

Global Expedited Package Services (GEPS) Contracts  
 GEPS 1 (CP2008-5, CP2008-11, CP2008-12, and CP2008-13, CP2008-18, CP2008-19, CP2008-20, CP2008-21, CP2008-22, CP2008-23, and CP2008-24)  
 Global Plus Contracts  
 Global Plus 1 (CP2008-9 and CP2008-10)  
 Global Plus 2 (MC2008-7, CP2008-16 and CP2008-17)  
 Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008-6, CP2008-14 and CP2008-15)  
 Competitive Product Descriptions  
 Express Mail [Reserved for Group Description]  
 Express Mail [Reserved for Product Description]  
 Outbound International Expedited Services [Reserved for Product Description]  
 Inbound International Expedited Services [Reserved for Product Description]  
 Priority Mail [Reserved for Product Description]  
 Priority Mail [Reserved for Product Description]  
 Outbound Priority Mail International [Reserved for Product Description]  
 Inbound Air Parcel Post [Reserved for Product Description]  
 Parcel Select [Reserved for Group Description]  
 Parcel Return Service [Reserved for Group Description]  
 International [Reserved for Group Description]  
 International Priority Airlift (IPA) [Reserved for Product Description]  
 International Surface Airlift (ISAL) [Reserved for Product Description]  
 International Direct Sacks—M-Bags [Reserved for Product Description]  
 Global Customized Shipping Services [Reserved for Product Description]  
 International Money Transfer Service [Reserved for Product Description]  
 Inbound Surface Parcel Post (at non-UPU rates) [Reserved for Product Description]  
 International Ancillary Services [Reserved for Product Description]  
 International Certificate of Mailing [Reserved for Product Description]  
 International Registered Mail [Reserved for Product Description]  
 International Return Receipt [Reserved for Product Description]  
 International Restricted Delivery [Reserved for Product Description]  
 International Insurance [Reserved for Product Description]  
 Negotiated Service Agreements [Reserved for Group Description]  
 Domestic [Reserved for Product Description]  
 Outbound International [Reserved for Group Description]  
 Part C—Glossary of Terms and Conditions [Reserved]  
 Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E8-30373 Filed 12-19-08; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2008-0472; FRL-8755-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Stafford County Reasonably Available Control Technology Under the 8-Hour Ozone National Ambient Air Quality Standard

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This SIP revision fulfills Virginia's reasonably available control technology (RACT) requirements under the Clean Air Act (CAA or the Act) with respect to the 8-hour ozone national ambient air quality standard (NAAQS) in Stafford County. Virginia has fulfilled these requirements by submitting a certification that 1-hour ozone NAAQS RACT controls for sources in the Commonwealth subject to control technology guidelines (CTGs) and for a single major source not subject to any CTG, continue to represent RACT under the 8-hour NAAQS, and submitting a negative declaration demonstrating that no facilities exist in Stafford County that are subject to certain enumerated CTGs that have not been adopted by Virginia.

**DATES:** *Effective Date:* This final rule is effective on January 21, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2008-0472. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (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 through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

#### FOR FURTHER INFORMATION CONTACT:

Gregory Becoat, (215) 814-2036, or by e-mail at [becoat.gregory@epa.gov](mailto:becoat.gregory@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 7, 2008 (73 FR 45925), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of Stafford County's requirements of RACT under the 8-hour ozone NAAQS set forth by the CAA. The formal SIP revision was submitted by the Virginia Department of Environmental Quality on April 21, 2008.

##### II. Summary

Sections 172(c)(1) and 182(b)(2) of the CAA require that all SIPs satisfy the nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs) RACT requirements that apply in areas that have not attained the NAAQS for ozone. See 42 U.S.C. 7502(c)(1), 42 U.S.C. 7511a(b)(2), and 42 U.S.C. 7511a(f). EPA has determined that States that have RACT provisions approved in their SIPs for 1-hour ozone nonattainment areas have several options for fulfilling the RACT requirements for the 8-hour ozone NAAQS. If a State meets certain conditions, it may certify that previously adopted 1-hour ozone RACT controls in the SIP continue to represent RACT control levels for purposes of fulfilling 8-hour ozone RACT requirements. See *Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline* (Phase 2 Rule) 70 FR 71612, 71655, November 29, 2005. Alternatively, a State may adopt new or more stringent regulations that represent RACT control levels, either in lieu of or in conjunction with a certification.

