rule in the U.S. Court of Appeals for the District of Columbia Circuit (the Court). NRDC challenged several aspects of the Phase 2 Rule including EPA's interpretation that formed the basis of its policy for allowing credit for reductions outside the nonattainment area, namely EPA's interpretation that the intent of section 182(c)(2)(C) is to reduce ambient ozone concentrations within an area rather than to reduce emissions within the nonattainment area. NRDC claimed that EPA's interpretation and implementation of these provisions were both unlawful and arbitrary. NRDC also argued that the rule was arbitrary because it allowed the State to claim credit for emission reductions from selected outside-the-nonattainment-area sources without also adding emissions from other outside sources to the RFP baseline, even where those other sources impact air quality in the nonattainment area.

Following the conclusion of briefing in this case, EPA published a final rule implementing the NAAQS for fine particulate matter (the PM<sub>2.5</sub> Implementation Rule) where we adopted a different approach for crediting reductions from outside nonattainment areas ("outside" reductions). See 72 FR 20586 (April 25, 2007). The PM<sub>2.5</sub> Rule allows States to take credit for "outside" reductions of NO<sub>x</sub> and sulfur dioxide (SO<sub>2</sub>) emissions up to 200 km from the nonattainment area (and potentially VOC or ammonia as well) provided certain conditions are met, including that when taking RFP credit for emissions reductions achieved in "outside" areas, the baseline emissions inventory for the nonattainment area contain all, rather than a select few, sources in the outside area.<sup>3</sup> The primary objective of this policy was to reflect the net emission reductions in the "outside" area that

could affect the nonattainment area rather than crediting only reductions from selected sources.

Following publication of the PM<sub>2.5</sub> Implementation Rule, EPA requested from the Court on July 17, 2007, a partial voluntary remand of the Phase 2 Rule to reevaluate and consider whether to revise the RFP interpretation for ozone to assure consistency with the provisions in the PM<sub>2.5</sub> Implementation Rule. In response to EPA's motion for a partial voluntary remand of the ozone RFP policy, NRDC asked the Court to also vacate this provision. On November 2, 2007, the Court issued an order that vacated and remanded the portion of the Phase 2 Rule that permitted credit for reductions of VOC and NO<sub>x</sub> from outside nonattainment areas. On August 11, 2009 (74 FR 40074), EPA issued a final rule to revise the RFP policy in the Phase 2 Rule to be consistent with the interpretation in the PM<sub>2.5</sub> Implementation rule.

Meanwhile on July 10, 2009, the Court issued its decision on the other issues in the Phase 2 Ozone Implementation Rule case. *NRDC v. EPA*, 571 F.3d 1245 (DC Cir. 2009). The Court examined the phrase "in the area" included in separate provisions relating to reductions from the application of Reasonably Available Control Technology (RACT) (CAA sections 172(1) and 182(b)(2)). In the Phase 2 Rule, EPA had explained that because an interstate emissions trading program [the NO<sub>x</sub> State implementation plan (SIP) call's NO<sub>x</sub> budget program] would achieve beyond RACT-level NO<sub>x</sub> reductions regionally, areas did not have to meet the RACT-level reductions required under CAA section 172(c)(1) solely from within the nonattainment area. The Court, however, concluded that the phrase "in the area" means that reductions must occur within the area and "reductions from outside the nonattainment area do not satisfy the requirement." 571 F.3d at 1256.

