

#### IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for

failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 2002. Filing a petition for reconsideration by the Administrator of this final 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 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 1, 2002.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

#### Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (293) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(293) New and amended regulations for the following APCDs were submitted on January 22, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(1) Rules 208 and 444, adopted on December 21, 2001.

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[FR Doc. 02-8287 Filed 4-5-02; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 81

[KY 116; KY 119-200214(c); FRL-7166-5]

#### Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Withdrawal of Direct Final Rule

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** On February 12, 2002 (67 FR 6411), EPA published a direct final approval of a revision to the Kentucky State Implementation Plan (SIP) which pertained to the Kentucky portion of the Cincinnati-Hamilton non-attainment area. The direct final action was published without prior proposal because EPA anticipated no adverse comment. EPA stated in the direct final rule that if EPA received adverse comment by March 14, 2002, EPA would publish a timely withdrawal in the **Federal Register**. EPA subsequently received adverse comments on the direct final rule. Therefore, EPA is withdrawing the direct final approval. EPA will address the comments in a subsequent final action based on the parallel proposal also published on February 12, 2002 (67 FR 6459). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

**EFFECTIVE DATE:** The direct final rule published on February 12, 2002, is withdrawn as of April 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** Randy Terry at (404) 562-9032, or by electronic mail at [Terry.randy@epa.gov](mailto:Terry.randy@epa.gov).

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 21, 2002.

**Michael V. Peyton,**

*Acting Regional Administrator, Region 4.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[WT Docket No. 97-82; FCC 02-34]

### Competitive Bidding Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission declines to adopt a total assets test as part of its determination of small business eligibility in the context of spectrum auctions deciding that the potential benefit from such a test does not justify the difficulty of its use. Instead, the Commission will continue to rely on the gross revenues test already employed. The Commission adopts exceptions to the controlling interest standard's fully diluted requirements for "rights of first refusal" and "put" options. The two exceptions are consistent with the Commission's underlying goal of assuring that the decision of whether and when to transfer a license won by a designated entity rests with those in control of the designated entity. In addition, the Commission clarifies that mutually exclusive contingent ownership interests are to be considered fully diluted only in the possible combinations in which those interests can be exercised by their holder(s). This clarification offers a common sense approach to evaluating ownership interests that could not possibly be given simultaneous or successive effect.

**DATES:** Effective May 8, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Audrey Bashkin of the Auctions and Industry Analysis Division at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of an *Eighth Report and Order* in WT Docket No. 97-82, adopted on February 8, 2002 and released on February 13, 2002. The full text of this document is available for public inspection and copying during regular

business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

### I. Introduction

1. In the *Eighth Report and Order*, the Commission addresses the proposals and tentative conclusions of the *Part 1 Fourth Further Notice of Proposed Rule Making*, 65 FR 52401 (August 29, 2000). In the *Part 1 Fourth Further Notice of Proposed Rule Making*, the Commission sought comment on whether to incorporate a total assets component into its ownership attribution rule for determining which entities are eligible for small business provisions in competitive bidding proceedings. The Commission also proposed three exceptions to the requirement in its competitive bidding attribution rule that certain ownership interests be counted on a "fully diluted" basis. For the reasons explained further, the Commission declines to adopt a total assets test as part of our determination of small business eligibility; however, the Commission adopts two of the proposed exceptions to the attribution rule and clarifies its rules regarding the third.

### II. Total Assets Test

#### A. Background

2. Historically, the Commission has defined small businesses according to a gross revenues test for purposes of ascertaining eligibility for a small business bidding credit. In the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998), the Commission adopted a gross revenues test as its general standard for measuring the size of an entity for competitive bidding purposes, in part because such a standard provides "an accurate, equitable, and easily ascertainable measure of business size." In conjunction with a gross revenues test, the Commission currently employs a total assets test to evaluate the eligibility of applicants to acquire broadband Personal Communications Services (PCS) C and F block licenses made available in "closed" (entrepreneur-only) bidding. In the *Part 1 Fourth Further Notice of Proposed Rule Making*, the Commission sought comment on whether the use of a total assets test, in conjunction with the gross

revenues measure already employed, would enhance Commission determinations of small business status.

#### B. Discussion

3. The Commission declines to expand its definition of small business to include a total assets test for purposes of determining small business bidding credit eligibility. Commenters favoring the inclusion of a total assets test suggest that it could serve to prevent low-revenue but asset-rich businesses from taking advantage of small business programs. However, others argue that a total assets test might disqualify small entities by setting an asset limit that is too low or by attributing assets that are not readily available to these entities for auction purposes. The Commission's attribution rules already prevent many asset-rich applicants from taking advantage of the Commission's small business benefits, because, to the extent that their assets, or those of their controlling interests and affiliates, produce revenues, those revenues must be attributed to the applicant. Moreover, the Commission's experience in using a total assets test to determine C and F block entrepreneur eligibility indicates that the test adds complexity to business size determinations without producing a commensurate benefit. In broadband PCS Auctions No. 5, 10, 11, and 22, in which all C and F block bidders were required to meet a total assets test as well as a gross revenues test to establish entrepreneur eligibility, more than 95 percent of those bidders also met the more stringent gross revenues test required for small business bidding credit eligibility. Thus, in practice, having a total assets test for the C and F blocks has not made a significant difference in defining the qualified applicant population. At the same time, employing a total assets test carries administrative costs for the Commission and for applicants and raises difficult valuation issues. As the Commission observed in its decision not to establish a total assets test for Local Multipoint Distribution Service business size determinations, "[a]ssets, being potentially fluid and subject to inconsistent valuation (e.g., intangibles) are generally much less ascertainable than gross revenues \* \* \*." The Commission believes that the potential benefit provided by a total assets test does not outweigh the valuation difficulties and the administrative costs the test would impose. Moreover, the Commission is reluctant to impose an additional regulatory burden on auction applicants at a time when it is striving to streamline Commission processes. For these reasons, the Commission will