The Commonwealth of Virginia has submitted a certification that previously adopted RACT controls in Virginia's SIP that were approved by EPA under the 1-hour ozone NAAQS continue to represent RACT for the 8-hour implementation purposes. This previously adopted RACT consists of Virginia's adoption of EPA promulgated CTGs for those source categories that apply to existing sources in Stafford County. Virginia has also submitted a negative declaration demonstrating that no facilities exist in Stafford County for

those CTGs that have not been adopted by Virginia.

Virginia has also certified, based on consideration of additional research, that the 1-hour ozone NAAQS RACT determination for the only major stationary source located in Stafford County not covered by a CTG continues to represent RACT under the 8-hour ozone NAAQS. Other specific requirements of RACT and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

On September 8, 2008, EPA received adverse comments from State of New Jersey Department of Environmental Protection on the NPR. A summary of the comments submitted and EPA's response is provided in Section III of this document.

### III. Summary of Public Comments and EPA Responses

*Comment:* The commenter opposes the approval of the SIP revision submitted by Virginia for Stafford County. The commenter notes that Stafford County is a moderate ozone nonattainment area, and is required to implement RACT on all major VOC and NO<sub>x</sub> sources, and all sources covered by a CTG. The commenter also states that in the final rule to implement the 8-hour ozone standard (i.e., the Phase 2 Rule) EPA indicates that States may rely on existing CTGs and the prior 1-hour RACT determinations as presumptive RACT. The comment also states that most CTGs and prior 1-hour RACT determinations were done over a decade ago, and asserts that the emission limits are no longer RACT because of advancements in air pollution control technology. This is especially the case, it argues, for nitrogen oxides. Additionally, the commenter appears to believe that section 108 of the Act requires EPA to review, modify and reissue control technology in a timely fashion, that EPA has failed to do so, and that this failure to do so prevents EPA from allowing States the discretion of certifying that previous 1-hour ozone RACT determinations fulfill obligations under the 8-hour ozone NAAQS. The commenter also asserts that it is adversely affected because it is a downwind state. Finally, the commenter notes that sections 110(a)(2)(D) and Part D of the CAA require upwind states to include adequate controls in their SIPs prohibiting interstate transport of air pollutants in amounts that contribute to nonattainment in any downwind state.

*Response:* The commenter correctly notes that Stafford County is a moderate ozone nonattainment area and is required to implement RACT on all

major VOC and NO<sub>x</sub> sources, and all sources covered by a CTG. The RACT provisions of the CAA are set forth in sections 172(c)(1) and 182(b)(2) of Part D of the Act. 42 U.S.C. 7502(c)(1), 42 U.S.C. 7511a(b)(2). Section 172 applies to RACT in so-called "subpart 1" areas. Stafford County is not a "subpart 1" area. RACT, as it applies in moderate or above ozone nonattainment areas, or within the OTR, i.e., to Stafford County, is a specific requirement set forth in Section 182(b)(2) of Part D of the Act. Section 182(b)(2) identifies the categories of sources to which RACT applies. Section 182(b)(2) does not specify the level of control required to meet the RACT requirement.

The commenter also correctly acknowledges that the Phase 2 Rule, 70 FR 71612, explicitly addressed whether, and the circumstances under which, states may continue to rely on existing CTGs and the prior 1-hour RACT determinations. Specifically, in the Phase 2 Rule, EPA determined that States may certify that "previously required RACT controls represent RACT for 8-hour implementation purposes." 70 FR at 71652.

The commenter does not allege that EPA's approval of the SIP revision is inconsistent with the provisions of the Phase 2 Rule. The final action establishing those provisions was taken by EPA, not in today's action, but in the **Federal Register** notice for the Phase 2 Rule published on November 29, 2005, 70 FR 71612. Challenges to the Phase 2 Rule have been brought by commenter and others in the U.S. Court of Appeals for the District of Columbia. *Natural Resources Defense Council v. EPA* (D.C. Cir. No. 06-1045 and consolidated cases).

The Phase 2 Rule, in fact, explicitly addresses the State's obligation to consider new information when deciding whether to certify that prior RACT determinations remain valid for the 8-hour ozone NAAQS. The commenter does not allege that the State has failed to satisfy that obligation, or that it has not met any other requirements in the Phase 2 Rule for certifying that its prior RACT determinations remain valid for the 8-hour ozone NAAQS. Thus, while we agree with commenter that many of the CTGs have not been revised since they were issued, we do not agree that it is therefore improper for EPA to approve this SIP revision. In the Phase 2 Rule, EPA specifically addressed concerns arising from our recognition that "the CTGs/ACTs \* \* \* may not provide the most accurate picture of current control options." 70 FR at 71655.

