

crude oil or bona fide feedstocks;<sup>1</sup> according to Small Business Administration (SBA) size standards established under the North American Industry Classification System (NAICS); (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 impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's rule revises the introductory text of § 80.70(j) to distinguish the nonattainment areas that have opted into the RFG program from those that are required to be in the program under the Clean Air Act. In addition, today's rule revises the text of sections 80.70(l) and (n) to make these provisions clearer. These minor revisions are strictly organizational and do not change the substance or intent of these provisions in any way. Today's rule also removes the current provisions of § 80.70(m) relating to Phoenix as an opt-in covered area, since the Phoenix area is no longer a covered area as of June 10, 1998. Published on August 11, 1998, in the **Federal Register** (at 63 FR 43044) is a public announcement of EPA's approval of the Arizona Governor's petition and the effective date of the Phoenix opt-out. The opt-out effective date for the Phoenix area was June 10, 1998. The provisions for the Sacramento and San Joaquin Valley covered areas, described above, are included in a new § 80.70(m).

Today's amendments to the CFR reflect changes that have occurred in separate actions in accordance with EPA's regulations and the CAA. This rule is not itself an approval of Maine's or Arizona's opt-out request—Agency action approving those petitions occurred earlier in separate administrative proceedings. Similarly, neither the reclassification of the Sacramento and San Joaquin Valley nonattainment areas, nor the self-executing change in status of these areas to RFG "covered areas," are dependent on today's action. EPA is simply modifying the list of covered areas in the RFG regulations, 40 CFR 80.70, so

the list will reflect EPA's earlier approval of the Maine and Arizona opt-out requests, and the self-executing change in the status of the Sacramento and San Joaquin Valley nonattainment areas. Thus, the various elements of today's direct final rule involve little or no exercise of agency discretion. Rather today's actions essentially are ministerial regulatory amendments.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, Nov. 6, 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." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's proposed rule does not have tribal implications and will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule simply makes several minor modifications in the regulations to reflect changes in the covered areas for the federal RFG program, and to delete obsolete language and clarify existing language in the provisions listing the federal RFG covered areas. Thus, Executive Order 13175 does not apply to this proposed rule.

#### *I. Executive Order 13211 (Energy Effects)*

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

## II. Statutory Authority

The Statutory authority for the proposed action today is granted to EPA by sections 211(c) and (k), 301, and 307 of the Clean Air Act, as amended; 42

U.S.C. 7545(c) and (k), 7601, 7607; and 5 U.S.C. 553(b).

## III. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this proposed action must be filed in the United States Court of Appeals for the appropriate circuit by August 5, 2002. Filing a petition for reconsideration by the Administrator of this proposed rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 23, 2002.

**Christine Todd Whitman,**  
Administrator.

[FR Doc. 02-13977 Filed 6-3-02; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 02-113; FCC 02-150]

### Broadcast Services; Television Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on the policy it should follow when it denies a request to extend a television station's digital television construction deadline.

**DATES:** Comments are due by July 8, 2002; reply comments are due by July 23, 2002.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Shaun Maher, Media Bureau, Office of Broadcast Licensing, Video Division, (202) 418-2324. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at 202-418-0214, or via the Internet at jboley@fcc.gov.

<sup>1</sup> Capacity includes owned or leased facilities as well as facilities under a processing agreement or an agreement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Notice of Proposed Rule Making ("NPRM")* in MM Docket No. 02-113, FCC 02-150, adopted May 16, 2002, and released May 24, 2002. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY-B402, Washington, DC 20554. The *Notice* is also available on the Internet at the Commission's website: <http://www.fcc.gov>.

### Synopsis

1. The Commission has adopted this *NPRM* to seek comment on the policy it should follow when requests to extend DTV construction deadlines are denied. The Commission proposed a set of graduated sanctions that it would impose. Under the first step of its approach, the Commission would deny the request for an unqualified extension and admonish the station for its failure to comply with its DTV construction obligation. The station would be required to submit a report within thirty (30) days outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date should be no later than six months from the date of admonishment. Sixty (60) days later, the station would be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this six month period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or the Commission otherwise find that the licensee has acted in bad faith, the Commission would consider the imposition of additional sanctions including proceeding immediately to the second step.

