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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA-R02-OAR-2017-0723; FRL-9977-64--Region 2]

Outer Continental Shelf Air Regulations Update To Include New Jersey State Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing the update of the Outer Continental Shelf (OCS) Air Regulations proposed in the Federal Register on February 13, 2018. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements for the corresponding onshore area (COA), which is typically the state geographically closest to the OCS source. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of New Jersey is the COA. The intended effect of approving the updated OCS requirements for the State of New Jersey is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed below are incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Effective Date: This rule is effective on July 27, 2018.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of July 27, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2017-0723. The index to the docket is available electronically at http://www.regulations.gov and in hard copy at EPA Region 2, 290 Broadway, New York, New York 10007.

FOR FURTHER INFORMATION CONTACT: Viorica Petriman, Air Programs Branch, Permitting Section, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007, (212) 637-4021,

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SUPPLEMENTARY INFORMATION: Throughout this document, the terms ``we,'' ``us,'' and ``our'' refer to the EPA.

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I. Proposed Action

On February 13, 2018 (83 FR 6136), EPA proposed to incorporate requirements into the OCS Air Regulations at 40 CFR part 55 \1\ pertaining to the State of New Jersey. Section 328(a) of the CAA 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 corresponding onshore area (COA). Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that the EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

 $\label{eq:continuous}$ The reader may refer to the Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

To comply with the statutory mandate of Section 328(a)(1) of the CAA, the EPA must incorporate by reference all relevant state rules into part 55 so they can be applied to OCS sources located offshore. 40 CFR 55.12 specifies certain times at which part 55's incorporation by reference of a state's rules must be updated. One such time a consistency update must occur is when any OCS source applicant submits a Notice of Intent (NOI) under 40 CFR 55.4 for a new or a modified OCS source. 40 CFR 55.4(a) requires that any OCS source applicant must submit to EPA a NOI before performing any physical change or change in method of operation that results in an increase in emissions. EPA must conduct any necessary consistency update when it receives an NOI, and prior to receiving any application for a preconstruction permit from the OCS source applicant. 40 CFR 55.6(b)(2) and 55.12(f).

On December 21, 2017, the EPA received a NOI for a new OCS source off the coast of New Jersey. In today's action, the EPA is updating the ``New Jersey'' section of Appendix A to 40 CFR part 55 to incorporate by reference the relevant New Jersey air pollution control rules that are currently in effect.

EPA has evaluated the proposed regulations to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards (AAQS) 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. The EPA has also evaluated the rules to ensure they are not

arbitrary and capricious. 40 CFR 55.12(e). The EPA has excluded New Jersey's administrative or procedural rules, $\2\$ and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and State AAQS.

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

To comply with the statutory mandate of Section 328(a) of the CAA, the EPA must incorporate by reference applicable rules in effect for onshore sources into part 55. 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. 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.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period, which closed on March 15, 2018. During this period, we received 12 public comments. None of the comments are relevant to today's action, which simply incorporates by reference current New Jersey air pollution control rules into the OCS regulations applicable to all OCS sources and makes no findings regarding any specific OCS source. Thus, no EPA response to public comments is warranted.

III. EPA Action

In this document, EPA is taking final action to incorporate the proposed changes into 40 CFR part 55. EPA is approving this 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

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requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the NJDEP

air rules that are applicable to OCS sources and which are described in the amendments to 40 CFR part 55 set forth below. The EPA has made, and will continue to make, these documents available through www.regulations.gov and at the EPA Region 2 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 Clean Air Act, 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, the 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, the EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the Clean Air Act. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by the EPA. 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); and 13563 (76 FR 3821, January 21, 2011);

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 Mandate Reform Act of 1995 (Pub. L. 04-4);

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 Clean Air Act; and

Does not provide the 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 final rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct costs on tribal governments, nor preempt tribal law.

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).

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 August 27, 2018. 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).)

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: April 19, 2018.
Peter D. Lopez,
Regional Administrator, Region 2.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, part 55, is amended as follows:

PART 55--[AMENDED]

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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 revising the sixth sentence in paragraph (e) introductory text and paragraph (e) (15) (i) (A) to read as follows:

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

* * * * *

(e) * * * Copies of rules pertaining to particular states or local areas may be inspected or obtained from the EPA Docket Center--Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004 or the appropriate EPA regional offices: U.S.

EPA, Region 1 (Massachusetts), One Congress Street, Boston, MA 02114-2023; U.S. EPA, Region 2 (New Jersey and New York), 290 Broadway, New York, NY 10007-1866; U.S. EPA, Region 3 (Delaware), 1650 Arch Street, Philadelphia, PA 19103, (215) 814-5000; U.S. EPA, Region 4 (Florida and North Carolina), 61 Forsyth Street, Atlanta, GA 30303; U.S. EPA, Region 9 (California), 75 Hawthorne Street, San Francisco, CA 94105; and U.S. EPA, Region 10 (Alaska), 1200 Sixth Avenue, Seattle, WA 98101. * * *

(15) * * * * (i) * * *

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(A) State of New Jersey Requirements Applicable to OCS Sources, January 16, 2018.

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3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading `New Jersey'' to read as follows:

Appendix A to Part 55--Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

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NEW JERSEY

(a) * * *

(1) The following State of New Jersey requirements are applicable to OCS Sources, as of January 16, 2018. New Jersey State Department of Environmental Protection--New Jersey Administrative Code. The following sections of Title 7:

Chapter 27 Subchapter 2--Control and Prohibition of Open Burning (Effective 6/20/1994)

N.J.A.C. 7:27-2.1. Definitions

N.J.A.C. 7:27-2.2. Open burning for salvage operations

N.J.A.C. 7:27-2.3. Open burning of refuse

N.J.A.C. 7:27-2.4. General provisions

N.J.A.C. 7:27-2.6. Prescribed burning

N.J.A.C. 7:27-2.7. Emergencies

N.J.A.C. 7:27-2.8. Dangerous material

N.J.A.C. 7:27-2.12. Special permit

N.J.A.C. 7:27-2.13. Fees

Chapter 27 Subchapter 3--Control and Prohibition of Smoke From Combustion of Fuel (Effective 2/4/2002)

N.J.A.C. 7:27-3.1. Definitions

N.J.A.C. 7:27-3.2. Smoke emissions from stationary indirect heat exchangers

N.J.A.C. 7:27-3.3. Smoke emissions from marine installations

N.J.A.C. 7:27-3.4. Smoke emissions from the combustion of fuel in mobile sources

N.J.A.C. 7:27-3.5. Smoke emissions from stationary internal

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combustion engines and stationary turbine engines
N.J.A.C. 7:27-3.6. Stack test
N.J.A.C. 7:27-3.7. Exceptions
Chapter 27 Subchapter 4--Control and Prohibition of Particles From
Combustion of Fuel (Effective 4/20/2009)
N.J.A.C. 7:27-4.1. Definitions
N.J.A.C. 7:27-4.2. Standards for the emission of particles
N.J.A.C. 7:27-4.3. Performance test principle
N.J.A.C. 7:27-4.4. Emissions tests
N.J.A.C. 7:27-4.6. Exceptions
Chapter 27 Subchapter 5--Prohibition of Air Pollution (Effective 10/12/
1977)
N.J.A.C. 7:27-5.1. Definitions
N.J.A.C. 7:27-5.2. General provisions
Chapter 27 Subchapter 6--Control and Prohibition of Particles From
Manufacturing Processes (Effective 6/12/1998)
N.J.A.C. 7:27-6.1. Definitions
N.J.A.C. 7:27-6.2. Standards for the emission of particles
N.J.A.C. 7:27-6.3. Performance test principles
N.J.A.C. 7:27-6.4. Emissions tests
N.J.A.C. 7:27-6.5. Variances
N.J.A.C. 7:27-6.7. Exceptions
Chapter 27 Subchapter 7--Sulfur (Effective 11/6/2017)
N.J.A.C. 7:27-7.1. Definitions
N.J.A.C. 7:27-7.2. Control and prohibition of air pollution from
sulfur compounds
Chapter 27 Subchapter 8--Permits and Certificates for Minor Facilities
(and Major Facilities Without an Operating Permit) (Effective 1/16/
2018)
N.J.A.C. 7:27-8.1. Definitions
N.J.A.C. 7:27-8.2. Applicability
N.J.A.C. 7:27-8.3. General provisions
N.J.A.C. 7:27-8.4. How to apply, register, submit a notice, or renew
N.J.A.C. 7:27-8.5. Air quality impact analysis
N.J.A.C. 7:27-8.6. Service fees
N.J.A.C. 7:27-8.7. Operating certificates
N.J.A.C. 7:27-8.8. General permits
N.J.A.C. 7:27-8.9. Environmental improvement pilot tests
N.J.A.C. 7:27-8.11. Standards for issuing a permit
N.J.A.C. 7:27-8.12. State of the art
N.J.A.C. 7:27-8.13. Conditions of approval N.J.A.C. 7:27-8.14. Denials
N.J.A.C. 7:27-8.15. Reporting requirements
N.J.A.C. 7:27-8.16. Revocation
N.J.A.C. 7:27-8.17. Changes to existing permits and certificates
N.J.A.C. 7:27-8.18. Permit revisions
N.J.A.C. 7:27-8.19. Compliance plan changes
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N.J.A.C. 7:27-8.20. Seven-day notice changes
N.J.A.C. 7:27-8.21. Amendments
N.J.A.C. 7:27-8.23. Reconstruction
N.J.A.C. 7:27-8.24. Special provisions for construction but not
N.J.A.C. 7:27-8.25. Special provisions for pollution control
equipment or pollution prevention process modifications
N.J.A.C. 7:27-8.27. Special facility-wide permit provisions
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Chapter 27 Subchapter 9--Sulfur in Fuels (Effective 9/20/2010)
N.J.A.C. 7:27-9.1. Definitions
N.J.A.C. 7:27-9.2. Sulfur content standards
N.J.A.C. 7:27-9.3. Exemptions
N.J.A.C. 7:27-9.4. Waiver of air quality modeling
Chapter 27 Subchapter 10--Sulfur in Solid Fuels (Effective 9/6/2011)
N.J.A.C. 7:27-10.1. Definitions
N.J.A.C. 7:27-10.2. Sulfur contents standards
N.J.A.C. 7:27-10.3. Expansion, reconstruction or construction of
solid fuel burning units
N.J.A.C. 7:27-10.4. Exemptions
N.J.A.C. 7:27-10.5. SO2 emission rate determinations
Chapter 27 Subchapter 11--Incinerators (Effective 5/4/1998)
N.J.A.C. 7:27-11.1. Definitions
N.J.A.C. 7:27-11.2. Construction standards
N.J.A.C. 7:27-11.3. Emission standards
N.J.A.C. 7:27-11.4. Permit to construct; certificate to operate
N.J.A.C. 7:27-11.5. Operation
N.J.A.C. 7:27-11.6. Exceptions
Chapter 27 Subchapter 12--Prevention and Control of Air Pollution
Emergencies (Effective 5/20/1974)
N.J.A.C. 7:27-12.1. Definitions
N.J.A.C. 7:27-12.2. Emergency criteria
N.J.A.C. 7:27-12.3. Criteria for emergency termination
N.J.A.C. 7:27-12.4. Standby plans
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Volatile Organic Compounds (Effective 1/16/2018)
N.J.A.C. 7:27-16.1. Definitions
N.J.A.C. 7:27-16.1A. Purpose, scope, applicability, and severability
N.J.A.C. 7:27-16.2. VOC stationary storage tanks
N.J.A.C. 7:27-16.3. Gasoline transfer operations
N.J.A.C. 7:27-16.4. VOC transfer operations, other than gasoline
N.J.A.C. 7:27-16.5. Marine tank vessel loading and ballasting
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N.J.A.C. 7:27-16.6. Open top tanks and solvent cleaning operations
N.J.A.C. 7:27-16.7. Surface coating and graphic arts operations
N.J.A.C. 7:27-16.8. Boilers
N.J.A.C. 7:27-16.9. Stationary combustion turbines
N.J.A.C. 7:27-16.10. Stationary reciprocating engines
N.J.A.C. 7:27-16.12. Surface coating operations at mobile equipment
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N.J.A.C. 7:27-16.13. Flares
N.J.A.C. 7:27-16.16. Other source operations
N.J.A.C. 7:27-16.17. Alternative and facility-specific VOC control
requirements
N.J.A.C. 7:27-16.18. Leak detection and repair
N.J.A.C. 7:27-16.19. Application of cutback and emulsified asphalts
N.J.A.C. 7:27-16.21. Natural gas pipelines
N.J.A.C. 7:27-16.22. Emission information, record keeping and
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New or Altered Sources Affecting Ambient Air Quality (Emission Offset
Rules) (Effective 11/6/2017)
N.J.A.C. 7:27-18.1. Definitions
N.J.A.C. 7:27-18.2. Facilities subject to this subchapter
N.J.A.C. 7:27-18.3. Standards for issuance of permits
N.J.A.C. 7:27-18.4. Air quality impact analysis
N.J.A.C. 7:27-18.5. Standards for use of emission reductions as
emission offsets
N.J.A.C. 7:27-18.6. Emission offset postponement
N.J.A.C. 7:27-18.7. Determination of a net emission increase or a
significant net emission increase
N.J.A.C. 7:27-18.8. Banking of emission reductions
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N.J.A.C. 7:27-18.9. Secondary emissions
N.J.A.C. 7:27-18.10. Exemptions
N.J.A.C. 7:27-18.12. Civil or criminal penalties for failure to
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Chapter 27 Subchapter 19--Control and Prohibition of Air Pollution From
Oxides of Nitrogen (Effective 1/16/2018)
N.J.A.C. 7:27-19.1. Definitions
N.J.A.C. 7:27-19.2. Purpose, scope and applicability
N.J.A.C. 7:27-19.3. General provisions
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N.J.A.C. 7:27-19.8. Stationary reciprocating engines
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N.J.A.C. 7:27-20.1. Definitions
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N.J.A.C. 7:27-20.3. Burning of on-specification used oil in space
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N.J.A.C. 7:27-20.5. Demonstration that used oil is on-specification
N.J.A.C. 7:27-20.6. Burning of on-specification oil in other
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N.J.A.C. 7:27-20.7. Burning of off-specification used oil
N.J.A.C. 7:27-20.8. Ash standard
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N.J.A.C. 7:27-22.1. Definitions
N.J.A.C. 7:27-22.2. Applicability
N.J.A.C. 7:27-22.3. General provisions
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