DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, 26, 31, 40, 41, 44, 53, 54, 55, 56, 156, 157, and 301

[REG–129243–07]

RIN 1545–BG83

Tax Return Preparer Penalties Under Sections 6694 and 6695; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–129243–07) that was published in the **Federal Register** on Tuesday, June 17, 2008 (73 FR 34560) implementing amendments to the tax return preparer penalties under sections 6694 and 6695 of the Internal Revenue Code and related provisions under sections 6060, 6107, 6109, 6696 and 7701(a)(36) reflecting amendments to the Code made by section 8246 of the Small Business and Work Opportunity Tax Act of 2007. The proposed regulations affect tax return preparers and provide guidance regarding the amended provisions.

FOR FURTHER INFORMATION CONTACT: Michael E. Hara, (202) 622–4910 and Matthew S. Cooper, (202) 622–4940 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under sections 6107, 6694, 6696, and 7701 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–129243–07) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–129243–07), which was the subject of FR Doc. E8–12898, is corrected as follows:

1. On page 34563, column 2, in the preamble, under the paragraph heading ''*Furnishing of Copy of the Tax Return*'', first paragraph of the column, line 2, the language ''Single Filers and Joint Filers With No'' is corrected to read ''Single and Joint Filers With No''.

2. On page 34567, column 1, in the preamble, under the paragraph heading ''*Definition of Tax Return Preparer*'', first paragraph of the column, line 3, the language ''under proposed § 301.7701–15(b)(2) and'' is corrected to read ''under proposed §§ 301.7701–15(b)(2) and''.

§ 1.6694–1 [Corrected]

3. On page 34572, column 1, § 1.6694–1(e)(2), line 6, the language ''would be sustained on its merits and'' is corrected to read ''be sustained on its merits and''.

§ 26.6694–1 [Corrected]

4. On page 34583, column 3, § 26.6694–1(a), line 5, the language ''see § 1.66994–1 of this chapter.'' is corrected to read ''see § 1.6694–1 of this chapter.''.

§ 41.6107–1 [Corrected]

5. On page 34586, column 3, § 41.6107–1(a), line 3, the language ''or claim for refund of excise tax section'' is corrected to read ''or claim for refund of excise tax under section''.

§ 156.6107–1 [Corrected]

6. On page 34593, column 1, § 156.6107–1(a), line 3, the language ''or claim for refund of tax under Section'' is corrected to read ''or claim for refund of tax under section''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8–16176 Filed 7–18–08; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 51

[EPA–HQ–OAR–2008–0419; FRL–8695–2]

RIN 2060–A096

Proposed Rule to Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: Addressing a Portion of the Phase 2 Ozone Implementation Rule Concerning Reasonable Further Progress Emissions Reductions Credits Outside Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to revise its Phase 2 implementation rule for the 8-hour ozone national ambient air quality standard (NAAQS or standard) to address the U.S. Circuit Court of Appeals for the District of Columbia Circuit's vacatur and remand of this rule. Specifically, this proposal addresses the vacatur and remand of a provision that allowed credit toward reasonable further progress (RFP) for the 8-hour standard from emission reductions outside the nonattainment area.

DATES: Comments must be received on or before August 20, 2008.

If anyone contacts us requesting a public hearing by July 31, 2008, we will hold a public hearing approximately 30 days after publication in the **Federal Register**. Additional information about the hearing would be published in a subsequent **Federal Register** notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0419 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* a-*and-r-docket@epa.gov.*
- *Fax Number:* (202) 566–9744.
- *Mail:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA–HQ–OAR–2008–0419, Environmental Protection Agency, 1301 Constitution Ave., NW., Mail Code 2822T, Washington, DC 20460. Please include two copies if possible.
- *Hand Delivery:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA–HQ–OAR–2008–0419, Environmental Protection Agency in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room hours of operation will be 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, Air and Radiation Docket and Information Center.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0419. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *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 *www.regulations.gov,* or e-mail. The *www.regulations.gov* Web site 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 *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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in *www.regulations.gov.* 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 *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: For further information on the this proposal contact: Ms. Denise Gerth, Office of Air Quality Planning and Standards (C539–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5550 or by e-mail at *gerth.denise@epa.gov,* fax number (919) 541–0824; or Mr. John Silvasi, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (C539–01), Research Triangle Park, NC 27711, telephone number (919) 541–5666, fax number (919) 541–0824 or by e-mail at *silvasi.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected directly by the subject rule for this action include state, local, and Tribal governments. Entities potentially affected indirectly by the subject rule include owners and operators of sources of emissions (volatile organic compounds (VOCs) and nitrogen oxides (NO_X) that contribute to ground-level ozone concentrations.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed to be CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where Can I Get a Copy of This Document and Other Related Information?

