

Register as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Puget Sound will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of these security zones is suspended.

(b) *Definitions.* The following definitions apply to this section:

Designated Representative means those persons designated by the Captain of the Port Puget Sound to monitor these security zones, permit entry into these zones, give legally enforceable orders to persons or vessels within these zones and take other actions authorized by the Captain of the Port Puget Sound. Persons authorized in paragraph (g) to enforce this section and Vessel Traffic Service Puget Sound (VTS) are Designated Representatives.

Federal Law Enforcement Officer means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

Navigable waters of the United States means those waters defined as such in 33 CFR part 2.

Public vessel means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Washington Law Enforcement Officer means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(c) *Security zone.* The following areas are security zones:

(1) *Blair Waterway Security Zone:* The Security Zone in the Blair waterway, Commencement Bay, WA, includes all waters enclosed by a line connecting the following points: 47°16'57" N, 122°24'39" W, which is approximately the beginning of Pier No. 23 (also known as the Army pier); then northwesterly to 47°17'05" N, 122°24'52" W, which is the end of the Pier No. 23 (Army pier); then southwesterly to 47°16'33" N, 122°25'18" W, which is the approximate location of a private buoy on the end of the sewage outfall; then southeasterly to 47°16'42" N, 122°25'04" W, which is approximately the northwestern end of Pier No. 5; then northeasterly to the northwestern end of Pier No. 1; then southeasterly along the shoreline of the Blair Waterway to the Blair Waterway turning basin; then along the shoreline

around the Blair Waterway turning basin; then northwesterly along the shoreline of the Blair Waterway to the Commencement Bay Directional Light (light list number 17159); then northeasterly along the shoreline to the point of origin. [Datum: NAD 1983].

(2) *Sitcum Waterway Security Zone:* The Security Zone in the Sitcum waterway, Commencement Bay, WA, includes all waters enclosed by a line connecting the following points: 47°16'42" N, 122°25'04" W, which is approximately the northwestern end of Pier No. 5; then northwesterly to 47°16'33" N, 122°25'18" W, which is the approximate location of a private buoy on the end of the sewage outfall; then southwesterly to 47°16'23" N, 122°25'36" W; then southeasterly to 47°16'10" N, 122°25'27" W, which is the northwestern corner of Pier No. 2; then extending northeasterly to 47°16'13" N, 122°25'13" W; then extending southeasterly along the shoreline of the Sitcum Waterway; then northeasterly along the shoreline at the terminus of the Sitcum Waterway and then northwesterly along the shoreline of the Sitcum Waterway; then northeasterly along the shoreline of Pier No. 5 to the point of origin. [Datum: NAD 1983].

(d) *Obtaining permission to enter, move within, or exit the security zones:* All vessels must obtain permission from the COTP or a Designated Representative to enter, move within, or exit the security zones established in this section when these security zones are enforced. Vessels 20 meters or greater in length should seek permission from the COTP or a Designated Representative at least 4 hours in advance. Vessels less than 20 meters in length should seek permission at least 1 hour in advance. VTS Puget Sound may be reached on VHF channel 14.

(e) *Compliance.* Upon notice of enforcement by the Captain of the Port Puget Sound, the Coast Guard will enforce these security zones in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Captain of the Port Puget Sound, all persons and vessels are authorized to enter, transit, and exit these security zones.

(f) *Regulations.* Under the general regulations in 33 CFR part 165 subpart D, this section applies to any vessel or person in the navigable waters of the United States to which this section applies. No person or vessel may enter the security zones established in this section unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted permission to enter the security zone shall obey all lawful orders or

directions of the Captain of the Port or his designated representatives. All vessels shall operate at the minimum speed necessary to maintain a safe course.

(g) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other Federal, State or local agencies in enforcing this section pursuant to 33 CFR 6.04–11.

(h) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from the requirements in this section.

(i) *Waiver.* For any vessel, the Captain of the Port Puget Sound may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: May 7, 2004.

Danny Ellis,

Captain, U. S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 04–10997 Filed 5–13–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 120–0063; FRL–7661–2]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a full approval of some revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP) and a limited approval/limited disapproval of other revisions to the Arizona SIP. These revisions concern sulfur dioxide (SO₂) emissions from existing primary copper smelters. We are proposing

action on local rules that regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by June 14, 2004.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to steckel.andrew@epa.gov, or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies

of the submitted SIP revisions at the following locations: Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 85007.

