

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1910

[Docket No. OSHA–2008–0046]

RIN 1218–AC33

#### Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Advance Notice of Proposed Rulemaking; withdrawal.

**SUMMARY:** OSHA is withdrawing its Advance Notice of Proposed Rulemaking (ANPRM) on Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl in order to facilitate convening a Small Business Advocacy Review Panel, pursuant to the Small Business Regulatory Enforcement Fairness Act (SBREFA). Materials submitted prior to this withdrawal as well as any other information submitted directly to OSHA after the withdrawal will be put in the public rulemaking docket and receive equal consideration as a part of the rulemaking record. In addition, there will be several other opportunities for stakeholders to provide information and comment during the rulemaking process.

**DATES:** The ANPRM on Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl, published January 21, 2009 (74 FR 3938), is withdrawn, effective March 17, 2009.

**SUPPLEMENTARY INFORMATION:** On September 25, 2007, OSHA announced its intent to initiate rulemaking to address concerns regarding diacetyl exposure in the workplace pursuant to Section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, 655). The Agency hosted a stakeholder meeting on October 17, 2007, as part of its process to gather information for the rulemaking. The meeting addressed not

only specific OSHA information requests, but also identified stakeholder concerns associated with developing a standard addressing occupational exposure to diacetyl and food flavorings containing diacetyl. OSHA also announced its intent to convene a Small Business Advocacy Review (SBAR) Panel, pursuant to the SBREFA, in the Department of Labor's Semiannual Regulatory Agenda (73 FR 71396, 71399, 11/24/2008). The SBREFA requires that, prior to publication of any proposed rule that has a significant economic impact on a substantial number of small entities, OSHA convene a SBAR Panel to determine the impacts of such a rule on small businesses and the ways those impacts can be reduced, consistent with the Agency's statutory requirements.

On January 21, 2009, OSHA published an ANPRM (74 FR 3938). The ANPRM sought information and comment on issues related to occupational exposure to diacetyl and food flavorings containing diacetyl, including current employee exposures; the relationship between exposure and the development of adverse health effects; methods to evaluate, monitor, and control exposure; and related topics.

OSHA is withdrawing the ANPRM in order to promptly convene a SBAR panel. Responses to the questions raised in the ANPRM, however, are still of interest to OSHA. Thus, such responses submitted prior to this withdrawal as well as any other information submitted directly to OSHA after this withdrawal will be included in the public rulemaking docket and receive equal consideration as a part of the overall rulemaking record. In addition, relevant materials received before the SBAR panel is formally convened will be considered as part of the SBREFA review process. For consideration in the SBREFA review, OSHA requests that such information be submitted within 10 business days of this notice.

Commenters should be aware that upon withdrawal of this ANPRM they will no longer be able to use the <http://www.regulations.gov> portal for submitting comments. Information submitted informally to the Agency after withdrawal of this ANPRM should be sent to OSHA's Docket Office at the address/fax number indicated below. OSHA believes that withdrawing the ANPRM will not hinder the ability of

the Agency to obtain information or limit stakeholders from providing information and comment during this rulemaking. OSHA recognizes the importance of gathering information and comment during the development of rules and stakeholders still have several avenues to provide input during the rulemaking process even though the ANPRM is being withdrawn.

For example, during the SBREFA process, small entity representatives (SERs) will review and comment on a draft proposed standard, alternatives to the draft proposal, and preliminary analyses of costs, benefits, and impacts of the draft proposal. At the same time OSHA provides these documents to the SERs, the Agency will include the documents in the public docket of this rulemaking (Docket No. OSHA–2008–0046), which is available for stakeholders to view and download. OSHA will hold meetings (open to the public) with the SERs to gather their input and will put their written comments in the public docket. Finally, OSHA will put the final SBAR Panel report in the public docket at the conclusion of the process. Throughout this process, interested parties who are not directly participating in the SBREFA process may nevertheless enter comments into the public docket for this rulemaking. Such comments will be considered by OSHA as part of the rulemaking. In addition, OSHA will formally request public comment when the Agency publishes a proposed rule in the **Federal Register**, and will hold public hearings at which stakeholders will be provided a further opportunity to provide additional information, make suggestions, and raise issues.

OSHA also intends to conduct expert peer reviews of the preliminary risk and feasibility assessments and will put the relevant documents in the public docket when a rule is proposed and open for public comment. In addition, OSHA has conducted and is continuing to conduct site visits at workplaces where exposures to diacetyl and food flavorings containing diacetyl may occur to collect information on processes utilizing diacetyl and the controls used to prevent or minimize employee exposures.

**FOR FURTHER INFORMATION CONTACT:**

*Press Inquiries:* Jennifer Ashley, OSHA, Office of Communications, Room N–3647, U.S. Department of

Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: 202-693-1999.

*General and Technical Information:* David O'Connor, OSHA, Directorate of Standards and Guidance, Office of Chemical Hazards—Non-Metals, Room N-3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone 202-693-2090.

*Submission of Information and Comment:* OSHA Docket Office, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (reference Docket No. OSHA-2008-0046); telephone 202-693-2350 or David O'Connor, OSHA, Directorate of Standards and Guidance, Office of Chemical Hazards—Non-Metals, Room N-3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone 202-693-2090. If your comments, including attachments do not exceed 10 pages, you may fax them to the OSHA Docket Office at 202-693-1648.

#### Authority and Signature

This document was prepared under the direction of Donald G. Shalhoub, Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to section 4, 6, and 8 of the Occupational Safety and Health Act of 1970 and Secretary of Labor's Order No. 5-2007 (72 FR 31160).

Signed at Washington, DC, this 11th day of March 2009.

**Donald G. Shalhoub,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

[OAR-2004-0091; FRL-8768-8]

#### Outer Continental Shelf Air Regulations; Consistency Update for California

**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, as amended in 1990 ("the Act"). The portions of the OCS air regulations that are being updated pertain to the requirements for OCS sources by the Ventura County Air Pollution Control District (Ventura County APCD). The intended effect of approving the OCS requirements for the Ventura County APCD 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:** Any comments must arrive by April 16, 2009.

**ADDRESSES:** Submit comments, identified by docket number OAR-2004-0091, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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:* The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in

the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Allen, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947-4120, [allen.cynthia@epa.gov](mailto:allen.cynthia@epa.gov).

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#### I. Background Information

##### Why is EPA taking this action?

On September 4, 1992, EPA promulgated 40 CFR part 55,<sup>1</sup> which established requirements to control air pollution from 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

<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.