

**§ 3.45-30 Milwaukee Marine Inspection Zone and Captain of the Port Zone.**

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(b) The boundary of the Milwaukee Marine Inspection Zone and the Milwaukee Captain of the Port Zone starts at the Illinois-Wisconsin boundary at longitude 90° W.; thence due east to longitude 87° W.; thence due north to latitude 44°15' N.; thence northeasterly to latitude 44°43' N., longitude 86°40' W.; thence due north to latitude 45°27' N.; thence due west to longitude 88°30' W.; thence due north to latitude 46°20' N.; thence due west to longitude 90° W.; thence due south to the starting point.

**§ 3.45-35 [Removed]**

4. Section 3.45-35 is removed.

5. Section 3.45-45 is revised to read as follows:

**§ 3.45-45 Sault Ste. Marie Marine Inspection Zone and Captain of the Port Zone.**

(a) The Sault Ste. Marie Marine Inspection Office and the Sault Ste. Marie Captain of the Port Office are located in Sault Ste. Marie, Michigan.

(b) The boundary of the Sault Ste. Marie Marine Inspection Zone and the Sault Ste. Marie Captain of the Port Zone starts at the international boundary at latitude 44°43' N.; thence due west to longitude 86°40' W.; thence due north to latitude 45°27' N.; thence due west to longitude 88°30' W.; thence due north to latitude 46°20' N.; thence northeasterly to the shore of Lake Superior at longitude 87°45' W.; thence northerly to Manitou Island Light, located at latitude 47°25' N., longitude 87°35' W.; thence due north to the international boundary at longitude 87°35' W.; thence southeasterly along the international boundary to the starting point.

**§ 3.45-60 [Removed]**

6. Section 3.45-60 is removed.

**§ 3.45-80 [Removed]**

7. Section 3.45-80 is removed.

Dated: February 8, 1995.

**J.C. Card,**

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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**POSTAL SERVICE****39 CFR Part 265****Demands for Testimony or Records in Certain Legal Proceedings**

AGENCY: Postal Service.

ACTION: Final rule.

**SUMMARY:** This rule establishes a procedure for Postal Service response to subpoenas or other demands for Postal Service employees to testify about, or produce records concerning, Postal Service matters in private litigation or other proceedings in which the United States is not a party.

**EFFECTIVE DATE:** April 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Holvik, Attorney, (312) 765-5230.

**SUPPLEMENTARY INFORMATION:** The rule provides that, in response to subpoenas or other demands for testimony or records concerning Postal Service matters in private litigation or other proceedings in which the United States is not a party, Postal Service employees may testify or produce records only if the General Counsel or the General Counsel's delegate authorizes compliance with the demand. In making this determination, the General Counsel or his or her delegate will consider whether compliance is in accordance with applicable laws, privileges, rules, authority, and regulations and would not be contrary to the interests of the United States.

On February 17, 1995, the Postal Service published a notice of proposed rulemaking (60 FR 8610-8612) with a 30-day comment period. No comments were received during the comment period. Accordingly, the rule is adopted as proposed.

**List of Subjects in 39 CFR Part 265**

Administrative practice and procedure, Freedom of information, Government employees.

For the reasons set out above, 39 CFR part 265 is amended as follows.

**PART 265—RELEASE OF INFORMATION**

1. The authority citation for part 265 is revised to read as follows:

**Authority:** 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

2. Section 265.12 is added to read as follows:

**§ 265.12 Demands for testimony or records in certain legal proceedings.**

(a) *Scope and applicability of this section.* (1) This section establishes procedures to be followed if the Postal Service or any Postal Service employee receives a demand for testimony concerning or disclosure of:

(i) Records contained in the files of the Postal Service;

(ii) Information relating to records contained in the files of the Postal Service; or

(iii) Information or records acquired or produced by the employee in the

course of his or her official duties or because of the employee's official status.

(2) This section does not create any right or benefit, substantive or procedural, enforceable by any person against the Postal Service.

(3) This section does not apply to any of the following:

(i) Any legal proceeding in which the United States is a party;

(ii) A demand for testimony or records made by either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress;

(iii) An appearance by an employee in his or her private capacity in a legal proceeding in which the employee's testimony does not relate to the employee's official duties or the functions of the Postal Service; or

(iv) A demand for testimony or records submitted to the Postal Inspection Service (a demand for Inspection Service records or testimony will be handled in accordance with rules in § 265.11).

(4) This section does not exempt a request from applicable confidentiality requirements, including the requirements of the Privacy Act. 5 U.S.C. 552a.

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

(1) *Adjudicative authority* includes, but is not limited to, the following:

(i) A court of law or other judicial forums, whether local, state, or federal; and

(ii) Mediation, arbitration, or other forums for dispute resolution.

(2) *Demand* includes a subpoena, subpoena duces tecum, request, order, or other notice for testimony or records arising in a legal proceeding.