Although such region-wide reductions could potentially satisfy the statutory requirement that the reductions must be from sources within the nonattainment area, the Court found that EPA had not made a demonstration for all nonattainment areas within the SIP Call area showing that the regional emissions trading program did in fact produce sufficient reductions from inside each nonattainment area to represent RACT-level reductions. *Id.*

#### *B. NRDC's Petition for Reconsideration of the August 2009 RFP Rule on Credits for Outside Reductions*

Following the Court's decision, on October 9, 2009, NRDC filed a petition

with EPA for administrative reconsideration of the August 2009 final rule revising EPA's interpretation in the Phase 2 Ozone Implementation Rule on allowing credit toward meeting the RFP requirements using emissions reductions from outside of ozone nonattainment areas. In its petition, NRDC based its objections to the rule on the following grounds: (1) The Court's decision on the RACT provisions in the Phase 2 Rule and its interpretation of the phrase "sources in the area" requires that RFP emission reductions also be achieved only from sources within the nonattainment area; (2) EPA presented a new rationale, *i.e.*, there is some ambiguity in the statutory provisions because they do not prohibit credits for reductions from outside the nonattainment area, for which it did not provide an opportunity for comment; (3) EPA offered a new and arbitrary rationale for its choice of the 100 and 200 km distances for "outside" reductions; (4) EPA stated a new and arbitrary rationale, *i.e.*, creditable "outside" reductions must be reasonably expected to provide ozone air quality benefits comparable to those from reductions in the area, for evaluating "outside" reductions; and (5) EPA relied on a new rationale when it explained that sources that are outside the nonattainment area are not necessarily "nearby" for designations purposes and certain factors would need to be considered for judging whether an area is "nearby."

On May 13, 2010, EPA granted reconsideration of the rule based on NRDC's petition and stated it would initiate rulemaking to address the reconsideration. EPA is addressing the reconsideration through this proposed rulemaking. NRDC's first objection is addressed in the following section and EPA believes that the proposed action makes NRDC's other objections moot. Therefore, EPA is not addressing any of those subsequent points here.

#### *C. EPA's Proposed Approach to Relying on Credits From Outside the Nonattainment Area to Meet the RFP Obligations and Response to the Request for Reconsideration*

EPA is proposing to set aside its earlier interpretation of the RFP provisions in the August 2009 final rule and no longer permit States to rely on credit for emission reductions from outside the ozone nonattainment area to meet such an area's RFP obligations. In light of the Court's decision in *NRDC* discussed previously, and upon consideration of NRDC's petition for reconsideration, EPA believes that the language in the baseline emissions

<sup>2</sup> The memorandum is available on the EPA Technology and Transfer Network (TTN) Policy and Guidance page for Title I at this Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

<sup>3</sup> In addition, where State RFP plans rely on "outside" reductions to meet the RFP obligations, such plans must include a technical demonstration showing that such outside emissions significantly affected the PM<sub>2.5</sub> concentrations within the nonattainment area. And, the area outside the nonattainment area from which creditable reductions are taken must be within the State; areas outside the State but within 200 km would not be eligible for credit for RFP purposes.

provision for determining the emissions reductions required for RFP purposes (CAA sections 182(b)(1)(B) and 182(c)(2)(B)) is almost identical to the language in the RACT provision (section 172(c)(1)) addressed by the Court, and thus compels a similar interpretation. All three sections contain the phrase “in the area” and in examining the RACT provision the Court found that language compelled that the reductions must come from within the nonattainment area, and that reductions from outside the nonattainment area would not satisfy the statutory requirement for reductions “in the area.” We see no basis for interpreting that same clause in the RFP provisions in a different manner in light of the Court’s decision.

EPA is therefore proposing that for the 1997 ozone NAAQS States may not take credit for VOC or NO<sub>x</sub> reductions occurring outside the nonattainment area for purposes of meeting the section 182(b) and (c) RFP requirements. This includes the 15 percent VOC plan requirement for Moderate and above ozone nonattainment areas in section 182(b)(1) and the additional 3 percent per year requirement for Serious and above ozone nonattainment areas in section 182(c)(2)(B).

