

proposed regulation. The Department proposed the class exemption on its own motion pursuant to section 408(a) of ERISA, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

In the notice of proposed exemption, the Department invited interested persons to submit written comments on or before February 11, 2008. The Department has received separate written comments on the proposed exemption, in addition to those comments made as part of information received from the public on the proposed regulation.

In view of the importance of these initiatives and their potential for significantly affecting the provision of services to employee benefit plans, the Department has decided to hold a public hearing. The primary purpose of this hearing is to further develop the public record regarding the regulation and the class exemption and to assist the Department to understand the issues involved. The hearing will be held on March 20, 2008, and March 21, if necessary, beginning at 9 a.m. and ending at 5 p.m., EST, in Room S-4215 A-C of the Department of Labor, Francis Perkins Building, at 200 Constitution Avenue, NW., Washington, DC 20210.

Persons interested in presenting testimony and answering questions at this public hearing must submit, by 3:30 p.m., EST, March 10, 2008, the following information: (1) A written request to be heard; and (2) An outline of the topics to be discussed, indicating the time allocated to each topic. To facilitate the receipt and processing of responses, EBSA encourages interested persons to submit their requests and outlines electronically by e-mail to [ORI@dol.gov](mailto:ORI@dol.gov). Persons submitting requests and outlines electronically are encouraged not to submit paper copies. Persons submitting requests and outlines on paper should send or deliver their requests and outlines (preferably at least three copies) to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Attn: 408(b)(2) Hearing, Rooms N-5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. All requests and outlines submitted to the Department will be available to the public, without charge, online at <http://www.dol.gov/ebsa> and at the Public Disclosure Room, N-1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The Department will prepare an agenda indicating the order of

presentation of oral comments and testimony. In the absence of special circumstances, each presenter will be allotted ten (10) minutes in which to complete his or her presentation.

Any individuals with disabilities who may need special accommodations should notify Fil Williams on or before March 10, 2008.

Information about the agenda will be posted on <http://www.dol.gov/ebsa> on or after March 10, 2008, or may be obtained by contacting Fil Williams, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8510 (this is not a toll-free number).

Those individuals who make oral comments and testimonies at the hearing should be prepared to answer questions regarding their information and/or comments. The hearing will be transcribed.

#### Notice of Public Hearing

Notice is hereby given that a public hearing will be held on March 20, 2008, and March 21, if necessary, concerning the Department's proposed regulation under section 408(b)(2) of ERISA and the related proposed class exemption. The hearing will be held beginning at 9 a.m. in Room S-4215 A-C of the U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 21st day of February 2008.

**Bradford P. Campbell,**

*Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. E8-3601 Filed 2-26-08; 8:45 am]

**BILLING CODE 4510-29-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

[EPA-R01-OAR-2008-0112; A-1-FRL-8533-7]

#### Outer Continental Shelf Air Regulations Consistency Update for Massachusetts

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

**ACTION:** Proposed rule-consistency update.

**SUMMARY:** EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries

must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources in the Commonwealth of Massachusetts. The intended effect of approving the OCS requirements for the Commonwealth of Massachusetts is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations.

**DATES:** Written comments must be received on or before March 28, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R01-OAR-2008-0112 by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: [mcdonnell.ida@epa.gov](mailto:mcdonnell.ida@epa.gov).
3. *Fax*: (617) 918-0653.
4. *Mail*: "Docket Identification Number EPA-R01-OAR-2008-0112", Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAP), Boston, MA 02114-2023.
5. *Hand Delivery or Courier*: Deliver your comments to: Ida McDonnell, Air Permits, Toxics and Indoor Air Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAP), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R01-OAR-2008-0112. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://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 through [www.regulations.gov](http://www.regulations.gov), or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://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](http://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.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. 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](http://www.regulations.gov) or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ida E. McDonnell, Air Permits, Toxics and Indoor Air Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAP), Boston, MA 02114-2023, telephone number (617) 918-1653, fax number (617) 918-0653, e-mail [mcdonnell.ida@epa.gov](mailto:mcdonnell.ida@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. EPA’s Evaluation
- III. Proposed Action

#### IV. Statutory and Executive Order Reviews

##### I. Background and Purpose

On September 4, 1992, EPA promulgated 40 CFR part 55,<sup>1</sup> which established requirements to control air pollution from Outer Continental Shelf (OCS) sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a State’s seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the corresponding onshore area (COA). Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of a Notice of Intent on December 7, 2007 by Cape Wind Associates, LLC of Boston, Massachusetts. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States’ seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA’s flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA’s state implementation plan (“SIP”) guidance or certain requirements of the Act.