A copy of the rules may also be available via the Internet at http://www.sosaz.com/public_services/Title_18/18-02.htm. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 947-4118, petersen.alfred@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Amended	Submitted
ADEQ	R18-2-715 (sections F, G, and H).	Standards of Performance for Existing Primary Copper Smelters, Site-specific Requirements.	08/09/02	09/12/03
ADEQ	R18-2-715.01	Standards of Performance for Existing Primary Copper Smelters, Compliance and Monitoring.	08/09/02	09/12/03
ADEQ	R18-2-715.02	Standards of Performance for Existing Primary Copper Smelters, Fugitive Emissions.	11/15/93	07/15/98
ADEQ	R18-2-appendix 8	Procedures for Utilizing the Sulfur Balance Method for Determining Sulfur Emissions.	11/15/93	07/15/98

On November 14, 2003, the submittal of Rules R18-2-715 (sections F, G, and H) and R18-2-715.01 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On December 18, 1998, the submittal of Rules R18-2-715.02 and R18-2-appendix 8 was found to meet the completeness criteria.

B. Are There Other Versions of These Rules?

We approved versions of Rules R18-2-715, R18-2-715.01, and R18-2-715.02 into the SIP as Rule R9-3-515 at various times. Specifically, we approved a version of Rule R18-2-715 (sections F, G, and H) into the SIP as Rule 9-3-515 (sections A and C.1 (a through g)), portions of which were submitted on September 20, 1979, July 17, 1980, and February 2, 1983, on January 14, 1983 (48 FR 1717) and October 19, 1984 (49 FR 41026). Part was submitted on September 20, 1979; part submitted on July 17, 1980; part submitted on July 13, 1981 and approved at 48 FR 1717 (January 14, 1983), part submitted on June 3, 1982 and approved at 47 FR 42572 (September 28, 1982), and part submitted on February 3, 1984 and approved at 49 FR 41026 (October 19, 1984).

We approved a version of Rule R18-2-715.01 into the SIP as Rule R9-3-515 (sections C.1(h and i), C.2, C.3, C.4, C.5, and C.6), portions of which were submitted on September 20, 1979, July 13, 1981, June 3, 1982, and February 3, 1984, on January 14, 1983 (48 FR 1717) and October 19, 1984 (49 FR 41026).

We approved a version of Rule R18-2-715.02 into the SIP as Rule R9-3-515 (sections C.8 and C.9), portions of which were submitted on September 20, 1979 and June 3, 1982, on January 14, 1983 (48 FR 1717).

We approved a version of Rule R18-2-appendix 8 into the SIP as Rule R9-3-appendix 8 (sections 8A.3.1 and 8A.3.2), submitted on June 3, 1982, on September 28, 1982 (47 FR 42572).

C. What Is the Purpose of the Submitted Rule Revisions?

Sulfur dioxide is formed by the combustion of fuels and by certain industrial processes, including those at smelters. High concentrations of SO₂ affect breathing and may aggravate existing respiratory and cardiovascular disease. Section 110(a) of the CAA requires states to submit regulations that control SO₂ emissions. The submitted rules regulate SO₂ emissions from existing primary copper smelters. The

TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Pursuant to the CAA as amended in 1977, EPA designated six areas in Arizona as nonattainment for the SO₂ National Ambient Air Quality Standards (NAAQS). See 43 FR 8962 (March 3, 1978), 44 FR 21261 (April 10, 1979), and 44 FR 53081 (September 12, 1979). Local copper smelters were the principal sources of SO₂ emissions in these areas. Under the CAA as amended in 1977, States were required to revise their SIPs to include air quality plans that set forth a strategy to bring nonattainment areas into attainment. As part of the attainment strategy, ADEQ initially submitted R9-3-515, the predecessor regulation to the submitted rules evaluated herein, to EPA on September 20, 1979. As noted above, EPA approved various provisions of R9-3-515 into the Arizona SIP at different times. See the proposed rule at 46 FR 58098 (November 30, 1981), and related final rules at 47 FR 42572 (September 28, 1982), 48 FR 1717 (January 14, 1983), and 49 FR 41026 (October 19, 1984).

Rule R9-3-515 provides SO₂ stack emission limits for seven individual copper smelters in the six nonattainment areas: Magma Copper Company (San Manuel); ASARCO, Inc. (Hayden); Kennecott Copper Company, Ray Mines Division (Hayden); Inspiration Consolidated Copper Company (Miami); Phelps Dodge Corp., New Cornelia Branch (Ajo); Phelps Dodge Corp., Douglas Reduction Works (Douglas); and Phelps Dodge Corp., Morenci Branch (Morenci). While EPA took action to fully approve R9-3-515, EPA also concluded that the control strategy for SO₂ in these six areas was incomplete due to the failure to address the fugitive emissions problems at the copper smelters. See 48 FR 1717 (January 14, 1983) and 40 CFR 52.125(a)(1).