(3) *Employee* means a current employee or official of the Postal Service.

(4) *General Counsel* means the General Counsel of the United States Postal Service, the Chief Field Counsels, or an employee of the Postal Service acting for the General Counsel under a delegation of authority.

(5) *Legal proceeding means:*

(i) A proceeding before an adjudicative authority;

(ii) A legislative proceeding, except for a proceeding before either House of Congress or before any committee or subcommittee of Congress; or

(iii) An administrative proceeding.

(6) *Private litigation* means a legal proceeding to which the United States is not a party.

(7) *Records custodian* means the employee who maintains a requested record. For assistance in identifying the custodian of a specific record, contact

the Records Officer, United States Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260-5240.

(8) *Testimony* means statements made in connection with a legal proceeding, including but not limited to statements in court or other forums, depositions, declarations, affidavits, or responses to interrogatories.

(9) *United States* means the federal government of the United States and any of its agencies, establishments, or instrumentalities, including the United States Postal Service.

(c) *Requirements for submitting a demand for testimony or records.* (1) Ordinarily, a party seeking to obtain records from the Postal Service should submit a request in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Postal Service's regulations implementing the FOIA at 39 CFR 265.1 through 265.9 or the Privacy Act, 5 U.S.C. 552a and the Postal Service's regulations implementing the Privacy Act at 39 CFR 266.1 through 266.9.

(2) A demand for testimony or records issued pursuant to the rules governing the legal proceeding in which the demand arises must:

- (i) Be in writing;
- (ii) Identify the requested record and/or state the nature of the requested testimony, describe the relevance of the record or testimony to the proceeding, and why the information sought is unavailable by any other means; and
- (iii) If testimony is requested, contain a summary of the requested testimony and a showing that no document could be provided and used in lieu of testimony.

(3) Procedures for service of demand are made as follows:

(i) Service of a demand for testimony or records (including, but not limited to, personnel or payroll information) relating to a current or former employee must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the District Manager, Customer Services and Sales, for all current employees whose work location is within the geographic boundaries of the manager's district, and any former employee whose last position was within the geographic boundaries of the manager's district. A demand for testimony or records must be received by the employee whose testimony is requested and the appropriate District Manager, Customer Services and Sales, at least ten (10) working days before the date the testimony or records are needed.

(ii) Service of a demand for testimony or records other than those described in paragraph (c)(3)(i) of this section must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the General Counsel, United States Postal Service, 475 L'Enfant Plaza, SW, Washington DC 20260-1100, or the Chief Field Counsel. A demand for testimony or records must be received by the employee and the General Counsel or Chief Field Counsel at least ten (10) working days before the date testimony or records are needed.

(d) *Procedures followed in response to a demand for testimony or records.* (1) After an employee receives a demand for testimony or records, the employee shall immediately notify the General Counsel or Chief Field Counsel and request instructions.

(2) An employee may not give testimony or produce records without the prior authorization of the General Counsel.

(3)(i) The General Counsel may allow an employee to testify or produce records if the General Counsel determines that granting permission:

- (A) Would be appropriate under the rules of procedure governing the matter in which the demand arises and other applicable laws, privileges, rules, authority, and regulations; and
- (B) Would not be contrary to the interest of the United States. The interest of the United States includes, but is not limited to, furthering a public interest of the Postal Service and protecting the human and financial resources of the United States.

(ii) An employee's testimony shall be limited to the information set forth in the statement described at paragraph (c)(2) of this section or to such portions thereof as the General Counsel determines are not subject to objection. An employee's testimony shall be limited to facts within the personal knowledge of the employee. A Postal Service employee authorized to give testimony under this rule is prohibited from giving expert or opinion testimony, answering hypothetical or speculative questions, or giving testimony with respect to privileged subject matter. The General Counsel may waive the prohibition of expert testimony under this paragraph only upon application and showing of exceptional circumstances and the request substantially meets the requirements of this section.

(4) The General Counsel may establish conditions under which the employee may testify. If the General Counsel

authorizes the testimony of an employee, the party seeking testimony shall make arrangements for the taking of testimony by those methods that, in the General Counsel's view, will least disrupt the employee's official duties. For example, at the General Counsel's discretion, testimony may be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(5) If a response to a demand for testimony or records is required before the General Counsel determines whether to allow an employee to testify, the employee or counsel for the employee shall do the following:

- (i) Inform the court or other authority of the regulations in this section; and
- (ii) Request that the demand be stayed pending the employee's receipt of the General Counsel's instructions.

(6) If the court or other authority declines the request for a stay, or rules that the employee must comply with the demand regardless of the General Counsel's instructions, the employee or counsel for the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and the regulations in this section.

(7) The General Counsel may request the assistance of the Department of Justice or a U.S. Attorney where necessary to represent the interests of the Postal Service and the employee.

(8) At his or her discretion, the General Counsel may grant a waiver of any procedure described by this section, where waiver is considered necessary to promote a significant interest of the United States or for other good cause.