2. Under the second step in the approach, if the station had not come into compliance with the DTV construction rule within the six month period, then, absent extraordinary and compelling circumstances, the Commission would impose further sanctions against the licensee. The Commission would issue a Notice of Apparent Liability for forfeiture to the licensee. It would require that the station report every thirty (30) days on

its proposed construction milestones and its efforts to meet those milestones. Once again, failure to adequately demonstrate that the station was taking all reasonable steps towards construction and to justify any additional delays that were encountered, would result in the imposition of additional sanctions.

3. Under the third and final step in the approach, if the station still had failed to come into compliance with the DTV construction rule within an additional six-month period of time (i.e., one year from the date of the formal admonition), then, absent extraordinary and compelling circumstances, the Commission would consider its construction permit for its DTV facilities to have expired and it would take whatever steps necessary to rescind the station's DTV authorization. The Commission seeks comment as to whether a hearing is necessary under section 312 or section 316 of the Communications Act prior to removal of the station's DTV authorization. The Commission also seeks comment as to whether it should make the station's vacant DTV allotment available to other potential DTV broadcasters through auction, or delete the allotment from the DTV Table altogether. In any event, however, as directed by Congress, the station will be required to surrender its analog authorization at the end of the DTV transition. The Commission tentatively concludes that a licensee whose DTV authorization is rescinded under the above procedures will not be permitted to convert to digital on its analog allotment without being subject to competing applications.

4. The Commission reserved the right to alter its graduated enforcement scheme should circumstances in a particular case warrant it doing so.

### Administrative Matters

5. *Comments and Reply Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before July 8, 2002 and reply comments on or before July 23, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998). Written comments by the public on the proposed information collections are due July 8, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before August 5, 2002.

6. Comments filed through ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. 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 appear in the caption of this proceeding, commenters 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 (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

7. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, SW., Room, 2-C207, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible

format using MS Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case, MM Docket No. 02-113, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Vistrionix, Portals II, 445 12th Street SW., CY-B402, Washington, DC 20554.

8. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov), and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to [Jeanette\\_I\\_Thornton@omb.eop.gov](mailto:Jeanette_I_Thornton@omb.eop.gov).

9. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, SW., CY-A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0270, (202) 418-2555 TTY, or [bcline@fcc.gov](mailto:bcline@fcc.gov). Comments and reply comments also will be available electronically at the Commission's Disabilities Issues Task Force web site: [www.fcc.gov/df](http://www.fcc.gov/df). Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

10. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Martha Contee at (202) 4810-0260, TTY (202) 418-2555, or [mcontee@fcc.gov](mailto:mcontee@fcc.gov).

11. *Ex Parte Rules*. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

12. *Initial Regulatory Flexibility Analysis*. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following IRFA of the possible significant economic impact on small entities of the proposals contained in this *NPRM*. Written public comments are requested on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the radio broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *NPRM*, but they must have a distinct heading designating them as responses to the IRFA.

13. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above in paragraph 16. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a). In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

#### **A. Need for, and Objectives of, the Proposed Rules**

14. The Commission adopts the *NPRM* to seek comment on proposed remedial steps for failure to comply with its digital television (DTV) construction schedule. The remedial steps are intended to prevent undue delay in the required build out of DTV facilities.