In response, we decided that "States and other interested parties should consider available information that may supplement the CTG and ACT documents. In cases where additional information is presented, for example, as part of notice-and-comment rulemaking on a RACT SIP submittal, States (and EPA) would necessarily consider the additional data in reviewing what control obligation is consistent with RACT." 70 FR at 71655. Only after conducting this review may a State certify that a 1-hour ozone RACT determination continues to represent an appropriate RACT level of control for the 8-hour ozone program. *Id.* Absent data indicating that the previous RACT determination is no longer appropriate, the State may certify that the existing 1-hour RACT determination fulfills the requirement for 8-hour ozone RACT, and the State need not submit in its SIP a new RACT requirement for those sources. *Id.*

Although the commenter broadly alleges that the CTGs no longer reflect RACT because they have not been updated recently, the commenter does not identify any specific deficiencies or indicate which, if any, of the particular CTGs adopted by Virginia it believes to be defective. Furthermore, no evidence in the record indicates that Virginia either determined—or that anyone brought to its attention during the notice and comment rulemaking for this SIP submission—that evidence existed to cast doubt on the appropriateness under the 8-hour ozone NAAQS of any of the previously adopted and SIP-approved CTGs. A commenter bears some burden of bringing to an agency's attention at least some particulars of an alleged defect in a rulemaking. See, *International Fabricare Inst. v. EPA*, 972 F.2d 384, 391 (D.C. Cir. 1992).

In sum, the commenter has not identified any new information that has become available, but that the State did not consider and has not even alleged that any particular CTG actually adopted into the Virginia SIP fails to represent RACT under the 8-hour ozone NAAQS. Thus, under the specific terms of the Phase 2 ozone implementation rule, Virginia is entitled to rely on that Rule's presumption that absent evidence to the contrary, a state may certify that CTGs previously adopted to meet 1-hour ozone NAAQS continue to meet the requirements for RACT under the 8-hour ozone NAAQS. See 70 FR at 71652, 71654–55.

With respect to the single major source in Stafford County that is not subject to a CTG, Virginia took reasonable steps to seek out additional information to assure that the 1-hour

ozone NAAQS source-specific RACT determination for this source continues to represent RACT under the 8-hour ozone NAAQS. This is consistent with our determination in the Phase 2 Rule that the certification must be submitted with appropriate supporting information, including the consideration of new data. In all cases where additional information is presented, States (and EPA) must consider the additional information as part of that rulemaking, and absent such information, the State may certify existing RACT as meeting the 8-hour ozone requirements. 70 FR at 71655.

Virginia reviewed EPA's RACT/BACT/LAER clearinghouse for sources within the same Standard Industrial Classification code as the sole major non-CTG source in Stafford County, and determined that there was no information to indicate that the 8-hour ozone RACT determination should be different from the August 10, 1998 1-hour ozone RACT determination for this facility, which has been approved by EPA. See 66 FR 8, January 2, 2001. Based on the forgoing, the low potential emissions from the facility, and the even lower actual emissions from the facility, Virginia determined in its SIP submission, consistent with the Phase 2 Rule, that the existing 1-hour RACT determination could be certified as fulfilling the 8-hour ozone RACT requirements. As with our analysis with respect to the CTG RACT certification, we believe that Virginia is entitled to rely on the Phase 2 Rule's presumption that absent evidence to the contrary, a state may certify this 1-hour ozone NAAQS determination as meeting the requirements for RACT under the 8-hour ozone NAAQS.

We also do not agree with commenter's apparent beliefs regarding section 108 of the Clean Air Act. With respect to that section, the commenter states that "[a]ccording to Section 108(c) of the Clean Air Act, EPA has an obligation to review, modify and reissue control techniques" and that "USEPA has failed to do so in a timely fashion." Section 108 of the Act provides that "the Administrator shall from time to time review, and as appropriate, modify or reissue any criteria or information on control techniques. \* \* \*" Section 108 does not establish time frames for the Administrator to review, modify, or reissue control techniques. Furthermore, section 108 provides that the review, modification or reissuance of a RACT is only to be done "as appropriate." EPA believes that Congress left the decision whether to review, modify or reissue a control technique to the Administrator's discretion.