A copy of this document and other related information is available from the docket.

D. What Information Should I Know About the Public Hearing?

If requested, EPA will hold a public hearing only if a party notifies EPA by July 31, 2008, expressing its interest in presenting oral testimony on issues addressed in this notice. Any person may request a hearing by calling Mrs. Pamela Long at (919) 541–0641 before 5 p.m. by July 31, 2008. Any person who plans to attend the hearing should also contact Mrs. Pamela Long at (919) 541–0641 to learn if a hearing will be held.

If a public hearing is held on this notice, it will be held at the EPA, Building C, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709. Because the hearing will be held at a U.S. Government facility, everyone planning to attend should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please contact Mrs. Pamela Long at *long.pam@epa* or by telephone at (919) 541–0641 for information and updates concerning the public hearing.

If held, the public hearing will begin at 10 a.m. and will end one hour after the last registered speaker has spoken. The hearing will be limited to the subject matter of this document. Oral testimony will be limited to five minutes. The EPA encourages commenters to provide written versions of their oral testimony either electronically (on computer disk or CD–ROM) or in paper copy. The list of speakers can be obtained from Mrs. Pamela Long. Verbatim transcripts and written statements will be included in the rulemaking docket.

A public hearing would provide interested parties the opportunity to present data, views, or arguments concerning issues addressed in this notice. The EPA may ask clarifying questions during the oral presentations, but would not respond to the presentations or comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at a public hearing.

E. How Is This Notice Organized?

The information presented in this notice is organized as follows:

SUPPLEMENTARY INFORMATION:

II. What Is the Background for This Proposal?

A. Final Phase 2 Ozone Implementation Rule (40 CFR Parts 51, 52, and 80)

On November 29, 2005 (70 FR 71612), EPA published the Phase 2 final rule that addressed, among other things, the following control and planning obligations as they apply to areas designated nonattainment for the 8-hour ozone NAAQS: Reasonably available control technology and measures (RACT and RACM), RFP, modeling and attainment demonstrations and new source review (NSR). In the Phase 1 Rule, RFP was defined in section 51.900(p) as meaning for the purposes of the 8-hour NAAQS, the progress reductions required under section 172(c)(2) and section 182(b)(1) and (c)(2)(B) and (c)(2)(C) of the CAA. In section 51.900(q), rate of progress (ROP) was defined as meaning for purposes of the 1-hour NAAQS, the progress reductions required under section 172(c)(2) and section 182(b)(1) and (c)(2)(B) and (c)(2)(C) of the CAA (see 69 FR 23997).

The Phase 2 Rule to implement the 8-hour NAAQS set forth an interpretation that certain emission reductions from outside a nonattainment area could be credited toward the 8-hour ozone RFP requirement. The rule stated that credit could be taken for VOC and NO_X emission reductions within 100 kilometers (km) and 200 km respectively outside the nonattainment area (70 FR 71647; November 29, 2005). In addition, if a regional NO_X control strategy were in place in the state, reductions could be taken from within the state (beyond 200 km). In all cases, areas had to include a demonstration that the emissions from outside the nonattainment had an impact on air quality levels within the nonattainment area.

This interpretation was similar to the policy EPA had established under the 1-hour ozone standard.[1] That policy provided additional flexibility for a nonattainment area as it attempted to meet its annual ROP emission reductions. This flexibility expanded the geographic size of the area from which states could obtain emission reductions to meet their annual average 3 percent per year ROP requirement. The policy required that pre-control emissions from a source outside the nonattainment area that would provide credit had to be included in the baseline ROP emissions and target ROP reduction calculation. However, emissions from other sources in the area outside the nonattainment area did not have to be included in the baseline if the nonattainment area was not taking credit for emissions reductions for purposes of ROP.