#### **B. Legal Basis**

15. This *NPRM* is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307 and 309.

#### **C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

16. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as

having the same meaning as "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business" concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

17. The proposals in the *NPRM* will affect only full-power television broadcasters. As of September 30, 2001 the Commission had licensed a total of 1,686 full-power television stations. SBA defines television broadcasting establishments that have \$12 million or less in annual receipts as a small business. According to Census Bureau data for 1997, there were 906 firms in this category, total, that operated for the entire year. Of this total, 728 firms had annual receipts of under \$10 million, and an additional 71 had receipts of \$10 million to \$24,999,999. Thus, under this size standard, the majority of the firms are considered small.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

18. This *NPRM* contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

#### **E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

20. The *NPRM* seeks comment on proposed remedial steps for failure of broadcast stations to comply with the DTV construction schedule. Adoption of the proposal in the *NPRM* by the

Commission is likely to have an insignificant and mixed impact overall on the economic opportunities for small entities. We seek comment from small entities on this issue.

21. One of the sanctions that the Commission proposing using is the issuance of a notice of apparent liability for forfeiture to stations that do not comply with their DTV construction obligation. We seek comment on any small entity concerns that might affect the Commission's enforcement decisions. We note that we already take small entity status, including potential inability to pay, into account when assessing the need for, and amount of, monetary forfeitures.

#### F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

22. None.

23. *Paperwork Reduction Act*. This *NPRM* contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB notification of action is due August 5, 2002. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060-XXXX.

Title: Remedial Steps for Failure to Comply with Digital Television Construction Schedule.

Form No.: n/a.

Type of Review: New collection.

Respondents: business or other for-profit; not-for-profit institutions.

Number of Respondents: 100.

Estimated Time Per Response: 2 hours (0.5 hours licensee; 1.5 hours contract attorney).

Frequency of Response: reporting, on occasion.

Total Annual Burden: 50 hours.

Total Annual Costs: \$30,000.

*Needs and Uses*: The Commission is seeking comment on proposed remedial steps for failure to comply with its DTV construction schedule. These steps include proposed reporting requirements. The remedial steps are intended to prevent undue delay in the required build out of DTV facilities.

24. *Authority*. This *NPRM* is issued pursuant to authority contained in Sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307, and Section 202(h) of the Telecommunications Act of 1996.

#### Ordering Clauses

25. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and Section 202(h) of the Telecommunications Act of 1996, this *NPRM* is adopted.

26. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.  
Marlene H. Dortch,  
Secretary.

[FR Doc. 02-13908 Filed 6-3-02; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 223

[Docket No.020523130-2130-01; I.D. No. 040102D]

RIN 0648-AP94

#### Listing Endangered and Threatened Wildlife and Designating Critical Habitat; 90-day Finding for a Petition to Reclassify the Northern and Florida Panhandle Subpopulations of the Loggerhead as Distinct Population Segments with Endangered Status and to Designate Critical Habitat

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of petition finding; request for information and comments.

**SUMMARY:** The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric

Administration (NOAA), Department of Commerce, announces the 90-day finding for a petition to reclassify the Northern and Florida Panhandle subpopulations of the loggerhead turtle (*Caretta caretta*), now listed as threatened throughout their range, as distinct population segments with endangered status and designate critical habitat under the Endangered Species Act of 1973, as amended (ESA). We find that the petition presents substantial scientific information indicating that the petitioned action may be warranted.

We are initiating a review of the status of the species to determine whether the petitioned action is warranted. To ensure a comprehensive review, we are soliciting information and comments pertaining to this species from any interested party.

**DATES:** Written comments and information related to this petition finding must be received [see **ADDRESSES**] by August 5, 2002.

**ADDRESSES:** Written comments and information should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301-713-0376. Comments will not be accepted if submitted via e-mail or the Internet. The petition is available for public inspection, by appointment, during normal business hours at the above address. The petition may also be found at the following website: [http://www.nmfs.noaa.gov/prot\\_res/PR3/Turtles/turtles.html](http://www.nmfs.noaa.gov/prot_res/PR3/Turtles/turtles.html).

**FOR FURTHER INFORMATION CONTACT:** Barbara Schroeder (ph. 301-713-1401, fax 301-713-0376, e-mail [barbara.schroeder@noaa.gov](mailto:barbara.schroeder@noaa.gov)).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1531 *et seq.*) requires us to make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Our implementing regulations (50 CFR 424.14) define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In determining whether substantial information exists, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the