Article XX or XXI citation	Title/Subject	State effective date	EPA Approval date	Additional explanation/ § 52.2063 citation
2101.20	Definitions	6/8/13	11/6/14 [Insert **Federal Register** citation].	Added seven definitions related to Outdoor Wood-Fired Boilers.
*	*	*	*	*
Part D—Pollutant Emission Standards				
*	*	*	*	*
2104.09	Outdoor Wood-Fired Boilers	6/8/13	11/6/14 [Insert **Federal Register** citation].	Added new regulation.
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[FR Doc. 2014–26300 Filed 11–5–14; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 2, 15, 27, 73, and 74

[GN Docket No. 12–268; FCC 14–143]

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: This document clarifies how the Commission intends to preserve the ''coverage area'' as well as the ''population served'' of eligible broadcasters in the repacking process associated with the broadcast television spectrum incentive auction. This action is taken in order to remove any uncertainty regarding the repacking approach the Commission adopted in the *Incentive Auction R&O.*

DATES: Effective November 6, 2014.

FOR FURTHER INFORMATION CONTACT: Aspasia Paroutsas, Office of Engineering and Technology, 202–418–7285, *Aspasia.Paroutsas@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Declaratory Ruling, GN Docket No. 12–268, FCC 14–143, adopted September 20, 2014 and released September 30, 2014. 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, Best Copy and Printing, Inc., 445 12th Street SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of Declaratory Ruling

1. In this Declaratory Ruling, the Commission clarifies how it intends to preserve the ''coverage area'' as well as the ''population served'' of eligible broadcasters in the repacking process associated with the broadcast television spectrum incentive auction. The Commission takes this action in order to remove any uncertainty regarding the repacking approach it adopted in the *Incentive Auction R&O,* 79 FR48442, August 15, 2014. The Commission addresses each of these factors independently and in a manner that fully comports with Congress's mandate to make ''all reasonable efforts'' to ''preserve'' both coverage area and population served as of the enactment date of the Spectrum Act.

Background

2. The Spectrum Act requires the Commission, in repacking the television bands to repurpose spectrum through the incentive auction, to ''make all reasonable efforts to preserve, as of the date of the enactment of the Act [February 22, 2012], the coverage area and population served of each broadcast television licensee, as determined using the methodology described in OET Bulletin 69.'' In the *Incentive Auction R&O,* the Commission interpreted ''coverage area,'' consistent with the definition of ''service area'' in OET Bulletin 69 (OET–69) and 47 CFR 73.622(e), as the area within a full power station's noise-limited F(50,90) contour where the signal strength is predicted to exceed the noise-limited service level, and as the area within a Class A station's protected contour. The Commission interpreted ''population served,'' consistent with OET–69 and 47 CFR 73.616(e), to mean persons who reside within a station's ''coverage area'' at locations where the signal is not subject to interference from other stations.

3. Section 6403(b)(2) requires that the Commission determine each eligible station's ''coverage area'' and ''population served'' using ''the methodology described in OET Bulletin 69.'' The OET–69 methodology has two major steps. First, ''service area or coverage''—the area within a station's relevant contour where the signal strength is predicted to exceed a specified level—is determined using 2-kilometer spacing increments or ''cells.'' Second, interference from other stations is evaluated on a cell-by-cell basis within that area. The result of the interference analysis is data that indicate the population and area (in square kilometers) within the ''coverage area'' lost to interference from other stations.

4. While OET–69 does not provide standards for preserving a television station's coverage area or population served, the Commission's rules provide that applications for new or modified digital television station facilities are acceptable if they are not predicted to cause interference ''to more than an additional 0.5 percent of the population served . . . by another DTV station.'' In other words, the rules protect from interference populated portions of a station's coverage area that are not lost to existing interference from other stations. Consistent with this standard, the Commission adopted a 0.5 percent interference threshold in the *Incentive Auction R&O.* The Commission also

determined that preserving service for the specific viewers who had access to a station's signal as of February 22, 2012, would best comport with the ''all reasonable efforts'' mandate. However, the Commission rejected arguments that section 6403(b)(2) ''is a 'hold harmless' provision that requires the Commission to identify 'extraordinary' or 'truly exceptional' circumstances before altering a station's coverage area and population served.''

Discussion

5. The Commission is concerned that the *Incentive Auction R&O* left some uncertainty regarding how it intends to carry out the statutory preservation mandate in the repacking process. The Commission now clarifies that it will independently protect each eligible station's ''coverage area'' and its ''population served'' as defined in the *Incentive Auction R&O.* In doing so, the Commission will seek to preserve each station's coverage area as determined using the methodology described in OET–69. If the station is reassigned to a different channel, its coverage area on its original channel will be replicated as closely as possible, using the same antenna pattern and other technical parameters and allowing power adjustments as necessary to enable the signal to reach the same geographic area at the same field strength as before the repacking process. As the Commission explained in the *Incentive Auction R&O,* this ''equal area'' approach will enable a station to ''replicat[e] the area within the station's existing contour as closely as possible using the station's existing antenna pattern.'' Consistent with OET–69 and our rules, the Commission will seek to preserve coverage area without regard to interference from other stations or population.