Under the CAA as amended in 1990, areas designated nonattainment prior to enactment of the amendments retained their nonattainment designations by operation of law. See section 107(d)(1)(C) of the CAA. Thus, the six areas covered by R9-3-515 remained nonattainment for the SO₂ NAAQS following enactment of the 1990 CAA Amendments. Under subpart 5 of part D of title I of the CAA, as amended in 1990, States that contained areas designated nonattainment with respect to the NAAQS for SO₂ by operation of law but lacking a fully approved implementation plan complying with the requirements of the CAA as in effect immediately before enactment of the CAA Amendments of 1990 were required to prepare and submit a SIP revision meeting the requirements of subpart 1 (of part D). See section 191(b) of the CAA. Section 191(b) of the CAA applies to the six SO₂ nonattainment areas in Arizona because, as noted above, the pre-1990 implementation plan for those areas failed to address the fugitive emissions problems at the copper smelters.

The subpart 1 (of part D) requirement that is applicable to the submitted rules is section 172(c)(1): Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) and shall provide for attainment of the NAAQS. The submitted rules are evaluated herein to ensure they comply with RACT and that they contain the provisions necessary to ensure that the rules are enforceable. In addition, we evaluate the submitted rules for

approvability under sections 110(l) and 193 of the CAA.

Guidance and policy documents that we used to help evaluate specific enforceability requirements consistently include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation, Cutpoints, Deficiencies, and Deviations* (the "Blue Book"), U.S. EPA, OAQPS (May 25, 1988).
- *Guidance Document for Correcting Common Volatile Organic Compounds & Other Rule Deficiencies*, EPA Region IX (August 2, 2001), available at <http://www.epa.gov/region09/air/sips/littlebluebook2001.pdf>.
- Alushin, Michael S., Associate Enforcement Counsel for Air Enforcement, Alan W. Eckert, Associate General Counsel, Air and Radiation Division, and John S. Seitz, Director, Stationary Source Compliance Division, Office of Air Quality Planning and Standards, memorandum, *Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency*, (September 23, 1987).

B. Do the Rules Meet the Evaluation Criteria?

The submitted rules constitute source-specific SO₂ SIP rules for three of the seven primary copper smelters covered by the corresponding existing SIP rules: BHP Copper (formerly Magma Copper Company) (San Manuel); ASARCO, Inc. (Hayden); and Inspiration Consolidated Copper Company (Miami). The other four smelters have been completely dismantled or are no longer operational. See the TSD for additional information on these smelters. For those smelters that remain in operation, the submitted rules improve the SIP by establishing more stringent SO₂ stack emissions limits, by establishing SO₂ emissions limits for fugitive emissions, by adding compliance and monitoring provisions related to fugitive SO₂ emissions, and by revising the record retention period from two to five years.

As noted above, the San Manuel, Hayden, and Miami areas are designated as nonattainment for the SO₂ NAAQS. As required under the CAA as amended in 1990, ADEQ prepared SIP revisions involving the development of air quality plans that provide for attainment of the SO₂ NAAQS in these areas. ADEQ drafted these plans to provide for maintenance of the SO₂ NAAQS as well as attainment and has requested that the areas be redesignated from nonattainment to attainment under section 107(d) of the CAA. These plans

rely primarily on the stack and fugitive SO₂ emission limits and related compliance and monitoring provisions in the submitted rules to attain and maintain the SO₂ NAAQS in the three nonattainment areas. SO₂ NAAQS violations have not been recorded in these areas for at least the past five years. See ADEQ's *San Manuel Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan* (June 2002), submitted to EPA on June 20, 2002; *Miami Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan* (June 2002), submitted to EPA on June 26, 2002; *Hayden Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan* (June 2002), submitted to EPA on June 27, 2002.

Since the submitted rules are consistent with the control strategy that provides for attainment of the SO₂ NAAQS in the applicable nonattainment areas, they would fully satisfy the requirements for implementation of RACT under sections 172(c) and 191(b) and would be fully approvable by EPA under section 110(l) of the CAA but for the deficiencies in Rule R18-2-appendix 8, which are summarized below and discussed further in the TSD. In addition, the submitted rules contain more stringent emissions limits than the corresponding pre-1990 SIP requirements, they are approvable by EPA under section 193 of the CAA.

C. What Are the Rule Deficiencies?

These provisions of Rule R18-2-appendix 8 conflict with section 110 and part D of the CAA and prevent full approval of the SIP revision.