<sup>1</sup> The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

##### II. EPA’s Evaluation

In updating 40 CFR part 55, EPA reviewed the state rules for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,<sup>2</sup> and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

##### III. Proposed Action

EPA is proposing to incorporate the rules applicable to sources for which the Commonwealth of Massachusetts will be the COA. The rules that EPA proposes to incorporate are applicable provisions of 310 Code of Massachusetts Regulations (CMR) 4.00: Timely Action Schedule and Fee Provisions, 310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts, 310 CMR 7.00: Air Pollution Control, and 310 CMR 8.00: The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies.

With respect to the Air Pollution Control regulations at 310 CMR 7.00, Massachusetts is divided into six regions known as air pollution control

<sup>2</sup> Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, as in Massachusetts, EPA will use its own administrative and procedural requirements to implement the substantive requirements. See 40 CFR 55.14 (c)(4).

districts, three of which (Merrimack Valley, Metropolitan Boston, and Southeastern Massachusetts) are coastal.<sup>3</sup> Many of the specific provisions of the Air Pollution Control regulations are limited to certain air pollution control districts, or apply differently in different air pollution control districts.

In interpreting such provisions as they are incorporated into part 55, EPA proposes to treat any existing or proposed OCS source as if it were located in the specific air pollution control district that is geographically closest to that source. EPA is relying on this interpretation for purposes of this action. If EPA does not receive comments to the contrary from any party during the public comment period, the interpretation stated above will represent EPA's formal interpretations of the provisions incorporated into part 55 for purposes of federal law.

With respect to the Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies regulations at 310 CMR 8.00, EPA proposes to rely on the Massachusetts Department of Environmental Protection's evaluation, declaration, and notice of an Air Pollution Episode or Incident Emergency applicable to the point on land nearest to an OCS source. Specifically, in interpreting the Massachusetts Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies regulations as they are incorporated into part 55, EPA proposes to treat any existing or proposed OCS source as if it were located at the point on land that is geographically closest to that source. The restrictions that the Department of Environmental Protection applies to on-shore sources on that point of land pursuant to these regulations would then apply to the OCS source as if it were located on that point of land. EPA is relying on this interpretation for purposes of this action. If EPA does not receive comments to the contrary from any party during the public comment period, the interpretation stated above will represent EPA's formal interpretations of the provisions incorporated into part 55 for purposes of federal law.

#### IV. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency

must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget ("OMB") review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB Review. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have created an adverse material effect. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA.

##### B. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in 40 CFR part 55, and by extension this update to the rules, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0249. Notice of OMB's approval of EPA Information Collection Request ("ICR") No. 1601.06 was published in the **Federal Register** on March 1, 2006 (71 FR 10499-10500). The approval expires January 31, 2009. As EPA previously indicated (70 FR 65897-65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal

agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

##### 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.

These rules will not have a significant economic impact on a substantial number of small entities. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. These OCS rules already apply in the COA, and EPA has no evidence to suggest that these OCS rules have had a significant economic impact on a substantial number of small entities. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS requirements to make them consistent with rules in the COA. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

##### 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

<sup>3</sup> These districts are not associated with separate air pollution control agencies; they are purely conceptual.

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 rules 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 rule 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 adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. 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 rule 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.

This document contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector that may result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. This action would implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act without the exercise of any policy discretion by EPA. The OCS rules already apply in the COA, and EPA has no evidence to suggest that applying them in the OCS would 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. As required by section 328 of the Clean Air Act, this action simply updates the existing OCS

requirements to make them consistent with rules in the COA.

#### *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" 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."

This proposed rule 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. These rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. These rules do not amend the existing provisions within 40 CFR part 55 enabling delegation of OCS regulations to a COA, and this rule does not require the COA to implement the OCS rules. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comments on this proposed rule from State and local officials.

#### *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 rule does 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 and thus does not have "tribal implications," within the meaning of Executive Order 13175. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In addition, this rule does not impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Consultation with Indian tribes is therefore not required under Executive Order 13175. Nonetheless, in the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribes, EPA specifically solicits comments on this proposed rule from tribal officials.

#### *G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045: "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 is not economically significant as defined in Executive Order 12866. In addition, the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportional risk to children.

#### *H. 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.

### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable laws or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decided not to use available and applicable voluntary consensus standards.

As discussed above, these rules implement requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements. In the absence of a prior existing requirement for the state to use voluntary consensus standards and in light of the fact that EPA is required to make the OCS rules consistent with current COA requirements, it would be inconsistent with applicable law for EPA to use voluntary consensus standards in this action. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order 12898 (59 FR 7629 (Feb. 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

lacks the discretionary authority to address environmental justice in this proposed action. This rule implements requirements specifically and explicitly set forth by the Congress in section 328 of the Clean Air Act, without the exercise of any policy discretion by EPA. As required by section 328 of the Clean Air Act, this rule simply updates the existing OCS rules to make them consistent with current COA requirements.