B. Court's Vacatur and Remand of Provision Allowing Credit for Emissions Reductions Outside a Nonattainment Area for Purposes of RFP for the 8-Hour Ozone NAAQS

On January 27, 2007, the Natural Resources Defense Council (NRDC) filed a petition for review of EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2,'' 70 FR 71612 (November 29, 2005) in the Court of Appeals for the District of Columbia's Circuit. NRDC challenged several aspects of the Phase 2 rule including challenges to EPA's implementation of statutory provisions concerning RFP. In its challenge to EPA's implementation of the RFP provisions, NRDC stated that allowing certain NO_X and VOC emissions reductions achieved at sources outside a nonattainment area to be credited towards that area's RFP State Implementation Plan (SIP) requirements is both unlawful and arbitrary. NRDC specifically argued, in part, that the rule is arbitrary because it allowed the nonattainment area to claim credit for emission reductions from selected outside sources without also adding emissions from other outside sources to the RFP baseline, even where those other sources impact air quality in the nonattainment area.

Following the conclusion of briefing in this case, EPA published a final rule implementing the NAAQS for fine particulate matter (the ''$PM_{2.5}$ Implementation Rule''). *See* 72 FR 20586 (April 25, 2007). In the $PM_{2.5}$ Implementation Rule, EPA adopted a different approach for crediting ''outside'' reductions. The $PM_{2.5}$ Rule allows states to take credit for ''outside'' reductions of NO_X and sulfur dioxide (SO_2) emissions up to 200 kilometers from the nonattainment area (and potentially for VOC or ammonia if the state has provided a technical demonstration indicating that such pollutant emissions significantly contribute to $PM_{2.5}$ concentrations in the nonattainment area) provided it meets three conditions: (1) The state plan must demonstrate that emissions from the ''outside'' source area contribute to $PM_{2.5}$ concentrations in the nonattainment area; (2) a SIP taking RFP credit for emissions reductions achieved in ''outside'' areas includes all sources from that area in its baseline emissions inventory; and (3) the area ''outside'' the nonattainment area from which the state seeks credits only can include portions of the state or states in which the nonattainment area is located, even if the other states may be within 200 km of the nonattainment area.[2] *See* 72 FR at 20636–38. One objective of this policy was to reflect the net emission

[1] The 1-hour ozone policy was established in a memorandum ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS,'' December 29, 1997.

[2] On July 26, 2007, Earthjustice challenged, among other things, the suspension of requirements for attainment plans, progress plans (including RFP plans), contingency measures and certain other plans and measures where EPA determines that an area is meeting the $PM_{2.5}$ standard. The provision in the $PM_{2.5}$ implementation rule that allows States to take credit for reductions from outside the nonattainment area for the purposes of meeting RFP requirements has been challenged in litigation filed by Earthjustice on behalf of the American Lung Association, Medical Advocates for Healthy Air, the Natural Resources Defense Council, and the Sierra Club. *See National Cattlemen's Beef Association* v. *Environmental Protection Agency,* No. 07–1227.

reductions in the ''outside'' area that could affect the nonattainment area rather than crediting only reductions from selected sources. Another objective was to ensure that credit for ''outside'' reductions is achieved due to emission reduction programs implemented by the states having a responsibility to take actions to bring that specific nonattainment area into attainment.

Following publication of the $PM_{2.5}$ Implementation rule which significantly modified the interpretation regarding credits for emissions outside the nonattainment area, EPA requested a partial voluntary remand from the Court on July 17, 2007, to re-evaluate and consider whether to revise the Phase 2 Rule RFP interpretation for consistency with analogous provisions in the $PM_{2.5}$ Implementation rule. In response to EPA's motion for a partial voluntary remand of the RFP policy, NRDC asked the Court to also vacate, *i.e.*, to nullify this provision. On November 2, 2007, the Court issued an order that vacated and remanded the portion of the Phase 2 Rule that permitted credit for reductions of VOC and NO_X from outside the nonattainment areas.

In the meantime, to assist in making decisions regarding RFP in SIP submissions, EPA issued a memorandum on October 11, 2007 advising that, among other things, the Regional Offices not approve ROP/RFP SIPs that obtained VOC or NO_X reductions from outside the nonattainment area until the anticipated new rulemaking was finalized.[3]

III. This Action

A. Revision of 8-Hour Ozone RFP Provision for Emission Reduction Credit From Outside a Nonattainment Area

1. Original Regulatory Interpretation

As noted above under the Background section, EPA's interpretation in the Phase 2 Rule stated that emissions from a source outside the nonattainment area that would provide credit had to be included in the baseline for calculating the percent reduction needed. However, emissions from other sources outside the nonattainment area did not have to be included in the baseline if they did not provide RFP credit for the nonattainment area. The Phase 2 Rule also clarified that in relying on this provision, states should ensure that the reductions meet the standard tests of creditability (permanent, enforceable, surplus, and quantifiable) and are shown to be beneficial toward reducing ozone in the nonattainment area.

2. Effect of Court Ruling

The U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded that portion of the Phase 2 Rule which provided credit under the 8-hour ozone RFP requirement for VOC and NO_X emission reductions from outside a nonattainment area.

3. This Proposed Regulatory Interpretation for RFP

In response to the Court's vacatur and remand, this action proposes to revise the earlier interpretation to be consistent with the analogous provisions in the $PM_{2.5}$ implementation rule (72 FR 20636) such that if the state justifies consideration of precursor emissions for an area outside the nonattainment area, EPA will expect state RFP assessments to reflect emissions changes from all sources in this area. The state may no longer include only selected sources from an area providing emission reductions in the calculation of either (a) the RFP baseline from which to calculate the percent reduction needed for RFP or (b) the reductions obtained that would be credited toward the RFP requirement and the analysis of whether the reductions from areas outside the nonattainment area would contribute to decreases in ozone levels in the nonattainment area. Also, the justification for considering emissions outside the nonattainment area shall include justification of the state's selection of the area used in the RFP plan for each pollutant. In the $PM_{2.5}$ rule, EPA received comments objecting to the possibility that RFP inventories for areas outside the nonattainment area could include selected sources expecting substantial emission reductions while excluding other nearby sources expecting emissions increases. Consequently, EPA changed its approach for considering regional emissions. The $PM_{2.5}$ rules state that if a state justifies consideration of precursor emissions for an area outside the nonattainment area, EPA expects state RFP assessments to reflect emissions changes from all sources in the area. The state cannot include only selected sources providing emission reductions in the analysis. The inventories for 2002, 2009, 2012 (where applicable) and the attainment year would all reflect the same source domain, *i.e.*, the same set of sources except for the addition of any known new sources or removal of known, creditably and permanently shut down sources. EPA is proposing to adopt the same approach that was used in the $PM_{2.5}$ implementation rule in this revised interpretation for purposes of implementing the 8-hour ozone NAAQS.

In cases where the state justifies consideration of emissions of one or both of the ozone precursors (VOC and NO_X) from outside the nonattainment area, EPA proposes that they must provide separate information regarding on-road mobile source emissions within the nonattainment area for transportation conformity purposes.[4] The EPA's transportation conformity regulations (40 CFR 93.102(b)) only require conformity determinations in nonattainment and maintenance areas, and these regulations rely on SIP on-road motor vehicle emission budgets that address on-road emissions within the boundary of the designated nonattainment area. For this reason, if the state addresses emissions outside the nonattainment area for an ozone precursor, the on-road mobile source component of the RFP inventory will not satisfy the requirements for establishing a SIP budget for transportation conformity purposes. In such a case, the state must supplement the RFP inventory with an inventory of on-road mobile source emissions to be used to establish a motor vehicle emissions budget for transportation conformity purposes. *This inventory must:* (1) Address on-road motor vehicle emissions that occur only within the designated nonattainment area, (2) provide for the same milestone year or years as the RFP demonstration, and (3) satisfy other applicable requirements of the transportation conformity regulations (40 CFR part 93). As long as the state provides this separate emissions budget, EPA believes that this approach will optimally address both the RFP and the transportation conformity provisions of the Clean Air Act (CAA).

