

playlists or can they propose an alternative reporting requirement that would indicate which sound recordings were performed and the number of times (summary frequency data) and permit monitoring of the performance complement? What costs are involved in providing the intended playlist to different parties? Who should bear the costs of serving, maintaining, or accessing these records of use?

(5) Does provision of the intended playlist raise confidentiality problems? If so, what measures can a service or copyright owner take to protect its confidentiality? Should there be any express restrictions on the use of this information and, if so, what restrictions? If in fact the information is confidential or trade secret, and no satisfactory alternative reporting requirement can be devised, should the copyright owner be required to sign and return a confidentiality agreement before receiving reports of use consisting of playlist information? Should the regulation permit the copyright owner to waive service of information relating to the performance complement in order to receive simply the summary frequency data pertaining to the use of their sound recordings only?

(6) How do digital subscription services plan to identify and locate copyright owners of sound recordings they perform under statutory license? Beyond identification in the Copyright Office registration records, how should the regulations define a sound recording copyright owner "whose identity and location is known" for the purpose of triggering the requirement of direct service? How will services identify and locate foreign sound recording copyright owners?

(7) How do services anticipate that they will separate the names of members of various collectives, or of independent copyright owners, in order to provide such individuals or entities with separate reports? Given that services must pay royalties to small and individual copyright owners whose works are performed, what data will services generate to determine those royalties, and what separation of copyright owner names, sound recording identifiers, and performance frequency will they necessarily undertake? Could the data generated for royalty calculation and distribution be made available in reports of use, as an alternative to the intended playlists, in a way that would permit copyright owners to generally monitor the performance complement?

(8) How should copyright owners who have not been directly served make their identity and location known to digital

services? How might these copyright owners identify their sound recordings for digital services?

(9) Should services retain their reports of use for three years, or is there information underlying the reports of use (such as summary frequency data, and date and time information) that might be more easily kept and made available? How do services plan to make records of use for a three year period reasonably available and accessible for copyright owners who have not been directly served? Are regulations concerning access for such individuals and entities needed?

(10) What data fields and sound recording identifiers are available, and which of these should be included in the quarterly reports of use? Will the date and time of the performance be identified and, if so, how? With respect to compilation albums, what data fields should be included in the reports of use? If there are any particular sound recording identifiers or data fields that should not be required, or that should not be required during the interim regulatory period, state which fields, and why.

(11) Should the regulations address the reporting of non-music and foreign programming? How would such programming be defined? What notice and recordkeeping requirements would apply to such programming?

(12) Should the Office expressly recognize a transition period before services must provide reports conforming completely to the regulations? If so, what should be the transition period, and what is the minimum information that should be required?

Dated: June 18, 1997.

Marybeth Peters,

Register of Copyrights.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 73

[FRL-5845-2]

Acid Rain Program: Early Reduction Credits

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Title IV of the Clean Air Act, as amended by Clean Air Act Amendments of 1990, (the Act) authorizes the Environmental Protection

Agency (EPA or Agency) to establish the Acid Rain Program in order to reduce the adverse health and ecological impacts of acidic deposition. On March 23, 1993, the Agency promulgated final rules allocating allowances to utility units, including the criteria and method of allocating early reduction credits under section 404(e) of the Act. This action implements a settlement of litigation between EPA and a utility regarding Phase II early reduction credits. The settlement provides a method by which additional allowances may be loaned to units receiving early reduction credits as an incentive to further reduce emissions prior to the units becoming subject to the applicable Acid Rain Program emission limitations.

The revisions of the early reduction credit program proposed today are also being issued as a direct final rule because the Agency views the revisions as noncontroversial and anticipates no adverse comments. The detailed rationale for the revisions, and the revised rule provisions, are set forth in the preamble of the direct final rule. If no significant, adverse comments are timely received (see **DATES** section), no further action will be taken on this proposal and the direct final rule will become final on the date provided in that action.

DATES: *Comments.* Comments on the regulations proposed by this action must be received on or before July 24, 1997, unless a hearing is requested by July 7, 1997. If a hearing is requested, written comments must be received by August 8, 1997.

Public Hearing. Anyone requesting a public hearing must contact EPA no later than July 7, 1997. If a hearing is held it will take place July 8, 1997, beginning at 10:00 am.

ADDRESSES: *Comments.* All written comments must be identified with the appropriate docket number (Docket No. A-97-31) and must be submitted in duplicate to EPA Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M Street, SW, Washington DC 20460.

Public Hearing. If a public hearing is held, it will be held at the EPA Headquarters Auditorium, 401 M Street, SW, Washington, DC. Persons interested in attending the hearing or wishing to present oral testimony should notify Kathy Barylski, telephone 202-233-9074, in advance.

Docket. Docket No. A-97-31, containing supporting information used to develop the proposal, is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays, at

EPA's Air Docket Section at the above address. Information concerning the original rules is found in Docket No. A-92-06. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski at (202) 233-9074 Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; or the Acid Rain Hotline at (202) 233-9620. Electronic copies of this rulemaking can be accessed through the Acid Rain Division website at <http://www.epa.gov/acidrain>.

SUPPLEMENTARY INFORMATION: In this document, EPA proposes revisions to the early reduction credit regulation of the Acid Rain Program that are presented and discussed in detail in a direct final rule published in the Final Rules Section of this **Federal Register**. The proposed revisions provide a method by which additional allowances may be loaned to units receiving early reduction credits as an incentive to further reduce emissions prior to the units becoming subject to the applicable Acid Rain Program emission limitations. EPA is seeking comment on these proposed revisions. EPA considers these revisions to be noncontroversial and anticipates no adverse comments. If EPA timely receives significant, adverse comments, EPA will publish a document in the **Federal Register** withdrawing the direct final rule. In that event, all public comments received will be treated as comments on this proposed rule and will be addressed in a subsequent final rulemaking document. EPA will not institute a second comment period on this document. Any parties interested in commenting on these revisions to Part 73 should do so at this time. The direct final rule includes the rule revisions and a detailed rationale for them.

Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Administrator must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because the rule does not meet any of the criteria listed above. As such, this action was not submitted to OMB for review.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

The revisions to part 73 will not have a significant effect on regulated entities or State permitting authorities. The

revisions represent an economic benefit to the affected utility and a benefit to the environment. The early reduction credit program is operated entirely by the EPA and, therefore, the changes will not burden the State or local permitting authorities.

C. Paperwork Reduction Act

This rule will increase the information collection requirements of the existing regulations, but only for the utilities that are eligible and wish to participate in the early reduction credit program. As only two utilities are eligible for early reduction credits, an information collection report is not required. Therefore, no information collection report has been prepared or submitted to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

D. Regulatory Flexibility

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires each federal agency to consider potential impacts of its regulations on small business "entities." Under 5 U.S.C. 604(a), an agency issuing a notice of proposed rulemaking must prepare and make available for public comment a regulatory flexibility analysis. Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

Today's rule does not impact small entities. The only two utilities eligible for early reduction credits are large corporations, not small entities. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the revised rule will not have a significant, adverse impact on a substantial number of small entities.

E. Miscellaneous

In accordance with section 117 of the Act, issuance of this rule was preceded by consultation with any appropriate advisory committees, independent experts, and federal departments and agencies.

List of Subjects in 40 CFR Part 73

Air pollution control, Electric utilities, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: June 16, 1997.

Carol M. Browner,
Administrator.

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