Although EPA lacks authority to modify today’s regulatory decision on the basis of environmental justice considerations, EPA nevertheless explored this issue and found the following. This action, namely, updating the OCS rules to make them consistent with current COA requirements, 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. Environmental justice considerations may be appropriate to consider in the context of a specific OCS permit application.

#### **List of Subjects in 40 CFR Part 55**

Environmental protection, Administrative practice and procedure, Air pollution control, Continental Shelf, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 19, 2008.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

#### **PART 55—[AMENDED]**

1. The authority citation for part 55 continues to read as follows:

**Authority:** Section 328 of the Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended as follows:

- a. By adding paragraph (d)(11).
- b. In paragraph (e) introductory text by adding a new address after the words “regional offices:”.
- c. By adding paragraph (e)(11).

#### **§ 55.14 Requirements that apply to OCS sources located within 25 miles of States’ seaward boundaries, by State.**

\* \* \* \* \*

(d) \* \* \*

(11) Massachusetts.

(i) 40 CFR part 52, subpart W.

(ii) [Reserved]

\* \* \* \* \*

(e) \* \* \* U.S. EPA, Region 1  
(Massachusetts) One Congress Street,  
Boston, MA 02114–2023 \* \* \*

\* \* \* \* \*

(11) Massachusetts.

(i) State requirements.

(A) Commonwealth of Massachusetts  
Requirements Applicable to OCS  
Sources, December 28, 2007.

(B) [Reserved]

(ii) Local requirements.

(A) [Reserved]

\* \* \* \* \*

3. Appendix A to part 55 is amended by adding an entry for Massachusetts in alphabetical order to read as follows:

#### **Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, By State**

\* \* \* \* \*

Massachusetts

(a) State requirements.

(1) The following Commonwealth of Massachusetts requirements are applicable to OCS Sources, December 28, 2007, Commonwealth of Massachusetts—Department of Environmental Protection. The following sections of 310 CMR 4.00, 310 CMR 6.00, 310 CMR 7.00 and 310 CMR 8.00:

#### **310 CMR 4.00: Timely Action Schedule and Fee Provisions**

Section 4.01: Purpose, Authority and General Provisions (Effective 10/19/2007)

Section 4.02: Definitions (Effective 10/19/2007)

Section 4.03: Annual Compliance Assurance Fee (Effective 10/19/2007)

#### **310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts**

Section 6.01: Definitions (Effective 12/28/2007)

Section 6.02: Scope (Effective 12/28/2007)

Section 6.03: Reference Conditions (Effective 12/28/2007)

Section 6.04: Standards (Effective 12/28/2007)

#### **310 CMR 7.00: Air Pollution Control**

Section 7.00: Statutory Authority; Legend; Preamble; Definitions (Effective 12/28/2007)

Section 7.01: General Regulations to Prevent Air Pollution (Effective 12/28/2007)

Section 7.02: U Plan Approval and Emission Limitations (Effective 12/28/2007)

Section 7.03: U Plan Approval Exemptions: Construction Requirements (Effective 12/28/2007)

Section 7.04: U Fossil Fuel Utilization Facilities (Effective 12/28/2007)

Section 7.05: U Fuels All Districts (Effective 12/28/2007)  
 Section 7.06: U Visible Emissions (Effective 12/28/2007)  
 Section 7.07: U Open Burning (Effective 12/28/2007)  
 Section 7.08: U Incinerators (Effective 12/28/2007)  
 Section 7.09: U Dust, Odor, Construction and Demolition (Effective 12/28/2007)  
 Section 7.11: U Transportation Media (Effective 12/28/2007)  
 Section 7.12: U Source Registration (Effective 12/28/2007)  
 Section 7.13: U Stack Testing (Effective 12/28/2007)  
 Section 7.14: U Monitoring Devices and Reports (Effective 12/28/2007)  
 Section 7.15: U Asbestos (Effective 12/28/2007)  
 Section 7.18: U Volatile and Halogenated Organic Compounds (Effective 12/28/2007)  
 Section 7.19: U Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO<sub>x</sub>) (Effective 12/28/2007)  
 Section 7.21: Sulfur Dioxide Emissions Limitations (Effective 12/28/2007)  
 Section 7.22: Sulfur Dioxide Emissions Reductions for the Purpose of Reducing Acid Rain (Effective 12/28/2007)  
 Section 7.24: U Organic Material Storage and Distribution (Effective 12/28/2007)  
 Section 7.25: U Best Available Controls for Consumer and Commercial Products (Effective 12/28/2007)  
 Section 7.26: Industry Performance Standards (Effective 12/28/2007)  
 Section 7.27: NO<sub>x</sub> Allowance Program (Effective 12/28/2007)  
 Section 7.28: NO<sub>x</sub> Allowance Trading Program (Effective 12/28/2007)  
 Section 7.29: Emissions Standards for Power Plants (Effective 12/28/2007)  
 Section 7.60: U Severability (Effective 12/28/2007)  
 Section 7.00: Appendix A (Effective 12/28/2007)  
 Section 7.00: Appendix B (Effective 12/28/2007)  
 Section 7.00: Appendix C (Effective 12/28/2007)