In addition, for consistency with the approach taken in the $PM_{2.5}$ rule, this proposal would restrict the use of emission reductions for RFP credit to areas within the state, except in the case of multi-state nonattainment areas, and only then would allow RFP reductions from outside the state to be credited from outside the nonattainment area if the states involved develop and submit a coordinated RFP plan. EPA would expect states with multi-state nonattainment areas to consult with other involved states, to formulate a list

[3] ''Partial Voluntary Remand Sought in the Ozone Phase 2 Rule Concerning Rate of Progress (ROP) Reductions Obtained From Outside a Nonattainment Area'' Memorandum of October 11, 2007.

[4] Transportation conformity is required under CAA section 176(c) to ensure that federally supported transportation plans, programs, and highway and transit projects are consistent with the purpose of the SIP.

of the measures that they will adopt and the measures that the other state(s) will adopt, and then to adopt their list of measures under the assumption that the other state(s) will adopt their listed measures. Each state would be responsible for adopting and thereby providing for enforcement of its list of measures, and then that state and ultimately EPA (at such time as the plan is approved) would be responsible for assuring compliance with the SIP requirements (72 FR 20640).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not significant. Accordingly, this action is not subject to the Office of Management and Budget for review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The reason for this is that the CAA imposes the obligation for states to submit SIPs, including RFP, to implement the Ozone NAAQS. In this proposal, EPA is merely providing an interpretation of those requirements; thus there is no information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR parts 50 and 51 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0594. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of any regulation subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR 121.); (2) a 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 impact of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Rather this proposal interprets the RFP requirements under the SIP for states to submit RFP plans in order to attain the ozone NAAQS. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final regulations with ''Federal mandates'' that may result in expenditures to state, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA regulations for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the regulation. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final regulations an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this revision does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and Tribal governments, in the aggregate, or the private sector in any one year. Thus, this proposed revision is not subject to the requirements of section 202 and 205 of the UMRA. The CAA imposes the obligation for states to submit SIPs, including RFP, to implement the Ozone NAAQS. In this proposal, EPA is merely providing an interpretation of those requirements. However, even if this interpretation did establish an independent requirement for states to submit SIPs, it is questionable whether such a requirement would constitute a Federal mandate in any case. The obligation for a state to submit a SIP that arises out of section 110 and section 172 (part D) of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 21(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 21(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

The EPA has determined that this proposal contains merely an interpretation of regulatory requirements and no regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments because these regulations affect Federal agencies only.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), 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'' are 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.''

This action does not have Federalism implications. It 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. This proposal, if made final, would address the Court's vacatur and remand of a portion of the Phase 2 implementation rule for the 8-hour standard, namely an interpretation that allowed credit toward RFP for the 8-hour standard from emission reductions outside the nonattainment area. In addressing the vacatur and remand, this proposal merely explains the requirements for RFP and does not impose any additional requirements. Thus, Executive Order 13132 does not apply to this proposal.

In the spirit of Executive Order 13121 and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and 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 proposal does not have Tribal implications as specified in Executive Order 13175. They do not have a substantial direct effect on one or more Indian Tribes, since no Tribe has to develop a SIP under this proposal. Furthermore, this proposal does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the Tribal Air Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Because these proposed regulations revisions do not have Tribal implications, Executive Order 13175 does not apply. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposal addresses whether a SIP will adequately and timely achieve reasonable further progress to attain and maintain the NAAQS and meet the obligations of the CAA. The NAAQS are promulgated to protect the health and welfare of sensitive population, including children. The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to ozone or its precursors.

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

This 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.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposal does not involve technical standards. Therefore EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The reason for this is that the CAA imposes the obligation for states to submit SIPs, including RFP, to implement the Ozone NAAQS. In this proposal, EPA is merely providing an interpretation of those requirements.

K. Determination Under Section 307(d)

Pursuant to sections 307(d)(1)(E) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.''

EPA has determined that this proposal will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposal would, if promulgated, revise procedures for states to follow in developing SIPs to attain the NAAQS, which are designed to protect all segments of the general populations. As such, they do not adversely affect the health or safety of minority or low income populations and are designed to protect and enhance the health and safety of these and other populations.

List of Subjects 40 CFR Parts 50 and 51

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Transportation, Volatile organic compounds.

Authority: 42 U.S.C. 7409; 42 U.S.C. 7410; 42 U.S.C. 7511–7511f; 42 U.S.C. 7601(a)(1).

Dated: July 14, 2008.

Stephen L. Johnson,

Administrator.

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