

# Proposed Rules

Federal Register

Vol. 73, No. 72

Monday, April 14, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 920

[Docket No. AMS-FV-08-0014; FV08-920-1]

#### Kiwifruit Grown in California; Continuance Referendum

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Referendum order.

**SUMMARY:** This document directs that a continuance referendum be conducted among eligible California kiwifruit growers to determine whether they favor continuance of the marketing order regulating the handling of kiwifruit grown in California.

**DATES:** The referendum will be conducted from May 15 through May 30, 2008. To vote in this referendum, growers must have been engaged in producing kiwifruit within the production area during the period August 1, 2007, through April 30, 2008.

**ADDRESSES:** Copies of the marketing order may be obtained from the California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, #102-B, Fresno, California 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250-0237.

**FOR FURTHER INFORMATION CONTACT:** Kurt J. Kimmel, Regional Manager, or Maureen T. Pello, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or e-mail: [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov), or [Maureen.Pello@usda.gov](mailto:Maureen.Pello@usda.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to Marketing Order No. 920 (7 CFR part 920), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted during the period May 15 through May 30, 2008, among eligible kiwifruit growers in the production area. Only growers that were engaged in the production of kiwifruit in California during the period of August 1, 2007, through April 30, 2008, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor the continuation of marketing order programs. USDA would consider termination of the order if less than 50 percent of the growers who vote in the referendum and growers of less than 50 percent of the volume of kiwifruit represented in the referendum favor continuance of their program.

In evaluating the merits of continuance versus termination, USDA will not only consider the results of the continuance referendum. USDA will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, processors, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been previously approved by the Office of Management and Budget (OMB) under OMB No. 0581-0189, OMB Generic Fruit Crops. It has been estimated that it will take an average of 20 minutes for each of the approximately 250 producers of kiwifruit in the production area to cast a ballot. Participation is voluntary. Ballots postmarked after May 30, 2008, will not be included in the vote tabulation.

Kurt J. Kimmel and Maureen T. Pello of the California Marketing Field Office, Fruit and Vegetable Programs,

Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of USDA to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400 et seq.).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents and from their appointees.

#### List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

**Authority:** 7 U.S.C. 601-674.

Dated: April 8, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8-7864 Filed 4-11-08; 8:45 am]

**BILLING CODE 3410-02-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2008-0097; FRL-8554-5]

#### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Wayne County Area

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision consisting of a maintenance plan that provides for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) for at least 10 years after the April 30, 2004 designations, as well as, a 2002 base-year inventory for the Wayne County Area. EPA is proposing approval of the maintenance plan and the 2002 base-year inventory

in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before May 14, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2008-0097 by one of the following methods:

A. <http://www.regulations.gov>. Follow the online instructions for submitting comments.

B. E-mail: [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. Mail: EPA-R03-OAR-2008-0097, Cristina Fernandez, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2008-0097. 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 information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> website 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.

*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, 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Gregory Becoat, (215) 814-2036, or by e-mail at [becoat.gregory@epa.gov](mailto:becoat.gregory@epa.gov).

**SUPPLEMENTARY INFORMATION:** On December 17, 2007, PADEP formally submitted for approval, under section 110(a)(1) of the CAA, a SIP revision for the 8-hour ozone maintenance plan and the 2002 base-year inventory for the Wayne County Area.

### I. Background

Section 110(a)(1) of the CAA requires that states submit to EPA plans to maintain the NAAQS promulgated by EPA. EPA interprets this provision to require that areas that were maintenance areas for the 1-hour ozone NAAQS, but attainment for the 8-hour ozone NAAQS, submit a plan to demonstrate the continued maintenance of the 8-hour ozone NAAQS.

On May 20, 2005, EPA issued guidance that applies to areas that are designated unclassifiable/attainment for the 8-hour ozone standard. The purpose of this guidance is to address the maintenance requirements in section 110(a)(1) of the CAA, and to assist the states in the development of a SIP. The components from EPA's guidance include: (1) An attainment emissions inventory, which is based on actual "typical summer day" emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) for a 10-year maintenance period, from a base-year

chosen by the state; (2) a maintenance demonstration, which demonstrates how the area will remain in compliance with the 8-hour ozone standard for a period of 10 years following the effective date of designation unclassifiable/attainment (June 15, 2004); (3) an ambient air monitoring network, which will be in continuous operation in accordance with 40 CFR Part 58 to verify maintenance of the 8-hour ozone standard; (4) a contingency plan, that will ensure that in the event of a violation of the 8-hour ozone NAAQS, measures will be implemented as promptly as possible; (5) a verification of continued attainment, indicating how the state intends on tracking the progress of the maintenance plan.

### II. Summary of SIP Revision

The Commonwealth of Pennsylvania has requested approval of its 8-hour ozone maintenance plan and 2002 base-year inventory for the Wayne County Area. The PADEP 8-hour ozone maintenance plan addresses the five components of EPA's May 20, 2005 guidance, which pertains to the maintenance requirements in section 110(a)(1) of the CAA.

*Attainment Emission Inventory:* An attainment emissions inventory includes emissions during the time period associated with the monitoring data showing attainment. PADEP has provided an emissions inventory for VOCs and NO<sub>x</sub>, using 2002 as the base-year from which to project emissions. The 2002 inventory is consistent with EPA guidance, is based on actual "typical summer day" emissions of VOCs and NO<sub>x</sub>, and consists of a list of sources and their associated emissions. PADEP prepared comprehensive VOCs and NO<sub>x</sub> emissions inventories for the Wayne County Area. In the maintenance plan, PADEP included information on the man-made sources of ozone precursors, VOCs and NO<sub>x</sub> (e.g., "stationary sources," "stationary area sources," "highway vehicles," and "nonroad sources").

Pennsylvania projected emissions for beyond 10 years from the effective date of the April 30, 2004 designations for the 8-hour ozone standard. PADEP has developed an emissions inventory for ozone precursors for the year 2002, 2009, and 2018. Tables 1 and 2 show the VOCs and NO<sub>x</sub> emissions reduction summary for 2002, 2009, and 2018.

TABLE 1.—VOC EMISSIONS SUMMARY: 2002, 2009 AND 2018  
[Tons per summer day]

Major source category	2002	2009	2018
Stationary Point Sources *	0.00	0.00	0.00
Stationary Area Sources	3.12	2.80	2.92
Highway Vehicles	2.54	1.66	0.96
Nonroad Sources	7.61	8.66	6.10
<b>Total</b>	<b>13.27</b>	<b>13.12</b>	<b>9.98</b>

\* Values are greater than zero. Values appear as zero due to rounding.

TABLE 2.—NO<sub>x</sub> EMISSIONS SUMMARY: 2002, 2009 AND 2018  
[Tons per summer day]

Major source category	2002	2009	2018
Stationary Point Sources	0.10	0.10	0.10
Stationary Area Sources	0.32	0.34	0.36
Highway Vehicles	4.20	2.60	1.12
Nonroad Sources	1.46	1.35	0.99
<b>Total</b>	<b>6.08</b>	<b>4.39</b>	<b>2.57</b>

EPA believes Pennsylvania has demonstrated that the VOCs and NO<sub>x</sub> emissions in the Wayne County Area will improve due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state-adopted measures.

*Maintenance demonstration:* As Table 1 and 2 indicate, the Wayne County Attainment Area plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that future emissions of VOCs and NO<sub>x</sub> remain at or below the 2002 base-year emissions levels through the year 2018.

Based upon the comparison of the projected emissions and the 2002 base-year inventory emissions, along federal and state measures, EPA concludes that PADEP successfully demonstrates that the 8-hour ozone standard will be maintained in the Wayne County Area. Further details of Wayne County Attainment Area's 8-hour ozone maintenance demonstration can be found in a Technical Support Document (TSD) prepared for this rulemaking.

*Ambient Air Quality Monitoring:* With regard to the ambient air monitoring component of the maintenance plan, Pennsylvania commits to continue operating its current air quality monitoring stations in accordance with 40 CFR Part 58, to verify the attainment status of the area, with no reductions in the number of sites from those in the existing network unless pre-approved by EPA.

*Contingency Plan:* Section 110(a)(1) of the CAA requires that the state develop a contingency plan which will ensure that any violation of a NAAQS is

promptly corrected. The purpose of the contingency plan is to adopt measures, outlined in the maintenance plan, in order to assure continued attainment in the event of a violation of the 8-hour ozone NAAQS. The maintenance plan should identify the events that would "trigger" the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

Since the Wayne County Area does not have a monitor, contingency measures will be considered if for two consecutive years the fourth highest 8-hour ozone concentrations at the design monitor for the Scranton-Wilkes-Barre Area are above 84 parts per billion (ppb). If this trigger point occurs, PADEP will evaluate whether additional local emission control measures should be implemented in Wayne County in order to prevent a violation of the air quality standard. PADEP will analyze the conditions leading to the excessive ozone levels and evaluate what measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of federal, state, and local measures that have been adopted but not yet implemented at the time the excessive ozone levels occurred. PADEP will then begin the process of implementing the contingency measures outlined in their maintenance plan.

*Verification of continued attainment:* PADEP will track the attainment status of the 8-hour ozone NAAQS for Wayne

County by reviewing air quality at the design monitor for the Scranton-Wilkes-Barre Area and emissions data during the maintenance period. An annual evaluation of vehicle miles traveled and emissions reported from stationary sources will be performed and compared to the assumptions about the factors used in the maintenance plan. PADEP will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR 51, Subpart A) for any unanticipated increases. Based on these evaluations, PADEP will consider whether any further emission control measures should be implemented.

**III. Proposed Action**

EPA is proposing to approve the maintenance plan and the 2002 base-year inventory for the Wayne County Area, submitted on December 17, 2007, as revisions to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan and 2002 base-year inventory for the Wayne County Area because it meets the requirements of section 110(a)(1) of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

**IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions,

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule to approve the maintenance plan and the 2002 base-year inventory for the Wayne County Area in the Commonwealth of Pennsylvania does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping

requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 3, 2008.

**William T. Wisniewski,**

*Acting Regional Administrator, Region III.*

[FR Doc. E8-7875 Filed 4-11-08; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 08-737; MB Docket No. 08-43; RM-11420]

### Radio Broadcasting Services; Basin, Wyoming

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rulemaking filed by White Park Broadcasting, Inc., requesting the allotment of Channel 3000C3 at Basin, Wyoming, as the community's second local aural transmission service. Channel 300C3 can be allotted at Basin, Wyoming, without a site restriction at coordinates 44-22-48 NL, and 108-02-18 WL.

**DATES:** Comments must be filed on or before May 19, 2008, and reply comments on or before June 3, 2008.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: Barry A. Friedman, Esq., Thompson Hine, LLP, Suite 800, 1920 N Street, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Victoria McCauley, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking, MB Docket No. 08-43, adopted March 26, 2008, and released March 28, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming is amended by adding Basin, Channel 300C3.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. E8-7883 Filed 4-11-08; 8:45 am]

**BILLING CODE 6712-01-P**