(9) If it otherwise is permissible, the records custodian may authenticate, upon the request of the party seeking disclosure, copies of the records. No employee of the Postal Service shall respond in strict compliance with the terms of a subpoena duces tecum unless specifically authorized by the General Counsel.

(e) *Postal Service employees as expert witnesses.* No Postal Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's official duties or the functions of the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the General Counsel may approve such expert testimony in private litigation. A Postal Service employee may not testify as such an expert witness without the express authorization of the General Counsel. A litigant must obtain authorization of the General Counsel

before designating a Postal Service employee as an expert witness.

(f) *Substitution of Postal Service employees.* Although a demand for testimony may be directed to a named Postal Service employee, the General Counsel, where appropriate, may designate another Postal Service employee to give testimony. Upon request and for good cause shown (for example, when a particular Postal Service employee has direct knowledge of a material fact not known to the substitute employee designated by the Postal Service), the General Counsel may permit testimony by a named Postal Service employee.

(g) *Fees and costs.* (1) The Postal Service may charge fees, not to exceed actual costs, to private litigants seeking testimony or records by request or demand. The fees, which are to be calculated to reimburse fully the Postal Service for processing the demand and providing the witness or records, may include, among others:

(i) Costs of time spent by employees, including attorneys, of the Postal Service to process and respond to the demand;

(ii) Costs of attendance of the employee and agency attorney at any deposition, hearing, or trial;

(iii) Travel costs of the employee and agency attorney;

(iv) Costs of materials and equipment used to search for, process, and make available information.

(2) All costs for employee time shall be calculated on the hourly pay of the employee (including all pay, allowance, and benefits) and shall include the hourly fee for each hour, or portion of each hour, when the employee is in travel, in attendance at a deposition, hearing, or trial, or is processing or responding to a request or demand.

(3) At the discretion of the Postal Service, where appropriate, costs may be estimated and collected before testimony is given.

(h) *Acceptance of service.* This section does not in any way abrogate or modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MA-31-01-6845a; A-1-FRL-5177-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; U Restricted Emission Status

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision approves 310 CMR 7.02(12), entitled "U Restricted Emission Status," into the Massachusetts SIP. The intended effect of this action is to approve a SIP revision by the Commonwealth of Massachusetts to incorporate regulations for the issuance of federally enforceable operating permits which restrict sources' potential to emit criteria pollutants such that sources can avoid reasonably available control technology (RACT), title V operating permit requirements, or otherwise applicable requirements. This also extends federal enforceability of hazardous air pollutants (HAPs). This action is being taken in accordance with the Implementation Plans Section and the State Programs Section of the Clean Air Act.

**DATES:** This action will become effective June 5, 1995, unless notice is received May 5, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE-131), Washington, DC 20460; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Ida E. Walker, for criteria pollutants (617)

665-9168 or Janet Beloin, for HAPs (617) 565-2734.

**SUPPLEMENTARY INFORMATION:** On June 6, 1994, the Commonwealth of Massachusetts submitted a formal revision to its State Implementation Plan (SIP) to incorporate regulations for the issuance of federally enforceable operating permits. The revision consists of the addition of 310 CMR 7.02(12), entitled "U Restricted Emission Status." The Commonwealth of Massachusetts adopted these regulations in order to have the authority to issue federally enforceable operating permits under its SIP. In order to extend the federal enforceability of state operating permits to hazardous air pollutants (HAPs), EPA is also approving this regulation pursuant to section 112(l) of the Act.

#### Summary of SIP Revision

The Commonwealth of Massachusetts' principal purpose for adopting the operating permit regulations of 310 CMR 7.02(12) is to have a federally enforceable means of expeditiously restricting potential emissions such that sources can avoid RACT, title V operating permit requirements, or otherwise applicable requirements, as well as reduce annual compliance fees. The operating permit provisions in title V of the Clean Air Act Amendments of 1990 have created additional interest in mechanisms for limiting sources' potential to emit, thereby allowing the sources to avoid being defined as "major" with respect to title V operating permit programs. A key mechanism for such limitations is the use of federally enforceable state operating permits (FESOPs). The EPA issued general guidance on FESOPs in the **Federal Register** on June 28, 1989 [54 FR 27274]. This rulemaking evaluates whether Massachusetts has satisfied the requirements for this type of federally enforceable limitation on potential to emit. Each of the five criteria, as specified in the **Federal Register** of June 28, 1989, for approval of a state's program for the issuance of FESOPs under its SIP and how the state's submittal satisfies those criteria are presented below:

Criterion 1. The state's operating permit program (i.e. the regulations or other administrative framework describing how such permits are issued) must be submitted to and approved by EPA as a SIP revision: On June 6, 1994, the Commonwealth of Massachusetts submitted an administratively and technically complete SIP revision request to EPA consisting of 310 CMR 7.02(12) "U Restricted Emission Status."