EPA recognizes that not allowing credit for emissions reductions outside the nonattainment area will make it more challenging for some areas, such as nonattainment areas adjacent to the South Coast Air Quality Management District, namely, Coachella Valley, West Mojave Desert and Ventura County in California, to meet the RFP

requirements, and may limit the extent to which regional programs can be creditable toward RFP. For ozone nonattainment areas that are not able to meet the 182(b)(1) and 182(c)(2)(B)(i) RFP requirements, the CAA allows for a lesser amount of RFP if certain conditions are met. For an area to qualify for a less than the required 15 percent emissions reduction, that State must demonstrate that, in the area, New Source Review (NSR) provisions are applicable in the same manner and to the same extent as in an Extreme area, RACT is required for all existing major sources, and the RFP plan includes all feasible measures that can be implemented in light of technological achievability. For purposes of applying this provision, a major source is defined as a source that emits or has the potential to emit at least 5 tons per year of VOC. Similarly, for Serious and above areas to qualify for less than the required 3 percent each year of reductions in emissions to meet their RFP obligations, a State must show that the SIP includes all feasible measures

that can be implemented in the area in light of technological achievability. In both instances, the State must also demonstrate that the SIP for the area includes measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher classification. See 182(b)(1)(A)(ii) and 182(c)(2)(B)(ii).

Despite the Court’s opinion in *NRDC*, there may remain valid policy reasons for giving States incentive to focus on obtaining emission reductions that are the most beneficial and cost effective for attaining the ozone standards. Also, there may be cases where the most beneficial and cost-effective reductions are from sources located outside the nonattainment area boundaries. In these cases, there may be good reason to credit the emission reductions toward meeting RFP requirements. To this end, EPA is also taking comment on allowing credit for reductions outside the nonattainment area to satisfy the RFP requirements for the 1997 and 2010 ozone NAAQS. If EPA finalizes this proposal to provide that credit cannot be taken for emission reductions from outside the nonattainment area, States that previously submitted plans that relied on such credit will need to submit new RFP demonstrations for those areas.

EPA requests comments on the proposal and the implications for the 1997 ozone NAAQS.

## VI. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a “non-significant regulatory action” because it does not raise novel legal or policy issues arising out of legal mandates.

### B. Paperwork Reduction Act

This action does not impose any new information collection burden. The CAA imposes the obligation for States to submit SIPs, including RFP, to implement the ozone NAAQS. In this proposal, EPA is merely providing an interpretation of those requirements; thus there is no information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR parts 50 and 51 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0594. The OMB

control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of any regulation subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of these proposed regulations on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of these proposed revisions to the regulations on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposal will not impose any requirements on small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

### D. Unfunded Mandates Reform Act

This action contains no Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (URMA), 2 U.S.C. 1531–1538 for State, local, and Tribal governments, in the aggregate, or the private sector. This action imposes no enforceable duty on any State, local or Tribal governments or the private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

### E. Executive Order 13132: Federalism.

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State

and local officials in the development of regulator policies that have Federalism implications." Policies that have "Federalism implications" are defined in the Executive Order to include regulations that 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." This action does not have Federalism implications. It will 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, as specified in Executive Order 13132. This proposed rule, if made final, would modify the rules for implementing the 1997 8-hour ozone NAAQS. Thus, Executive Order 13132 does not apply to these proposed regulation revisions.

In the spirit of Executive Order 13121 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA is soliciting comments on this proposal from State and local officials.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications."

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). They do not have a substantial direct effect on one or more Indian Tribes, since no Tribe has to develop a SIP under these proposed regulatory revisions. Furthermore, these proposed regulation revisions do not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the Tribal Air Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. This proposed regulation revision does not have Tribal implications. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks*

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because this proposed revision addresses whether allowing outside the nonattainment area emission reduction credits for purposes of RFP obligations will adequately ensure attainment and maintenance of the 1997 ozone NAAQS and meet the obligations of the CAA. The NAAQS are promulgated to protect the health and welfare of sensitive population, including children.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed revision to the regulations does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to

make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The CAA imposes the obligation for States to submit SIPs, including RFP, to implement the ozone NAAQS. In this proposal, EPA is merely providing an interpretation of those requirements. The proposed interpretation, if promulgated, would no longer permit States to rely on credit for emission reductions from outside a nonattainment area to meet such an area's RFP obligations, which are designed to protect all segments of the general population. As such, they do not adversely affect the health or safety of minority or low-income populations and are designed to protect and enhance the health and safety of these and other populations.

*K. Determination Under Section 307(d)*

Pursuant to sections 307(d)(1)(E) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to "such other actions as the Administrator may determine."

**VII. Statutory Authority**

The statutory authority for this action is provided by sections 109; 110; 172; 181 through 185B; and 301(a)(1) of the CAA, as amended (42 U.S.C. 7409; 42 U.S.C. 7410; 42 U.S.C. 7502; 42 U.S.C. 7511-7511f; 42 U.S.C. 7601(a)(1)). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

**List of Subjects**

*40 CFR Part 50*

Environmental protection, Air pollution control, Ozone, Particulate.

*40 CFR Part 51*

Air pollution control, Intergovernmental relations, Ozone, Nitrogen oxides, Volatile organic compounds.

Dated: December 15, 2010.

**Lisa P. Jackson,**  
Administrator.

[FR Doc. 2010-32139 Filed 12-21-10; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[ET Docket No. 10-152; FCC 10-194]

#### Satellite Television Extension and Localism Act of 2010 and Satellite Home Viewer Extension and Reauthorization Act of 2004

**AGENCY:** Federal Communications  
Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document invites comment the submission of additional information concerning the methodological changes for the digital ILLR model with respect to the calculation of diffraction loss close to an obstacle or leading up to and following a pair of obstacles; and a factual or scientific basis for explaining the additional losses in the line of sight range above and beyond the free space loss and two-ray-loss. The Commission is particularly interested in information on any other techniques for improving the degree to which the model accurately represents the propagation of a digital television signal from a transmitter to a specific receive site and any new data that may be available for improving the model's predictions.

**DATES:** Comments must be filed on or before January 21, 2011, and reply comments must be filed on or before February 7, 2011.

**FOR FURTHER INFORMATION CONTACT:** Alan Stillwell, Office of Engineering and Technology, (202) 418-2925, e-mail: [Alan.Stillwell@fcc.gov](mailto:Alan.Stillwell@fcc.gov) or Robert Weller, Office of Engineering and Technology, (202) 418-7397, TTY (202) 418-2989.

**ADDRESSES:** You may submit comments, identified by ET Docket No. 10-97, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Federal Communications Commission's Web Site:** <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- **E-mail:** [Optional: Include the e-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.

- **Mail:** [Optional: Include the mailing address for paper, disk or CD-ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]

- **People with Disabilities:** Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** of this document.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Further Notice of Proposed Rule Making*, ET Docket No. 10-152, FCC 10-194, adopted November 22, 2010, and released November 23, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov).

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the

Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW-A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

**People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

#### Summary of Further Notice of Proposed Rulemaking

1. In the Report and Order, FCC 10-194, adopted November 22, 2010 and released November 23, 2010, in this proceeding, the Commission adopted a new digital TV ILLR model that complies with the requirements and provisions of the Satellite Television Extension and Localism Act of 2010 (STELA). This model will provide a method for accurately, reliably and presumptively estimating the signal strength of digital television stations at individual locations for purposes of determining whether a subscriber to a satellite television service is eligible for delivery of distant network signals from that service. With this model in place, the Commission seeks to further investigate and consider the suggestions in the comments for possible modifications to the digital ILLR model that would further improve the accuracy and improve the accuracy and reliability of its predictions. The Commission would adopt such modifications in a subsequent Report and Order in this proceeding.

2. In this regard, the Commission invites the submission of additional information concerning the methodological changes suggested in the comments by Mr. Shumate for the digital ILLR model with respect to (1) calculation of diffraction loss close to an obstacle or leading up to and following a pair of obstacles and (2) a factual or