

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 55**

[Alaska 001; FRL –6919–3]

**Outer Continental Shelf Air Regulations Consistency Update for Alaska****AGENCY:** Environmental Protection Agency (“EPA”).**ACTION:** Direct final rule.

**SUMMARY:** EPA is updating the Outer Continental Shelf (“OCS”) Air Regulations as they apply to OCS sources off the coast of Alaska. 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 portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of Alaska is the designated COA. The intended effect of incorporating the State of Alaska requirements applicable to OCS sources in effect as of July 2, 2000, is to regulate emissions from OCS sources in accordance with the requirements onshore.

**DATES:** This direct final rule is effective on April 16, 2001 without further notice, unless EPA receives adverse comment by April 2, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of April 16, 2001.

**ADDRESSES:** Written comments should be addressed to: Dan Meyer, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, WA 98101. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations: Office of Air Quality, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, WA 98101; and Environmental Protection Agency (LE–6102), 401 “M” Street, SW., Room M–1500, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Dan Meyer, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue,

Seattle, WA 98101, Telephone: (206) 553–4150.

**SUPPLEMENTARY INFORMATION:****Background**

On September 4, 1992, EPA promulgated the OCS air regulations and incorporated into 40 CFR part 55, Appendix A, *State of Alaska Requirements Applicable to OCS Sources*, August 21, 1992. (57 FR 40806) The OCS air regulations have been amended a number of times since original promulgation. On August 4, 1997, EPA promulgated amendments to the OCS air regulations and incorporated *State of Alaska Requirements Applicable to OCS Sources*, January 18, 1997 (62 FR 41870). EPA is today promulgating amendments to the OCS air regulations. The amendments incorporate the *State of Alaska Requirements Applicable to OCS Sources*, July 2, 2000.

Pursuant to 40 CFR 55.12(b)(2), EPA is updating its OCS air regulations so as to maintain the rule’s consistency with the corresponding onshore regulations. Since EPA’s August 4, 1997, rulemaking, the State of Alaska has amended its air quality control regulations on several occasions. A number of these regulations are represented in the *State of Alaska Requirements Applicable to OCS Sources*, July 2, 2000. Specifically, 18 AAC 50.010, 020, 030, 035, 055, 070, 215, 225, 230, 235, 300, 325, 335, 345, 350, 365, 370, 375, 380, 400, and 990 have been revised by the State of Alaska and are now updated in the *State of Alaska Requirements Applicable to OCS Sources*, July 2, 2000. In addition, 18 AAC 50.341 and 385 were promulgated by the State of Alaska after August 4, 1997. These two provisions are now represented in the *State of Alaska Requirements Applicable to OCS Sources*, July 2, 2000. Although not previously included, EPA is today incorporating 18 AAC 50.310(m) and 350(m). The construction permit provision 18 AAC 50.310(n) requires certain new sources of air pollution to demonstrate that the proposed allowable emissions from the source will not interfere with attainment or maintenance of the ambient air quality standards or maximum allowable ambient concentrations. The operating permit provision 18 AAC 50.350(m) contains substantive requirements for insignificant sources. Insignificant sources are described at 18 AAC 50.335(q).

Although previously identified as a requirement applicable to OCS sources, EPA is today not incorporating 18 AAC 50.300(g) and (h)(11). These State of

Alaska requirements applicable to certain sources located in the Port of Anchorage are not applicable to OCS sources. Similarly, EPA is not incorporating 18 AAC 50.340(d), (e), (f), (g), and (i) although previously identified as applicable to OCS sources. These administrative or procedural requirements applicable to the State of Alaska permitting authority are not applicable to OCS sources.

EPA has evaluated the COA requirements 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 that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

**EPA Action**

In this document, EPA takes direct final action under section 328(a)(1) of the Act, 42 U.S.C. 7627, to incorporate *State of Alaska Requirements Applicable to OCS Sources*, July 2, 2000, into 40 CFR part 55. 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.

**Administrative Requirements***A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled “Regulatory Planning and Review.”

*B. Executive Order 13045*

Executive Order 13045, entitled 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 rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

#### C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to "provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop and 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 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### E. 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.

This final rule will not have a significant impact on a substantial number of small entities because consistency updates under section 328(a) of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the consistency update approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of the state action.

#### F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual cost to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that my result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### G. 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 rule 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 rule is not a "major" rule as defined by 5 U.S.C. 804(2).

#### H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available

and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*I. Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review not 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: December 8, 2000.

**Charles E. Findley,**

*Acting Regional Administrator, Region 10.*

Title 40 of the Code of Federal Regulations, part 55, is 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 by revising paragraph (e)(2)(i)(A) to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) *State of Alaska Requirements Applicable to OCS Sources*, July 2, 2000.

\* \* \* \* \*

3. Appendix A to CFR part 55 is amended by revising paragraph (a)(1) under the heading "Alaska" to read as follows:

**Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference into Part 55, by State**

\* \* \* \* \*

**Alaska**

(a) \* \* \*

(1) The following requirements are contained in the *State of Alaska Requirements Applicable to OCS Sources*, July 2, 2000.

Alaska Administrative Code—Department of Environmental Conservation. The following sections of Title 18, Chapter 50:

- Article 1. Ambient Air Quality Management
- 18 AAC 50.005. Purpose and Applicability of Chapter. (effective 1/18/1997)
- 18 AAC 50.010. Ambient Air Quality Standards. (effective 6/21/1998)
- 18 AAC 50.015. Air Quality Designations, Classifications, And Control Regions. (effective 1/18/1997)

Table 1. Air Quality Classifications

- 18 AAC 50.020. Baseline Dates, Maximum Allowable Increases, And Maximum Allowable Ambient Concentrations. (effective 6/21/1998)

Table 2. Baseline Dates

Table 3. Maximum Allowable Increases

- 18 AAC 50.025. Visibility and Other Special Protection Areas. (effective 1/18/1997)
- (a) [untitled]

- 18 AAC 50.030. State Air Quality Control Plan. (effective 9/04/1998)

- 18 AAC 50.035. Documents, Procedures, and Methods Adopted by Reference. (effective 7/02/2000)

- 18 AAC 50.045. Prohibitions. (effective 1/18/1997)

- 18 AAC 50.050. Incinerator Emission Standards. (effective 1/18/1997)

Table 4. Particulate Matter Standards for Incinerators

- 18 AAC 50.055. Industrial Processes and Fuel-burning Equipment. (effective 11/04/1999)

- 18 AAC 50.065. Open Burning. (effective 1/18/1997)

- (a) General Requirements.
- (b) Black Smoke Prohibited.
- (c) Toxic and Acid Gases and Particulate Matter Prohibited.
- (d) Adverse Effects Prohibited.
- (e) Air Quality Advisory.
- (i) Firefighter Training: Fuel Burning.
- (j) Public Notice.
- (k) Complaints.

- 18 AAC 50.070. Marine Vessel Visible Emission Standards. (effective 6/21/1998)

- 18 AAC 50.080. Ice Fog Standards. (effective 1/18/1997)

- 18 AAC 50.100. Nonroad Engines/ (effective 1/18/1997)

- 18 AAC 50.110. Air Pollution Prohibited. (effective 5/26/1972)

Article 2. Program Administration

- 18 AAC 50.201. Ambient Air Quality Investigation. (effective 1/18/1997)

- 18 AAC 50.205. Certification. (effective 1/18/1997)
- 18 AAC 50.210. Potential to Emit. (effective 1/18/1997)
- 18 AAC 50.215. Ambient Air Quality Analysis Methods. (effective 6/21/1998)
- 18 AAC 50.220. Enforceable Test Methods. (effective 1/18/1997)
- 18 AAC 50.225. Owner-requested Limits. (effective 6/21/1998)
- 18 AAC 50.230. Preapproved Limits. (effective 6/21/1998)
- 18 AAC 50.235. Unavoidable Emergencies and Malfunctions. (effective 6/14/1998)
- 18 AAC 50.240. Excess Emissions. (effective 1/18/1997)

Article 3. Permit Procedures and Requirements

- 18 AAC 50.300. Construction Permits: Classifications. (effective 6/21/1998)
- (a) [untitled]
- (b) Ambient Air Quality Facilities.
- (c) Prevention of Significant Deterioration Major Facilities.
- (d) Nonattainment Major Facilities.
- (e) Major Facility Near a Nonattainment Area.
- (f) Hazardous Air Contaminant Major Facilities.
- (h) Modifications. (paragraphs 1 through 10)
- 18 AAC 50.305. Construction Permit Provisions Requested by the Owner or Operator. (effective 1/18/97)
- 18 AAC 50.310. Construction Permits: Application. (effective 1/18/1997)
- (a) Application Required.
- (b) Operating Permit Coordination.
- (c) General Information.
- (d) Prevention of Significant Deterioration Information.
- Table 6. Significant Concentrations
- (e) Excluded Ambient Air Monitoring.
- (f) Nonattainment Information.
- (g) Demonstration Required Near A Nonattainment Area.
- (h) Hazardous Air Contaminant Information.
- (j) Nonattainment Air Contaminant Reductions.
- (k) Revising Permit Terms.
- (l) Requested Limits.
- (m) Stack Injection.
- (n) Ambient Air Quality Information.
- 18 AAC 50.320. Construction Permits: Content and Duration. (effective 1/18/1997)
- 18 AAC 50.325. Operating Permits: Classifications. (effective 6/21/1998)
- 18 AAC 50.330. Operating Permits: Exemptions. (effective 1/18/1997)
- 18 AAC 50.335. Operating Permits: Application. (effective 6/21/1998)
- (a) Application Required.
- (b) Identification.
- (c) General Emission Information.
- (d) Fees.
- (e) Regulated Source Information.
- (f) Facility-wide Information: Ambient Air Quality.
- (g) Facility-wide Information: Owner Requested Limits.
- (h) Facility-wide Information: Emissions Trading.
- (i) Compliance Information.
- (j) Proposed Terms and Conditions.
- (k) Compliance Certifications.
- (l) Permit Shield.

- (m) Supporting Documentation.
- (n) Additional Information.
- (o) Certification of Accuracy and Completeness.
- (p) Renewals.
- (q) Insignificant Sources.
- (r) Insignificant Sources: Emission Rate Basis.
- (s) Insignificant Sources: Category Basis.
- (t) Insignificance Sources: Size or Production Rate Basis.
- (u) Insignificant Sources: Case-by-Case Basis.
- (v) Administratively Insignificant Sources.
- 18 AAC 50.340. Operating Permits: Review and Issuance. (effective 1/18/1997)
  - (a) Review for Completeness.
  - (b) Evaluation of Complete Applications.
  - (c) Expiration of Application Shield.
- 18 AAC 50.341. Operating Permits: Reopenings. (paragraphs a, b, c, f, and g) (effective 6/14/1998)
- 18 AAC 50.345. Operating Permits: Standard Conditions. (effective 6/21/1998)
- 18 AAC 50.350. Operating Permits: Content. (effective 6/21/1998)
  - (a) Purpose of Section.
  - (b) Standard Requirements.
  - (c) Fee Information.
  - (d) Source-Specific Permit Requirements.
  - (e) Facility-Wide Permit Requirements.
  - (f) Other Requirements.
  - (g) Monitoring Requirements.
  - (h) Records.
  - (i) Reporting Requirements.
  - (j) Compliance Certification.
  - (k) Compliance Plan and Schedule.
  - (l) Permit Shield.
  - (m) Insignificant Sources.
- 18 AAC 50.355. Changes to a Permitted Facility. (effective 1/18/1997)
- 18 AAC 50.360. Facility Changes that Violate a Permit Condition. (effective 1/18/1997)
- 18 AAC 50.365. Facility Changes that do not Violate a Permit Condition. (effective 6/14/1998)
- 18 AAC 50.370. Administrative Revisions. (effective 6/14/1998)
- 18 AAC 50.375. Minor and Significant Permit Revisions. (effective 6/21/1998)
- 18 AAC 50.380. General Operating Permits. (effective 6/14/1998)
- 18 AAC 50.385. Permit-by-rule for Certain Small Storage Tanks. (effective 6/21/1998)
- Article 4. User Fees
  - 18 AAC 50.400. Permit Administration Fees. (effective 6/21/1998)
  - 18 AAC 50.410. Emission Fees. (effective 1/18/1997)
  - 18 AAC 50.420. Billing Procedures. (effective 1/18/1997)
- Article 9. General Provisions
  - 18 AAC 50.910. Establishing Level of Actual Emissions. (effective 1/18/1997)
  - 18 AAC 50.990. Definitions. (effective 1/01/2000)

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