Finally, with respect to the comments related to requirements of section 110(a)(2)(D) and Part D of the Act, EPA agrees with the commenter that section 110(a)(2)(D) requires, among other things, that a State's SIP needs to contain provisions to regulate the interstate transport of air pollution that significantly contributes to nonattainment or interferes with maintenance of a NAAQS in another State. 42 U.S.C. 7411(a)(2)(D). Although Title I, Part D of the Act does not contain similar language, section 184 is within Title I, Part D of the Act. Section 184 contains specific provisions to address interstate transport of ozone and its precursors within the Ozone Transport Region (OTR) (which includes both New Jersey and Stafford County). This comment, however, is not relevant to the present action because EPA is not taking action here to determine whether Virginia has satisfied the requirements of CAA sections 110(a)(2)(D) or 184. EPA has never interpreted the RACT provisions in section 172(c)(1) or 182(b)(2) as requiring States to address interstate transport issues. Indeed, EPA has expressly stated in the Phase 2 Rule that we "believe [] that section 172(c) is not the appropriate section of the CAA to address the transport of ozone and ozone precursors \* \* \*" 70 FR at 71653. We believe, based on the forgoing, that the section 182(b)(2) RACT requirements also are not intended as a mechanism for addressing interstate transport of pollutants.

#### **IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia**

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the

content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. \* \* \*" The opinion concludes that "[r]egarding (10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at

any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

**IV. Final Action**

EPA is approving the SIP revision submitted to EPA by the Commonwealth of Virginia on April 21, 2008. This SIP revision contains the requirements of RACT set forth by the CAA under the 8-hour ozone NAAQS.

**V. Statutory and Executive Order Reviews**

**A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it

is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**C. Petitions for Judicial Review**

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 20, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, pertaining to the Stafford County RACT under the 8-hour ozone NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 11, 2008.

**Donald S. Welsh,**  
Regional Administrator, Region III.

■ 40 CFR Part 52 is amended as follows:

**PART 52—[AMENDED]**

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart VV—Virginia**

■ 2. In § 52.2420, the table in paragraph (e) is amended by adding the entry for RACT under the 8-hour ozone NAAQS-Stafford County at the end of the table to read as follows:

**§ 52.2420 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
RACT under the 8-Hour NAAQS.	Stafford County .....	4/21/2008	[Insert <i>Federal Register</i> page number where the document begins and date].	

[FR Doc. E8-30212 Filed 12-19-08; 8:45 am]  
BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 55

[EPA-R04-OAR-2008-0605; FRL-8745-8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule-consistency update.

**SUMMARY:** EPA is finalizing the update of the Outer Continental Shelf (OCS) Air Regulations proposed in the *Federal Register* on September 4, 2008. 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 ("CAA" or "the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of Florida has been designated COA. The effect of approving the OCS requirements for the State of Florida is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below will be incorporated by reference into the Code of Federal Regulations (CFR) and is listed in the appendix to the OCS air regulations. This action is an annual update of the Florida's OCS Air Regulations. These rules include revisions to existing rules that already apply to OCS sources. No comments were received on the September 4, 2008, proposal.

**DATES: Effective Date:** This rule is effective on January 21, 2009. The incorporation by reference of certain publications listed in this rule is approved by the Director of the *Federal Register* as of January 21, 2009.

**ADDRESSES:** EPA has established docket number EPA-R04-OAR-2008-0605 for this action. All documents in the docket are listed on the <http://www.regulations.gov> Web site. 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 through <http://www.regulations.gov> or in hard copy at the Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. 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 federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Air Permit Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can also be reached via electronic mail at [lakeman.sean@epa.gov](mailto:lakeman.sean@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. EPA Action
- III. Statutory and Executive Order Reviews

#### I. Background and Purpose

On September 4, 1992, EPA promulgated 40 CFR part 55, 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 in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) of the Act requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

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 process is distinct from the State Implementation Plan (SIP) process and incorporation of a rule into part 55 as part of the OCS consistency update process does not ensure such a rule would be appropriate for inclusion into the SIP. EPA proposed approval of Florida's rules for OCS consistency update on September 4, 2008 (73 FR 51610), and received no comments.

#### II. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposed action. EPA is approving the proposed action under section 328(a)(1) of the Act, 42 U.S.C. 7627. 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.

#### III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by EPA. For that reason, this action:

(1) Is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB) under Executive Order 12866 (58 FR 51735, October 4, 1993);

(2) Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

(3) Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