**310 CMR 8.00: The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies**

Section 8.01: Introduction (Effective 12/28/2007)  
 Section 8.02: Definitions (Effective 12/28/2007)  
 Section 8.03: Air Pollution Episode Criteria (Effective 12/28/2007)  
 Section 8.04: Air Pollution Episode Potential Advisories (Effective 12/28/2007)  
 Section 8.05: Declaration of Air Pollution Episodes and Incidents (Effective 12/28/2007)  
 Section 8.06: Termination of Air Pollution Episodes and Incident Emergencies (Effective 12/28/2007)  
 Section 8.07: Emission Reductions Strategies (Effective 12/28/2007)  
 Section 8.08: Emission Reduction Plans (Effective 12/28/2007)  
 Section 8.15: Air Pollution Incident Emergency (Effective 12/28/2007)

Section 8.30: Severability (Effective 12/28/2007)  
 (2) [Reserved]  
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 [FR Doc. E8-3614 Filed 2-26-08; 8:45 am]  
**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 97**

[EPA-HQ-OAR-2003-0053; FRL-8534-2]

**Clean Air Interstate Rule: Notice of the Filing of Petition for Administrative Review**

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

**ACTION:** Notice of the filing of petition for administrative review.

**SUMMARY:** On November, 26 2007, Nelson Industrial Steam Company (NISCO) filed a petition requesting that the Environmental Appeals Board review the Clean Air Interstate Rule (CAIR) applicability determination made on October 22, 2007. In the applicability determination, EPA concluded that NISCO's Nelson Units 1 and 2 are CAIR SO<sub>2</sub>, NO<sub>x</sub>, and NO<sub>x</sub> ozone season units because they meet the criteria for being such CAIR units under regulations of the EPA-administered CAIR trading programs.

**SUPPLEMENTARY INFORMATION:** In the applicability determination, EPA concluded that NISCO's Nelson Units 1 and 2 are CAIR SO<sub>2</sub>, NO<sub>x</sub>, and NO<sub>x</sub> ozone season units because they meet the criteria for being such CAIR units under 40 CFR 97.104, 97.204, and 97.304 of the EPA-administered CAIR trading programs. This appeal was filed under 40 CFR part 78. Motions for leave to intervene in the proceeding under 40 CFR 78.11 must be filed by March 28, 2008 with the Environmental Appeals Board.

**FOR FURTHER INFORMATION CONTACT:** Ragan Tate, Attorney-Advisor, Office of General Counsel (2344A), U.S. Environmental Protection Agency, Ariel Rios Building—North, 1200 Pennsylvania Ave., NW., Washington, DC 20460 at (202) 343-9883 or (214) 665-8020.

Dated: February 21, 2008.

**Elizabeth Craig,**  
*Acting Principal Deputy Assistant Administrator, Office of Air and Radiation.*  
 [FR Doc. E8-3694 Filed 2-26-08; 8:45 am]  
**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 76**

[MB Docket No. 92-264; FCC 07-219]

**The Commission's Cable Horizontal and Vertical Ownership Limits**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes changes to the cable and broadcast attribution rules. The cable attribution rules seek to identify those corporate, financial, partnership, ownership, and other business relationships that confer on their holders a degree of ownership or other economic interest, or influence or control over an entity engaged in the provision of communications services such that the holders should be subject to the Commission's regulation. The broadcast attribution rules define which financial or other interests in a licensee must be counted in applying the broadcast ownership rules, and seek to identify "those interests in or relationships to licensees that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions." This document further proposes changes to the rules and regulations establishing reasonable limits on the number of channels on a cable system that can be occupied by a video programmer in which a cable operator has an attributable interest.

**DATES:** Comments are due on or before March 28, 2008. Reply comments are due on or before April 14, 2008.

**ADDRESSES:** You may submit comments, identified by MB Docket No. 92-264; FCC 07-219, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- *Mail:* 445 12th Street, SW., Washington, DC 20554, with a copy to the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov)