

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1-93)

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, et seq.; 12 U.S.C. 391.

Date: May 15, 1996.

Darcy Bradbury,

Assistant Secretary (Financial Markets).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL-5507-7]

RIN 2060-AG40 and AG39

Outer Continental Shelf Air Regulations Delegation Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing revision to the outer continental shelf (OCS) regulations in response to a voluntary remand from the U.S. Court of Appeals for the District of Columbia Circuit. These regulations establish air pollution control requirements for certain sources located on the OCS.

In response to the requirements of section 328 of the Clean Air Act (Act), on September 4, 1992, EPA promulgated the OCS regulations setting up two regimes for controlling air pollution from OCS sources for the purposes of attaining and maintaining Federal air quality standards and to comply with certain Act requirements for preconstruction review of new and modified major sources. Sources located within 25 miles of the States' seaward boundaries (the 25-mile limit) must comply with regulations which are, in most respects, the same as the regulations for similar sources located on shore. Sources beyond the 25-mile limit are required to comply with Federal new source performance standards (NSPS), requirements for the prevention of significant deterioration (PSD), and national emission standards for hazardous air pollutants (NESHAP) related to attainment and maintenance of ambient air quality standards or the requirements of part C of title I of the Act. The Federal operating permits program and enhanced compliance monitoring regulatory requirements will also be incorporated into part 55 when

they are promulgated. In promulgating the OCS regulations, EPA provided for delegation to State and local agencies the authority to implement and enforce the regulations for sources within the 25-mile limit. However, EPA did not provide for delegation of the authority to implement and enforce the regulations for sources located beyond the 25-mile limit. The Santa Barbara County Air Pollution Control District (APCD) filed a petition for review of the regulations on several issues, including the issue of delegation beyond the 25-mile limit. Upon EPA's request for a voluntary remand, the court remanded the delegation issue to EPA for reconsideration.

By this action, EPA is revising the OCS regulations to provide for delegation to State and local agencies the authority to implement and enforce the OCS regulations beyond the 25-mile limit. Delegation of the program to any specific State or local agency will be under separate action.

DATES: Written comments on the proposed action must be received by EPA at the address below on or before June 19, 1996.

ADDRESSES: Comments should be submitted to the public docket for this action is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the Air and Radiation Docket and Information Center (6102), Attention Docket A-95-07, South Conference Center, Room 4, 401 M Street, SW, Washington, DC 20460. A reasonable fee for copying may be charged.

FOR FURTHER INFORMATION CONTACT: Mr. David Stonefield, U.S. EPA, MD-15, Research Triangle Park, NC 27711, telephone (919) 541-5350.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

The Clean Air Act Amendments of 1990 (Pub. L. 101-549, 104 Stat. 2399 (1990)) added section 328 to the Act and transferred authority to regulate sources on part of the OCS from the Department of the Interior (DOI) to EPA. The DOI retained the authority to regulate OCS sources in the Gulf of Mexico west of 87.5 degrees longitude. As to the remaining portions of the OCS—the Atlantic, Pacific, and Arctic coasts and the Gulf of Mexico east of 87.5 degrees—section 328 requires EPA to establish requirements for the control of air pollution from OCS sources to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C (for the

prevention of significant deterioration) of title I of the Act. For sources within 25 miles of the States' seaward boundaries, those requirements must be the same as would be applicable if the source were located in the corresponding onshore area (COA). For sources beyond the 25-mile limit, the Administrator had discretion in determining the requirements. The EPA proposed (56 FR 63774, December 5, 1991) and promulgated (57 FR 40792, September 4, 1992) regulations to implement the requirements of section 328. The regulations require, among other things, that sources located beyond 25 miles of States' seaward boundaries meet applicable Federal pollution control requirements which include PSD, NSPS and NESHAP regulations to the extent that they are rationally related to protection of air quality standards or part C of title I of the Act (40 CFR 55.13). In addition, EPA stated in the preamble to the final rule that it would incorporate into the OCS rules the requirements of the Federal operating permits regulations (40 CFR part 71) and the enhanced monitoring regulations, when promulgated (57 FR 40803).

B. Delegation Authority

Section 328(a)(3) of the Act permits States adjacent to an OCS source to adopt and submit to EPA regulations for implementing and enforcing the requirements of that section. It requires that:

[I]f the Administrator [of EPA] finds that the State regulations are adequate, the Administrator shall delegate to that State any authority the Administrator has under this Act to implement and enforce such requirements.

Therefore, in the OCS regulations, EPA included § 55.11 which authorizes the delegation of the implementation and enforcement authority to State and local agencies for OCS sources that are located within the 25-mile limit. However, in the preamble to the proposed and final rules, EPA stated that it would retain the authority to implement and enforce the OCS regulations for sources located beyond the 25-mile limit for two reasons. First, since the sources located beyond the 25-mile limit are subject only to Federal requirements, the State would have to adopt two OCS programs, one for sources within the 25-mile limit and one for sources beyond the limit. Second, it may be difficult to determine the appropriate agency to receive delegation for sources located beyond the 25-mile limit (56 FR 63784 and 57 FR 40801-802). Therefore, in the final

rule, EPA did not provide for the delegation of the implementation and enforcement authority for sources beyond the 25-mile limit.

C. Judicial Review

On November 2, 1992, the Santa Barbara County APCD filed a petition for review of the OCS regulations with the U.S. Court of Appeals for the District of Columbia Circuit (*Santa Barbara County Air Pollution Control District v. EPA*, 31 F. 3rd 1179 (D.C. Cir., 1994)). One of the issues that the Santa Barbara County APCD raised was EPA's failure to provide for delegation of the authority to implement and enforce the OCS regulations for sources located beyond 25 miles from a State's seaward boundary.¹ In reviewing the issue, EPA determined that section 328 of the Act requires it to delegate any authority the EPA has under the Act to implement and enforce the requirements of section 328(a) if it determines that the State government has adequate regulations. Therefore, EPA requested the court to remand this issue to it for reconsideration.

II. Revisions to the Regulations

The OCS regulations contain three references to the delegation authority beyond the 25-mile limit. The EPA is proposing in each case to revise the language of the OCS regulations to make clear that EPA may delegate the authority to implement and enforce the OCS regulations for the OCS sources beyond the 25-mile limit. Specific regulatory changes are proposed for §§ 55.3(c), 55.6(d), and 55.11(a). In addition, to allow for the delegation of authority for sources beyond the 25-mile limit, revisions in the wording of other sections are necessary to clarify the regulations. The specific regulatory changes proposed include revisions to § 55.2 (definition of nearest onshore area) and the addition of § 55.11(j).

Section 55.3 establishes the applicability of the regulations for OCS sources. Section 55.3(c) relates to sources located beyond the 25-mile limit and excludes those sources from the requirements of § 55.11, which specifically deals with the delegation of the authority for implementation and enforcement within the 25-mile limit. The EPA proposes to delete the reference in § 55.3(c) that provides that

the delegation requirements of § 55.11 do not apply for sources located beyond the 25-mile limit.

Section 55.6 establishes permit requirements for OCS sources. Section 55.6(d) relates to sources located beyond the 25-mile limit, and paragraph (2) states that the Administrator will retain the authority to implement and enforce the OCS regulations for those sources. The proposed revisions would delete the existing paragraph (2) and replace it with a new paragraph (2) which defines the permit requirements for sources if the program is delegated. The new provisions prohibit the issuance of permits to operators that have not demonstrated compliance with all applicable requirements of the OCS regulations. This new paragraph is identical to the paragraph in § 55.6(c) for sources located within the 25-mile limit.

Section 55.11 currently establishes the requirements for the delegation of the implementation and enforcement of the OCS regulations within the 25-mile limit. The EPA proposes to revise § 55.11(a) to clarify that the State can request delegation for sources beyond the 25-mile limit, as well as for sources located within the 25-mile limit.

The existing definition of "nearest onshore area" (NOA) only applies to sources within 25 miles of States' seaward boundaries. Under the existing regulatory scheme for OCS sources in which EPA retained all authority for sources beyond the 25-mile limit, the definition was only needed for sources located within 25 miles of States' seaward boundaries. However, in delegating the authority to implement and enforce the regulations for sources beyond the 25-mile limit, it will be necessary to determine the NOA for the source. Therefore, EPA is proposing to expand the NOA definition by deleting the limitation to sources within 25 miles of the States' seaward boundaries.

A new subsection "(j)" is proposed for § 55.11 to define the exercise of authority over OCS sources. The delegated agency in the COA for sources located within the 25-mile limit and the delegated agency in the NOA for sources located beyond the 25-mile limit will exercise all delegated authority. If there is no delegated agency in the COA or NOA, EPA will issue permits and implement and enforce the OCS regulations. This language mirrors that of § 55.5(c)(4), which discusses the exercise of authority for sources within the 25-mile limit.

Section 328(a)(4)(B) of the Act and § 55.5 of the OCS regulations establish a procedure for areas other than the NOA to be designated as the COA for

sources within the 25-mile limit. Pursuant to § 55.5, for an area other than the NOA to be designated as the COA, it must demonstrate, among other things, that it has more stringent air pollution control regulations than the NOA. Since sources located beyond the 25-mile limit are subject only to Federal regulations, as identified in § 55.13, any delegated State or local agency would be enforcing the same regulations. Therefore, for sources beyond the 25-mile limit, EPA will delegate the authority to implement and enforce the OCS regulations only to the State or local agency that is responsible for the NOA, assuming that the requirements for delegation are met (§ 55.5(b)).

The EPA is also rescinding that preamble language which specifically states that delegation beyond the 25-mile limit is unacceptable (57 FR 40794, 40797, 40801, and 40802).

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether the regulatory action is significant and therefore subject to the 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, 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.

Pursuant to the terms of Executive Order 12866, OMB has determined that the revisions to the OCS rules are "significant" because the OCS sources would be regulated by two Federal agencies, EPA and DOI. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Act of 1995 requires that EPA prepare a budgetary impact statement

¹ Another issue raised by the Santa Barbara County APCD petition involved EPA special offset provisions for OCS sources. On August 12, 1994, the court vacated that portion of the OCS regulations and remanded it to EPA for further consideration. Elsewhere in today's Federal Register, EPA is promulgating an interim final regulation revising the OCS regulation in accordance with the court's instructions.

before promulgating a rule that includes a Federal mandate that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year. Section 203 requires EPA to establish a plan for obtaining input from, informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule, unless EPA explains why a particular alternative is not selected or the selection of a particular alternative is inconsistent with law.

Because this proposed rule does not impose any new mandates on State, local, or tribal governments, and the rule is estimated to result in the expenditures by State, local, and tribal governments or the private sector of less than \$100 million in any 1 year, EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments. However, EPA will work with eligible State and local air pollution control agencies to assist them in requesting delegation of authority to implement and enforce the OCS regulations.

C. Paperwork Reduction Act

These rule revisions do not contain any information collection requirements subject to review by the OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, *et seq.*

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to identify potentially adverse impacts of Federal rules upon small entities. Small entities include small businesses, organizations, and governmental jurisdictions. In instances where significant economic impacts are possible on a substantial number of these entities, agencies are required to perform a regulatory flexibility analysis. Furthermore, *EPA Guidelines for Implementing the Regulatory Flexibility Act*, issued on April 9, 1992, require the

Agency to determine whether regulations will have any economic impacts on small entities. These revisions to the OCS regulations do not, in themselves, impose any requirements on small entities, nor require or exclude small entities from meeting the requirements of the OCS regulations. As a result, EPA has determined that these revisions will not have a significant impact on a substantial number of small entities.

Therefore, as required under § 605 of the RFA, 5 U.S.C. 605, I certify that these revisions do not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Continental shelf, Intergovernmental relations, Nitrogen oxides, Ozone, permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 13, 1996.
Carol M. Browner,
Administrator.

For reasons set out in the preamble, 40 CFR part 55 is proposed to be amended as set forth below.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

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

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

§ 55.2 [Amended]

2. In § 55.2 the introductory text of the definition of "Nearest Onshore Area" is proposed to be amended by adding a comma after "OCS source" and removing the words "located within 25 miles of the States' seaward boundary," which follows.

3. Section 55.3 is proposed to be amended by revising paragraph (c) to read as follows:

§ 55.3 Applicability.

* * * * *

(c) The OCS sources located beyond 25 miles of States' seaward boundaries shall be subject to all the requirements of this part, except the requirements of §§ 55.4, 55.5, 55.12 and 55.14 of this part.

* * * * *

4. Section 55.6 is proposed to be amended by revising paragraph (d)(2) to read as follows:

§ 55.6 Permit requirements.

* * * * *

(d) * * *
(1) * * *
(2) The Administrator or delegated agency shall not issue a permit to operate to any existing OCS source that has not demonstrated compliance with all the applicable requirements of this part.

* * * * *

5. Section 55.11 is proposed to be amended by revising paragraph (a) and by adding paragraph (j) to read as follows:

§ 55.11 Delegation.

(a) The governor or the governor's designee of any State adjacent to an OCS source subject to the requirements of this part may submit a request, pursuant to section 328(a)(3) of the Act, to the Administrator for the authority to implement and enforce the requirements of this OCS program (i) within 25 miles of the State's seaward boundary and/or beyond 25 miles of the State's seaward boundary. Authority to implement and enforce §§ 55.5, 55.11, and 55.12 of this part will not be delegated.

* * * * *

(j) *Delegated Authority.*

The delegated agency in the COA for sources located within 25 miles of the State's seaward boundary or the delegated agency in the NOA for sources located beyond 25 miles of the State's seaward boundary will exercise all delegated authority. If there is no delegated agency in the COA for sources located within 25 miles of the State's seaward boundary, or in the NOA for sources located beyond 25 miles of the State's seaward boundary, the EPA will issue the permit and implement and enforce the requirements of this part. For sources located within 25 miles of the State's seaward boundary, the Administrator may retain the authority for implementing and enforcing the requirements of this part if the NOA and COA are in different States.

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40 CFR Part 261

[SW-FRL-5507-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant a