

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that in accordance with Figure 2-1, (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. The subject regulation change is procedural in nature, in that it is updating an existing procedure. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under authority of Pub. L. 102-587, 106 Stat. 5039.

§ 117.411 [Amended]

2. In § 117.411, remove paragraph (b) and remove the paragraph designation (a).

§ 117.687 [Amended]

3. In § 117.687, remove paragraph (b) and remove the paragraph designation (a).

Dated: February 6, 2002.

Roy J. Casto,

*Rear Admiral, U.S. Coast Guard Commander,
Eighth Coast Guard District.*

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL-7145-5]

National Ambient Air Quality Standards for Ozone; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: The purpose of this document is to announce that EPA has scheduled two public meetings to solicit comments on various options to implement the 8-hour ozone national ambient air quality standard (NAAQS). The options contain EPA's preliminary views and are intended to initiate a dialogue with the public on approaches for implementing the 8-hour ozone NAAQS. The EPA is interested in hearing the views from interested stakeholders on the options that we've developed and their ideas on how to best implement the 8-hour ozone NAAQS consistent with the Supreme Court's decision in *Whitman v. American Trucking Association*. An overarching issue that EPA would like public input on is how EPA should address the Supreme Court's holding that subpart 2 of part D of title I of the Clean Air Act (CAA) applies for purposes of classifying areas under a revised ozone NAAQS.

DATES: The two, 1-day meetings will be held from 9 a.m. to 5 p.m. (EST) on Tuesday, March 5, 2002, in Alexandria, Virginia, and on Thursday, March 7, 2002, in Atlanta, Georgia.

ADDRESSES: The March 5, 2002 meeting will be held at: Radisson Old Town, 901 N. Fairfax Street, Alexandria, Virginia. The March 7, 2002 meeting will be held at: Renaissance Concourse Hotel, 1 Hartsfield Centre Parkway, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: For general information on the meetings, contact: Denise M. Gerth, U.S. EPA, Office of Air Quality Planning and Standards, C539-02, Research Triangle Park, NC 27711, phone (919) 541-5550, or e-mail: gerth.denise@epa.gov. To register for the meeting, please contact: Barbara Bauer, E.H. Pechan and Associates, Durham, NC, phone (919)

493-3144, extension 188, or e-mail: barbara.bauer@pechan.com.

SUPPLEMENTARY INFORMATION: On July 18, 1997, EPA revised the ozone NAAQS (62 FR 38856). At that time, EPA indicated it would implement the 8-hour ozone NAAQS under the less detailed requirements of subpart 1 of part D of title I of the CAA rather than more detailed requirements of subpart 2 requirements. Various industry groups and States challenged EPA's final rule promulgating the 8-hour ozone NAAQS in the U.S. Court of Appeals for the District of Columbia Circuit.¹ In May 1999, the Appeals Court remanded the ozone standard to EPA on the basis that EPA's interpretation of its authority under the standard-setting provisions of the CAA resulted in an unconstitutional delegation of authority. *American Trucking Assns., Inc. v. EPA*, 175 F.3d 1027, *aff'd*, 195 F.3d 4 (D.C. Cir. 1999). In addition, the Court held that EPA improperly interpreted the statute to provide for implementation of the 8-hour standard under subpart 1, but also determined that EPA could not implement a revised ozone standard under subpart 2. The EPA sought review of these two issues by the U.S. Supreme Court. In February 2001, the Supreme Court upheld the constitutionality of the air quality standard setting. *Whitman v. American Trucking Assoc.*, 121 S.Ct. 903. In addition, the Supreme Court held that EPA has authority to implement a revised ozone standard but that EPA could not ignore subpart 2 when implementing the 8-hour standard. Specifically, the Court noted EPA could not ignore the provisions of subpart 2 that "eliminate[s] regulatory discretion" allowed by subpart 1. After determining that EPA could not ignore the provisions of subpart 2, the Court went on to identify several portions of the classification scheme that are "ill-fitted" to the revised standard, but left it to EPA to develop a reasonable approach for implementation. Any implementation approach that EPA develops must address the requirements of the CAA, as interpreted by the Supreme Court.

The EPA has initiated a process to obtain stakeholder feedback on options the Agency is developing for implementation of the 8-hour ozone NAAQS. The EPA plans to issue a final rule on the implementation strategy prior to designating areas for the 8-hour ozone NAAQS. The implementation

¹ On July 18, 1997, EPA also promulgated a revised particulate matter (PM) standard (62 FR 38652). Litigation on the PM standard paralleled the litigation on the ozone standard and the court issued one opinion addressing both challenges.

rule will provide specific requirements for State and local air pollution control agencies and tribes to prepare implementation plans to attain and maintain the 8-hour NAAQS. States with areas that are not attaining the 8-hour ozone NAAQS will have to develop—as part of its State implementation plan (SIP)—emission limits and other requirements to attain the NAAQS within the time frames set forth in the CAA.² Tribal lands that are not attaining the 8-hour ozone standard may be affected, and could voluntarily submit a tribal implementation plan (TIP), but would not be required to submit a TIP. However, in cases where a TIP is not submitted, EPA would have the responsibility for planning in those areas.

The EPA is holding these meetings in order to obtain stakeholder feedback regarding the options that EPA has developed as well as to listen to any new or different ideas that stakeholders may be interested in presenting. In order to provide for more focused discussions, EPA is structuring these meetings to allow for an introductory session followed by four breakout sessions that attendees will rotate through in order to be involved in discussions of all the issues. The breakout sessions will cover the following topics: (1) Classifications and attainment dates; (2) nonattainment designations; (3) growth and its impact upon SIPs; and (4) other general SIP issues. A wrap up session will be held before adjourning. New Source Review (NSR) programs that accompany nonattainment designations will not be the subject of these meetings since the EPA is currently considering whether and how to change the NSR program regulations in other contexts. The EPA has placed a variety of materials regarding implementation options, and which will be the focus of the meetings, on the Website: www.epa.gov/ttn/rto/ozonetech/o3imp8hr/o3imp8hr.htm. Additional material will be placed on the website as they are developed. Anyone interested in attending the meetings should check the website for new material on a regular basis prior to the meetings.

The materials that are available on the website are also available at: Air and Radiation Docket and Information Center, Docket Number A-2001-31, U.S. EPA, 401 M Street, SW., Room M-1500 (Mail Code 6102), Washington, DC 20460. The docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday,

excluding legal holidays. A reasonable fee may be charged for copying.

Dated: February 8, 2002.

Jeffrey S. Clark,

Acting Director, Office of Air Quality Planning and Standards.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 27, 90 and 95

[WT Docket No. 02-08; FCC 02-15]

Reallocation of the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to establish new service rules for licensing a total of 27 megahertz of spectrum transferred from Government to non-Government use. The Commission seeks comment on the flexibility that should be afforded new or incumbent licensees, and the technical and other service rules that should govern the range of existing and proposed services. The comments will aid the Commission on how best to utilize these bands to provide valuable services to the public. Additionally, the Commission seeks comments on a petition for rulemaking filed on March 6, 2000, by Data Flow Systems, Inc., requesting amendment of the Commission's rules. The Commission also seeks comments on a proposal filed by Securicor Wireless Holdings, Inc.

DATES: Written comments on the proposed rule are due on or before March 4, 2002, and reply comments are due on or before March 18, 2002.

ADDRESSES: Parties who choose to file comments by paper must file an original and four copies to William F. Caton, Acting Secretary, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Room TW-A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at www.fcc.gov/e-file/ecfs.html.

FOR FURTHER INFORMATION CONTACT:

Zenji Nakazawa, Wireless Telecommunications Bureau, at (202) 418-0680, via e-mail at znakazaw@fcc.gov, via TTY (202) 418-7233 or Nese Guendelsberger, Wireless

Telecommunications Bureau, Auctions and Industry Analysis Division, at (202) 418-0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Notice of Proposed Rule Making, FCC 02-15, adopted on January 22, 2002, and released on February 06, 2002. The full text of this Notice of Proposed Rule Making 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 with the summarized band plan chart may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

1. In this Notice of Proposed Rulemaking (NPRM), we propose new service rules for licensing a total of 27 megahertz of spectrum from the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz bands. This spectrum was transferred from Government to non-Government use pursuant to the provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA-93) and the Balanced Budget Act of 1997 (BBA-97).

2. The service rules proposed in the NPRM include provisions for licensing, technical (and operating) rules, competitive bidding, and interference standards. We note that portions of this spectrum are currently available and utilized by existing non-Government licensees. We solicit public comment on the flexibility that should be afforded new or incumbent licensees, and the technical and other service rules that should govern the range of existing and proposed services. We also anticipate authorizing new primary services in the paired 1392–1395 MHz and 1432–1435 MHz bands and the unpaired 1390–1392 MHz, 1670–1675 MHz, and 2385–2390 MHz bands.

3. We generally seek comment on the following issues under consideration for all of these bands:

- Whether to authorize new services under part 27 or part 101 of our rules;
- Whether to license new services by geographic service areas;
- Whether to license band managers in any of these bands;
- Whether to provide for partitioning and disaggregation of licensed spectrum; and

² The CAA requires EPA to set ambient air quality standards and requires States to submit SIPs to implement those standards.