6. Independent of our efforts to preserve each station's ''coverage area,'' the Commission also will seek to preserve its population served, again as determined using the methodology described in OET–69, by prohibiting any channel assignment in the repacking process that would cause one station to interfere with 0.5 percent or more of another station's population served. As ''population served'' by definition excludes unpopulated areas and areas where a station's signal cannot be received due to existing interference from other stations, the Commission will not protect such areas from new interference in the repacking process.

7. The *Incentive Auction R&O* stated that the constraint files the Commission will use during the repacking process ''will match the coverage area of a station to the degree that the area is populated.'' The Commission clarifies that this statement concerns the mechanics of the repacking process, not the ''coverage area'' or ''population served'' that it will seek to preserve for each eligible station as set forth above. The Commission further clarifies that area's where a station's signal is lost to existing interference from other stations, as determined using the methodology in OET–69, will *not* be protected in the repacking process.

8. The Commission's approach is consistent with the statutory preservation mandate. First, as indicated, our approach comports with OET–69 and FCC rules. ''Congress is presumed to be cognizant of, and legislate against the background of, existing interpretations of law.'' Although the statutory terms ''coverage area'' and ''population served'' are related—in particular, ''population served'' is limited by the boundaries of ''coverage area''—they have independent significance under OET–69 and our rules. ''Coverage area'' defines the geographic region within which a signal is predicted to have a specified field strength, whereas ''population served'' represents the populated areas within that region where the signal is not subject to existing interference from other stations. The Commission fulfills the statutory obligation to ''preserve'' a station's coverage area in our repacking process by ensuring that they can continue to operate at technical parameters sufficient to maintain their coverage areas as of February 22, 2012. The Commission ''preserves'' the station's population served by protecting it from interference from other stations in areas where viewers received the station's signal as of that date. Our interpretation does not negate the statutory mandate for preservation of a station's coverage area — as would arguably be the case, for instance, if we required a station to reduce its transmission power or otherwise modify their facilities to reduce their coverage area to conform it to the area of population served. By contrast, according interference protection to ''coverage area'' without regard to ''population served'' would depart from OET–69 and our rules.

9. Second, the Commission's interpretation is consistent with Congress's mandate to ''preserve'' service as of the statutory enactment date, which we observed in the *Incentive Auction R&O* ''suggests that the goal is to maintain the *status quo,*'' consistent with the Commission's historical concern ''with avoiding disruption of service to existing viewers.'' By seeking to preserve each station's ''coverage area'' as set forth, the Commission will ensure that its signal reaches substantially the same geographic area at the same field strength after the repacking process as it did before. By independently protecting each station's ''population served'' from interfering signals, the Commission will ensure that its signal reaches the same viewers before and after the repacking process, subject only to the *de minimis* interference permitted under the Commission's rules for new or modified station facilities. In contrast, protecting a station's ''coverage area'' from interfering signals without regard to its ''population served'' would result in more expansive protection than stations received under the rules in effect at the time the Spectrum Act was enacted.

10. Third, the Commission's interpretation is consistent with Congress's ''all reasonable efforts'' mandate. As explained in the *Incentive Auction R&O,* in the context of a statute with important goals other than preservation of existing television service, in particular the goal of repurposing spectrum, the ''all reasonable efforts'' mandate militates against a statutory interpretation that would limit our ability to repack the television bands efficiently and thereby threaten the auction's overall success in repurposing spectrum. Expanding the interference protection provided in the repacking process beyond that provided under the pre-Spectrum Act rules to unpopulated or unserved (due to existing interference from other stations) portions of each station's coverage area would significantly constrain our flexibility in the repacking process and impair the efficiency of the final television channel assignment scheme: A station could not be assigned to a channel if the assignment would cause signal overlap with another station within either station's coverage area, even if such overlap occurred only in geographic areas where the stations do not have viewers because the areas are uninhabited, uninhabitable, or service was unavailable in the areas due to existing interference from other stations. As a result of such inefficiency, the prospects for the auction's overall success would be substantially threatened.

Ordering Clauses

11. The actions in this Declaratory Ruling has not changed the Final Regulatory Flexibility Analysis (FRFA), which was set forth in the *Incentive Auction R&O.* Thus, no supplemental FRFA is necessary. In addition, the action contained herein does not change

the information collection requirements subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13, contained in the *Incentive Auction R&O.* As a result, no new submission to the Office of Management and Budget is necessary to comply with the PRA requirements.

12. Pursuant to the authority found in Sections 1, 4, 301, 303, and 307 of the Communications Act of 1934, as amended, and sections 6402 and 6403 of Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156, 47 U.S.C. 151, 154, 301, 303, and 307, and section 1.2 of the Commission's rules, 47 CFR 1.2, the *Declaratory Ruling is adopted.*

13. The Declaratory Ruling adopted herein shall be effective upon release.

14. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Declaratory Ruling* in GN Docket No. 12–268 to the Chief Counsel for Advocacy of the Small Business Administration.

15. The Commission will not send a copy of the Declaratory Ruling pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the Commission did not adopt any new rules here.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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