- Sections A.8.1.2 and A.8.2 contain excessive Director's discretion by allowing the Director to approve an equivalent method to calculate the sulfur content without providing the criteria that will be used to determine approvability. The *Guidance Document for Correcting Common Volatile Organic Compounds (VOC) & Other Rule Deficiencies*, EPA Region IX (August 2, 2001), provides guidance on correcting instances of Director's discretion. Also for greater clarity, the term "equivalent method" should be replaced with "alternative method" in paragraph A.8.1.2, as these phrases have distinct meanings. See 40 CFR 60.2. Excessive director's discretion in essence allows for a variance from SIP requirements, and variances are not allowed under section 110(i) of the CAA unless they are submitted as individual SIP revisions by a State and then approved by EPA.

- Sections A.8.1.2.1.1, A.8.1.2.1.2, and A.8.1.2.1.3 should clarify how a representative sample should be taken from belt feeders, railcars, and trucks so that the sampling process is not biased. ADEQ may wish to investigate possible ASTM methods or other industry sampling methods.

- Sections A.8.1.2.3.1 and A.8.1.2.3.2 should provide specific test methods for the “barium sulfate” and “potassium iodine” procedures.

- Section A.8.2.5.5 should provide a specific test method for “chemical gravimetric means.” Apparently it is intended to be the “barium sulfate” method from section A.8.1.2.3.1. Also the accuracy is stated as +50%, but it should be a \pm number. The accuracy of a gravimetric procedure is normally about $\pm 1\%$, not $\pm 50\%$.

- The reference in A.8.3.1 should be changed from R18–2–715(C)(4) to R18–2–715.01(K)–(O). Also, the reference in A.8.3.2 should be changed from R18–2–715(C)(7)(v) to R18–2–715.01(Q).

D. Proposed Action and Public Comment

In order to strengthen the SIP, EPA is proposing a full approval of ADEQ’s submitted Rules R18–2–715 (sections F, G, and H), R18–2–715.01, and R18–2–715.02 as fulfilling the requirements of RACT, SIP relaxations, and enforceability.

Because of the above deficiencies, we cannot grant full approval of Rule R18–2–appendix 8 under section 110(k)(3) and part D. However, EPA may grant a limited approval of Rule R18–2–appendix 8 under section 110(k)(3) in light of EPA’s authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA’s action also contains a simultaneous limited disapproval.

EPA is proposing a limited approval of Rule R18–2–appendix 8 under sections 110(k)(3) and 301(a) of the CAA as meeting the requirements of section 110(a) and part D. At the same time, EPA is also proposing a limited disapproval of Rule R18–2–appendix 8 because it contains deficiencies which must be corrected in order to fully meet the requirements of section 110 and part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission’s failure to meet one or more of the elements required by the CAA, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such

disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18-month period referred to in section 179(a) will begin on the effective date of EPA’s final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this document have been adopted and are currently in effect. EPA’s final limited disapproval action will not prevent ADEQ or EPA from enforcing these rules. Also, if we finalize this action as proposed, the submitted rules will supersede the corresponding existing SIP rule in the Arizona SIP.

We will accept comments from the public on the proposed action for the next 30 days.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled “Regulatory Planning and Review.”

B. Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility

analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (*Federalism*) and 12875 (*Enhancing the Intergovernmental Partnership*). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is 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.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not

required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule 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, because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, 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 proposed rule does not have tribal implications, as specified in Executive Order 13175. It 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. Thus, Executive Order 13175 does not apply to this proposed rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

H. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If

the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

I. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

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.

J. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this proposed action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: April 28, 2004.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 04-10940 Filed 5-13-04; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 04-151; ET Docket No. 02-380; and ET Docket No. 98-237; FCC 04-100]

Unlicensed Operation of the 3650-3700 Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Commission's rules to maximize the efficient use of the 3650-3700 MHz band. The proposal would allow unlicensed devices to operate in either all, or portions of, this radiofrequency (RF) band under flexible technical limitations with smart/cognitive features that should prevent interference to licensed satellite services. This proposal fosters the introduction of new and advanced services to the American public, especially in rural areas.

DATES: Comments must be filed on or before July 28, 2004, and reply comments must be filed on or before August 27, 2004.

FOR FURTHER INFORMATION CONTACT: Neal McNeil at (202) 418-2408, Neal.McNeil@fcc.gov, Gary Thayer at (202) 418-2290, Gary.Thayer@fcc.gov, or Ahmed Lahjouji, (202) 418-2061, Ahmed.Lahjouji@fcc.gov—Office of Engineering and Technology; or Eli Johnson at (202) 418-1395, Eli.Johnson@fcc.gov, or Marty Liebman at (202) 418-0633, Martin.Liebman@fcc.gov—Wireless Telecommunications Bureau, TTY (202) 418-2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket No. 04-151, ET Docket No. 02-380 and ET Docket No. 98-237, FCC 04-100, adopted April 15, 2004, and released April 23, 2004. 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, Qualex International, 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.