



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA-R10-OAR-2019-0433; FRL-10006-99-Region 10]

Outer Continental Shelf Air Regulations; Consistency Update for Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; consistency update.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action 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 the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources subject to requirements of the State of Alaska. The State of Alaska's requirements discussed in this document and listed in the appendix to the Federal OCS air regulations, are approved for incorporated into the compilation of state provisions that is incorporated by reference.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of a certain publication listed in this rule is approved by the Director of the Federal Register as of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R10-OAR-2019-0433. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not

publicly available, *e.g.*, 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 through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Natasha Greaves, (206) 553-7079, or by e-mail at greaves.natasha@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 2, 2019, EPA published a Notice of Proposed Rulemaking (NPRM) proposing to approve various Alaska air pollution control requirements for inclusion in the updated compilation of “the State of Alaska Requirements Applicable to OCS Sources,” dated September 15, 2018, which is incorporated by reference into 40 CFR part 55. 84 FR 65938 (December 2, 2019).

Pursuant to 40 CFR 55.12, consistency reviews will occur at least annually. Additionally, consistency reviews will occur upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4 and when a State or local agency submits a rule to EPA to be considered for incorporation by reference in 40 CFR part 55. This action is being taken in response to the submittal of a NOI on October 1, 2019, by Hilcorp Alaska, LLC.

Section 328(a) of the CAA 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 40 CFR part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR 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 CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA reviewed Alaska's rules for inclusion in 40 CFR part 55 to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. *See* 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. *See* 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules¹ and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and state ambient air quality standards. EPA has also proposed to exclude those provisions that would not reasonably be expected to apply to an OCS source.

Other specific requirements of the consistency update and the rationale for EPA's proposed action are explained in the December 2, 2019 NPRM and will not be restated here.

¹ Each COA which has been delegated the authority to implement and enforce 40 CFR 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 40 CFR part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).

II. Public Comments and EPA Responses

EPA received one comment on the December 2, 2019 NPRM during the public comment period. A summary of the comment and EPA's response is discussed in this Section. A copy of the comment can be found in the docket for this rulemaking action.

Comment: I recommend we employ the most stringent standards in order to protect the OCS and prevent any and all exploration.

EPA Response: EPA is required to perform consistency updates to maintain consistency with the regulations in onshore areas. EPA incorporates those onshore rules that comply with the statutory requirements of section 328 of the CAA that are rationally related to the attainment and maintenance of national or state ambient air quality standards and the prevention of significant deterioration of air quality. *See* 40 CFR 55.1. In updating 40 CFR part 55, EPA reviews the current onshore rules for consistency with part 55. In this instance, EPA reviewed Alaska's Air Quality Control Regulations at 18 AAC 50, as amended through September 5, 2018, to identify rules that are rationally related to the attainment or maintenance of federal or state ambient air quality standards (or part C of title I of the CAA) and applicable to OCS sources. Additionally, as noted in 40 CFR 55.1, in implementing, enforcing and revising this rule and in delegating authority hereunder, the EPA will ensure that there is a rational relationship to the attainment and maintenance of Federal and State ambient air quality standards and the requirements of part C of title I, and that the rule is not used for the purpose of preventing exploration and development of the OCS. *See* 57 FR 40792 at 40802 (September 4, 1992).

After reviewing Alaska's rules, EPA proposed incorporating by reference rules which are rationally related to the attainment or maintenance of federal or state ambient air quality

standards or part C of title I of the CAA and, are not designed expressly to prevent exploration and development of the OCS and are applicable to OCS sources.

III. Final Action

EPA is taking final action today as discussed in the NPRM, with one minor change. The change is consistent with the approach detailed in the NPRM and does not materially alter the scope of the State of Alaska's requirements incorporated by reference. EPA is excluding from the incorporation by reference in this final action one additional Alaska regulatory provision found at 18 AAC 50.316(c) which relates to state procedures for preconstruction permitting approval. This provision is not appropriate for incorporation by reference because it is a procedural rule, and as explained in the NPRM such provisions should not be included in the scope of this action. EPA shall rely on its own procedural provisions in implementing the requirements applicable to OCS sources. The provision was inadvertently omitted from the list of excluded provisions at the NPRM stage.

EPA is taking final action to incorporate the rules potentially applicable to OCS sources for which the State of Alaska is the COA. The rules that EPA is taking final action to incorporate are applicable provisions of Title 18 of the Alaska Administrative Code, specifically, the provisions of Air Quality Control Chapter 50 identified below. The intended effect of incorporating by reference various Alaska air pollution control requirements for inclusion in the updated compilation of the "State of Alaska Requirements Applicable to OCS Sources" dated September 15, 2018, is to regulate emissions from OCS sources in accordance with the requirements for onshore sources. The rules that EPA is taking final action to incorporate will replace the rules previously incorporated into the "State of Alaska Requirements Applicable to

OCS Sources,” dated December 10, 2010, which was incorporated by reference into 40 CFR part 55. *See* 76 FR 37274 (June 27, 2011).

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the “State of Alaska Requirements Applicable to OCS Sources,” dated September 15, 2018, which is a compilation of provisions of Chapter 50 of the Alaska Administrative Code described in the amendments to 40 CFR part 55 set forth below. EPA has made, and will continue to make, these materials available through www.regulations.gov and at the EPA Region 10 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

V. 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 pollution control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. *See* 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 direction by EPA. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- 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 incorporating by reference sections of Title 18 of the Alaska Administrative Code, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this action 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.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C 3501 *et seq.*, 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. OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060-0249. OMB approved the EPA Information Collection Request (ICR) No. 1601.08 on September 18, 2017.² The current approval expires September 30, 2020. The annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 643 hours per response, using the definition of burden provided in 44 U.S.C. 3502(2).

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. The

² OMB's approval of the ICR can be viewed at www.reginfo.gov.

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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. 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 may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

EPA is incorporating the rules potentially applicable to sources for which the State of Alaska will be the COA. The rules that EPA is incorporating are applicable provisions of Title 18 of the Alaska Administrative Code, specifically, Air Quality Control Chapter 50.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 26, 2020.
Christopher Hladick,
Regional Administrator, Region 10.

Part 55 of Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

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.

2. Section 55.14 is amended by:

- a. Revising paragraph (e)(2)(i)(A); and
- b. Removing and reserving paragraph (e)(2)(ii)(A).

The revision reads as follows:

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

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(e) * * *

(2) * * *

(i) * * *

(A) State of Alaska Requirements Applicable to OCS Sources, September 15, 2018.

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

APPENDIX A TO PART 55—LISTING OF STATE AND LOCAL REQUIREMENTS INCORPORATED BY REFERENCE INTO PART 55, BY STATE

* * * * *

ALASKA

(a) * * *

(1) The following State of Alaska requirements are applicable to OCS Sources, September 15, 2018, 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 10/01/2004)

18 AAC 50.010. Ambient Air Quality Standards (effective 08/20/2016)

18 AAC 50.015. Air Quality Designations, Classification, and Control Regions (effective 04/17/2015) except (b)(3) and (d)(2)

Table 1. Air Quality Classifications

18 AAC 50.020. Baseline Dates and Maximum Allowable Increases (effective 08/20/2016)

Table 2. Baseline Areas and Dates

Table 3. Maximum Allowable Increases

18 AAC 50.025. Visibility and Other Special Protection Areas (effective 09/15/2018)

18 AAC 50.030. State Air Quality Control Plan (effective 09/15/2018)

18 AAC 50.035. Documents, Procedures, and Methods Adopted by Reference (effective 09/15/2018)

18 AAC 50.040. Federal Standards Adopted by Reference (effective 09/15/2018) except (h)(2)

18 AAC 50.045. Prohibitions (effective 10/01/2004)

18 AAC 50.050. Incinerator Emissions Standards (effective 07/25/2008)

Table 4. Particulate Matter Standards for Incinerators

18 AAC 50.055. Industrial Processes and Fuel-Burning Equipment (effective 09/15/2018) except (a)(4) through (a)(6), (a)(9), (b)(2)(A), (b)(3), (b)(5), and (e)

18 AAC 50.065. Open Burning (effective 03/06/2016)

18 AAC 50.070. Marine Vessel Visible Emission Standards (effective 06/21/1998)

18 AAC 50.080. Ice Fog Standards (effective 01/18/1997)

18 AAC 50.085. Volatile Liquid Storage Tank Emission Standards (effective 01/18/1997)

18 AAC 50.100. Nonroad Engines (effective 10/01/2004)

18 AAC 50.110. Air Pollution Prohibited (effective 05/26/1972)

ARTICLE 2. PROGRAM ADMINISTRATION

18 AAC 50.200. Information Requests (effective 10/01/2004)

18 AAC 50.201. Ambient Air Quality Investigation (effective 10/01/2004)

18 AAC 50.205. Certification (effective 10/01/2004) except (b)

18 AAC 50.215. Ambient Air Quality Analysis Methods (effective 09/15/2018)

Table 5. Significant Impact Levels (SILs)

18 AAC 50.220. Enforceable Test Methods (effective 09/15/2018)

18 AAC 50.225. Owner-Requested Limits (effective 09/15/2018) except (c) through (g)

18 AAC 50.230. Preapproved Emission Limits (effective 09/15/2018) except (d)

18 AAC 50.235. Unavoidable Emergencies and Malfunctions (effective 09/15/2018)

18 AAC 50.240. Excess Emissions (effective 12/29/2016)

18 AAC 50.245. Air Quality Episodes and Advisories for Air Pollution Other Than PM 2.5 (effective 02/28/2015)

Table 6. Concentrations Triggering an Air Quality Episode for Air Pollution Other Than PM 2.5

18 AAC 50.246. Air Quality Episodes and Advisories for PM 2.5 (effective 02/28/2015)

Table 6a. Concentrations Triggering an Air Quality Episode for PM 2.5

ARTICLE 3. MAJOR STATIONARY SOURCE PERMITS

18 AAC 50.302. Construction Permits (effective 09/14/2012)

18 AAC 50.306. Prevention of Significant Deterioration (PSD) Permits (effective 01/04/2013) except (c) and (e)

18 AAC 50.311. Nonattainment Area Major Stationary Source Permits (effective 09/15/2018) except (c)

18 AAC 50.316. Preconstruction Review for Construction or Reconstruction of a Major Source of Hazardous Air Pollutants (effective 12/01/2004) except (c)

18 AAC 50.321. Case-By-Case Maximum Achievable Control Technology (effective 10/06/2013)

18 AAC 50.326. Title V Operating Permits (effective 09/15/2018) except (c)(1), (h), (i)(3), (j)(5), (j)(6), (k)(1), (k)(3), (k)(5), and (k)(6)

18 AAC 50.345. Construction, Minor and Operating Permits: Standard Permit Conditions (effective 09/15/2018)

18 AAC 50.346. Construction and Operating Permits: Other Permit Conditions (effective 09/15/2018)

Table 7. Standard Operating Permit Condition

ARTICLE 4. USER FEES

18 AAC 50.400. Permit Administration Fees (effective 09/15/2018) except (a)(2) through (a)(4), (a)(6), (a)(8), (i)(1), (i)(4), (i)(8), and (i)(9)

18 AAC 50.403. Negotiated Service Agreements (effective 09/26/2015)

18 AAC 50.410. Emission Fees (effective 09/15/2018)

18 AAC 50.499. Definition for User Fee Requirements (effective 09/26/2015)

ARTICLE 5. MINOR PERMITS

18 AAC 50.502. Minor Permits for Air Quality Protection (effective 09/15/2018) except (b)(1) through (b)(3), (b)(5), (d)(1)(A) and (d)(2)(A)

18 AAC 50.508. Minor Permits Requested by the Owner or Operator (effective 12/09/2010)

18 AAC 50.510. Minor Permit—Title V Permit Interface (effective 12/09/2010)

18 AAC 50.540. Minor Permit: Application (effective 09/15/2018)

18 AAC 50.542. Minor Permit: Review and Issuance (effective 09/15/2018) except (a), (b), (c), and (d)

18 AAC 50.544. Minor Permits: Content (effective 12/09/2010)

18 AAC 50.546. Minor Permit Revision (effective 7/25/08)

18 AAC 50.560. General Minor Permits (effective 09/15/2018) except (b)

ARTICLE 9. GENERAL PROVISIONS

18 AAC 50.990. Definitions (effective 09/15/2018)

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