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ENVIRONMENTAL PROTECTION

AIR QUALITY, ENERGY, AND SUSTAINABILITY

DIVISION OF AIR QUALITY

Air Pollution Control

Outer Continental Shelf Air Regulations

Proposed New Rules: N.J.A.C. 7:27-32

Authorized By: Catherine R. McCabe, Commissioner, Department of Environmental Protection

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1D-134 et seq., 26:2C-1 et seq. , Executive Order No. 8 (2018).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 04-19-10

Proposal Number: _____

A **public hearing** concerning this notice of proposal will be held on December 12, 2019, at 1:00 P.M. at:

New Jersey Department of Environmental Protection

Hearing Room, 1st Floor

401 East State Street

Trenton, New Jersey 08625

Directions to the hearing room may be found at the Department of Environmental Protection's (Department's) website address at www.nj.gov/dep/where.htm.

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Submit comments by close of business on (60 days after publication), electronically at www.nj.gov/dep/rules/comments. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Alice A. Previte, Esq.

Attention: DEP Docket No. 04-19-10

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, NJ 08625-0402

Written comments may also be submitted at the public hearing. It is requested (but not required) that anyone providing oral testimony at the public hearing provide a copy of any prepared text to the stenographer at the hearing.

The proposed new rules will become operative 60 days after their adoption (see N.J.S.A. 26:2C-8). This rule proposal may be viewed or downloaded from the Department's website at www.nj.gov/dep/rules.

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The agency proposal follows:

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Pursuant to Section 328(a)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7627(a)(1), the U.S. Environmental Protection Agency (EPA) is required to establish air pollution control requirements for sources on the outer continental shelf (OCS), which includes the submerged lands beyond the seaward boundary of coastal states. See 43 U.S.C. § 1331(a). The EPA established these air pollution control requirements as well as procedures for the implementation and enforcement of those requirements at 40 CFR Part 55. The CAA authorizes the EPA to delegate the authority to implement and enforce air pollution control requirements on the outer continental shelf to any state with an adjacent OCS source, if the governor or governor's designee requests delegation and the EPA determines that the state meets certain requirements. 42 U.S.C. § 7637(a)(3); 40 CFR 55.11. The purpose of this rulemaking is to fulfill one of the necessary requirements for delegation of this authority to New Jersey by incorporating the relevant Federal regulations at 40 CFR Part 55 into the Department's rules.

The Summary is organized by topic; consequently, some provisions of the new rules may be discussed in several places in the Summary.

Background

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Federal law establishes the seaward boundary of New Jersey “as a line three geographical miles distant from its coast line.” 43 U.S.C. § 1312. Thus, the State has jurisdiction and control over the lands covered by tidal waters extending three miles out to sea. Id.; 43 U.S.C. § 1301. Submerged lands beyond the seaward boundary constitute the outer continental shelf and are under Federal jurisdiction and control. 43 U.S.C. § 1331(a).

In 1953, Congress passed the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §1331 et seq., for the purpose of declaring the OCS subject to the jurisdiction of the United States and regulating the exploration, development, and production of the minerals of the OCS. See 43 U.S.C. § 1332. The OCSLA was intended to ensure the orderly development of oil and gas wells on the OCS, which at the time of passage, was a large source of revenue for the United States. See 43 U.S.C. § 1332; see also OCS Lands Act History, <https://www.boem.gov/OCS-Lands-Act-History>. As a result of this legislation, any person or entity that seeks to develop the natural resources on the OCS is required to obtain a lease from the Secretary of the Department of the Interior (DOI) and comply with the pertinent regulations. See 43 U.S.C. § 1334(a).

While the OCSLA authorized the DOI to oversee the development of natural resources on the OCS, separate legislation required the EPA to promulgate rules that established controls for air pollution emitted by sources located on the OCS. In 1990, Congress enacted Pub. L. 101-549, commonly referred to as the Clean Air Act Amendments (CAAA). Among the amendments to the Clean Air Act was a provision that specified that the EPA, not the DOI, was responsible for protecting ambient air quality standards and ensuring compliance with the prevention of

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significant deterioration requirements on the OCS. See 42 U.S.C. § 7627(a)(1). At the time of the passage of the CAAA, the main activity on the OCS remained the exploration, development, and production of oil and gas. See “Outer Continental Shelf Air Regulations; Proposed Rule,” 56 Fed. Reg. 63774, 63776 (December 5, 1991) (OCS Proposed Rule).

Later, in 2005, Congress passed the Energy Policy Act (EPAAct), which recognized the OCS’s potential to serve as a renewable energy source. The EPAAct amended the OCSLA to authorize the Secretary of the DOI to issue leases, easements, and rights-of-way for a larger scope of activities on the OCS, including the production, transportation, and transmission of energy from sources other than oil and gas. See 43 U.S.C. § 1337(p)(1)(C)). Thereafter, the DOI adopted regulations that delegated the authority to regulate all activities under 43 U.S.C. § 1337(p) of the EPAAct, Alternate energy-related uses on the OCS, to the Bureau of Ocean Energy Management (BOEM). See 30 CFR 585.102. The DOI’s regulations created a framework for BOEM to issue and administer leases, right-of-way grants, and right-of-use and easement grants for renewable energy construction on the OCS. See 30 CFR 585.101.

Though BOEM was empowered to administer leases and other privileges for renewable energy projects on the OCS, the EPA retained the authority to regulate air pollution control on the OCS.

The Significance of Delegation for New Jersey

On January 31, 2018, Governor Murphy issued Executive Order No. 8 (2018) (EO No. 8) directing the Commissioner of the Department and the President of the New Jersey Board of Public Utilities (BPU) to “take all necessary actions ... to promote and realize the development of wind energy off of the coast of New Jersey to meet a goal of 3500 megawatts of offshore

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wind energy generation by the year 2030.” On May 23, 2018, Governor Murphy issued Executive Order No. 28 (EO No. 28) directing the BPU by June 1, 2019, to deliver a new Energy Master Plan (Plan) that will set forth a strategy to meet the State’s clean energy goals, including the development of offshore wind energy generation.

Prior to the issuance of the Governor’s Executive Orders, BOEM held a competitive lease sale that resulted in the issuance of two commercial wind energy leases on the OCS of New Jersey’s seaward boundary (<https://www.boem.gov/Commercial-Wind-Leasing-Offshore-New-Jersey/>). In April 2018, BOEM published a Call for Information and Nominations (Call) to identify companies interested in purchasing additional commercial wind energy leases within the shallow waters situated between Long Island, New York and the New Jersey coast, known as the New York Bight (<https://www.boem.gov/press04062018a/> and <https://www.boem.gov/NY-Bight/>). As a result, the State anticipates that BOEM will hold another competitive sale for wind energy leases, some of which may be located off of New Jersey’s seaward boundary.

In June 2019, the New Jersey BPU made the State’s first award for offshore wind to Ørsted. The developer is expected to build a 1,100MW offshore wind project in Federal waters off of New Jersey’s coast. Given the potential for a significant increase in renewable energy sources that may be developed off of New Jersey’s seaward boundary, the State has an interest in overseeing the implementation and enforcement of the air permitting program for these projects. Accordingly, the Department is taking one of the steps necessary for the State to be delegated implementation and enforcement authority for the air permitting program on the OCS.

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Achieving Delegation: Incorporation by Reference

As set forth in 40 CFR 55.11(b), the EPA Administrator (Administrator) will delegate the authority to issue and enforce air permits on the OCS within 25 miles of the state's seaward boundary and/or beyond 25 miles of the state's seaward boundary if the state demonstrates that its regulations are adequate to meet four conditions. One of the four conditions in 40 CFR 55.11(b) requires the state to adopt the appropriate portions of 40 CFR Part 55. For this reason, proposed N.J.A.C. 7:27-32.2 identifies the specific provisions of 40 CFR Part 55 that are to be incorporated by reference into this new subchapter. Independent of the incorporation by reference of the Federal rules, a request for delegation must also include a demonstration by the State that it has adequate authority, adequate resources, and adequate administrative procedures to implement and enforce the Federal rules.

As noted below, the Department has excluded specific non-delegable provisions of 40 CFR Part 55 from the incorporation by reference.

To maintain consistency with 40 CFR Part 55, proposed N.J.A.C. 7:27-32.2 dictates prospective incorporation by reference of the Federal rules. Specifically, when the EPA amends, supplements, repeals, or otherwise changes an incorporated rule, the change shall also be effective in New Jersey on the effective date cited by the EPA. Additionally, the Department intends that, when an applicable provision of Part 55 of the CFR is incorporated by reference, the incorporation includes all documents and notes associated with that provision, unless specifically excluded by the Department's rules. Equally important, proposed N.J.A.C. 7:27-32.2 provides that if there is an inconsistency between the New Jersey rules and the Federal rules incorporated by reference, the Federal rules will control.

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Proposed N.J.A.C. 7:27-32.2 lists the following provisions of 40 CFR Part 55 that are to

be incorporated by reference:

40 CFR 55.1	Statutory authority and scope
40 CFR 55.2	Definitions
40 CFR 55.3	Applicability
40 CFR 55.4	Requirements to submit a notice of intent
40 CFR 55.6	Permit Requirements
40 CFR 55.7	Exemptions
40 CFR 55.8	Monitoring, reporting, inspection, and compliance
40 CFR 55.9	Enforcement
40 CFR 55.10	Fees
40 CFR 55.13	Federal Requirements that apply to OCS sources
40 CFR 55.14	Requirements that apply to OCS sources within 25 miles of States' seaward boundaries, by State
40 CFR 55.15	Specific designation of corresponding onshore area

Appendix A to Part 55 -- LISTING OF STATE AND LOCAL REQUIREMENTS INCORPORATED BY REFERENCE INTO PART 55, BY STATE

The Department has excluded 40 CFR 55.5, 55.11, and 55.12 from the list of provisions to be incorporated by reference, because the duties and obligations set forth in those subsections are non-delegable pursuant to 40 CFR 55.11.

The proposed language at N.J.A.C. 7:27-32.1 makes it clear that the new rules will not be applicable to the owners and operators of existing and future OCS sources for which New

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Jersey is either designated the corresponding onshore area (for sources within 25 miles of the State's seaward boundary) or is the nearest onshore area (for sources beyond 25 miles of the State's seaward boundary) until the Department is granted delegation of the authority to implement and enforce the air pollution control scheme on the OCS by the Administrator. Once the request for delegation is made to the EPA, the Department anticipates that it will develop new forms and applications specific to OCS sources. Proposed N.J.A.C. 7:27-32.5 clarifies that the Department intends to communicate information concerning the process for the submission of all OCS-related forms and applications via the Department's website. Proposed N.J.A.C. 7:27-32.3 provides the public with options for reviewing and/or obtaining copies of the Federal rules that are proposed to be incorporated by reference.

Description of the Federal Rules Proposed to be Incorporated by Reference

Statutory Authority and Scope, 40 CFR 55.1

40 CFR 55.1 describes the authority and scope of the Federal regulations. As set forth above, the air pollution control requirements of 40 CFR Part 55 are intended to ensure attainment and maintenance of the Federal and state ambient air quality standards and ensure compliance with the requirements in the CAA for the prevention of significant deterioration of air quality on the outer continental shelf. To avoid any conflicts in applicability, implementation, and enforcement, the EPA defines the term "outer continental shelf" by reference to the definition of the same term, as set forth in the OCSLA, 43 U.S.C. § 1331 et seq.

OCS Source Definition, 40 CFR 55.2

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If the Department is delegated the authority to implement and enforce the air pollution control scheme on the OCS, the proposed incorporation by reference of the Federal rules will recognize the differences in the Federal OCS permitting scheme and New Jersey's existing permitting scheme for onshore sources. For example, the requirements for the issuance of an OCS air permit pursuant to 40 CFR Part 55 differ from the criteria the Department relies on to determine whether an onshore source requires a permit or certificate. Specifically, the Federal rules define an OCS source in 40 CFR 55.2 as "any equipment, activity, or facility that: (1) emits or has the potential to emit any air pollutant; (2) is regulated or authorized under the [OCSLA]; and (3) is located on the OCS or in waters above the OCS." Further, the definition of an OCS source "shall include vessels only when they are: (1) Permanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing, or producing resources therefrom, within the meaning of section 4(a)(1) of OCSLA (43 USC § 1331 et seq.); or (2) Physically attached to an OCS facility, in which case only the stationary sources aspects of the vessels will be regulated." In contrast, the Department's existing rules require an onshore source to secure a permit, license, or registration only if the onshore source meets the applicability provisions in N.J.A.C. 7:27-8 or N.J.A.C. 7:27-22. Thus, under the Federal rules that are proposed to be incorporated by reference, an OCS source will be required to obtain a permit if it emits or has the potential to emit any quantity of an air contaminant, even if it does not qualify as a source pursuant to the applicability provisions in N.J.A.C. 7:27-8 or N.J.A.C. 7:27-22.

Applicability, 40 CFR 55.3

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Section 328(a)(1) of the CAA provides that the requirements for sources within 25 miles of a state's seaward boundary include "State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting." On the other hand, the CAA does not mandate requirements for pollution controls for OCS sources located more than 25 miles from a State's seaward boundary. See "Outer Continental Shelf Air Regulations; Final Rule," 57 Fed. Reg. 40792, 40794 (September 4, 1992) (OCS Final Rule). Hence, another unique feature of the EPA's OCS air permitting program is the presence of two separate regulatory schemes. One scheme pertains to OCS sources located within 25 miles of a state's seaward boundary and the second scheme regulates OCS sources located more than 25 miles beyond a state's seaward boundary. See OCS Final Rule, 57 Fed. Reg. at 40794.

OCS Sources Within 25 Miles, 40 CFR 55.3(b)

For sources located within 25 miles of a state's seaward boundary, the Federal rules require compliance with the state and local requirements of the Corresponding Onshore Area (COA) identified in 40 CFR 55.14, as well as the Federal requirements identified in 40 CFR 55.13, if those Federal requirements are more stringent than the requirements of the COA. See 40 CFR 55.3(b), 55.13 and 55.14. The "Corresponding Onshore Area" or "COA" is defined as, "with respect to any existing or proposed OCS source located within 25 miles of a state's seaward boundary, the onshore area that is geographically closest to the source or another onshore area that the Administrator designates as the COA, pursuant to 40 CFR 55.5." See 40 CFR 55.2. Pursuant to 40 CFR 55.5, the Administrator may choose to designate a COA that is not the Nearest Onshore Area. The "Nearest Onshore Area" or "NOA" is defined at 40 CFR 55.2 as "the onshore area that is geographically closest to that source" (whether existing or proposed).

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Accordingly, there is no guarantee that the COA for an OCS source will be the onshore area with the closest shoreline. The duty to designate the COA for sources within 25 miles of a state's seaward boundary is not delegable to a state or local agency under 40 CFR 55.11 and the Administrator must follow the procedure set forth in 40 CFR 55.5

In addition to designating the COA for OCS sources within 25 miles of a state's seaward boundary, the EPA must determine which state and/or local rules from each COA will be applicable to OCS sources within 25 miles of a state's seaward boundary. The EPA does this by evaluating whether the state and/or local rules are rationally related to the attainment and maintenance of state and Federal ambient air standards or part C of Title I, and are not arbitrary or capricious. See OCS Proposed Rule, 56 Fed. Reg. 63785-86; OCS Final Rule, 57 Fed. Reg. 40802. Those state and/or local rules that meet the criteria are incorporated by reference into the Federal rule pursuant to 40 CFR 55.14 and are individually identified at 40 CFR Part 55 Appendix A. The EPA regularly updates Appendix A via a procedure known as a consistency update, pursuant to 40 CFR 55.12, which is also a non-delegable duty.

In the EPA's notice of proposed rulemaking published in 1991, the agency explained that it had interpreted section 328(a)(1) of the CAA as the authority to regulate Federal and state criteria pollutants and the precursors to those pollutants, only. See OCS Proposed Rule, 56 Fed. Reg. at 64786; see also OCS Final Rule, 57 Fed. Reg. at 40804. As a result of this interpretation, the EPA has not incorporated by reference the provisions of New Jersey's Administrative Code that pertain to the Control and Prohibition of Air Pollution by Toxic Substances and Hazardous Air Pollutants. Thus, if delegated the authority to implement and enforce the air pollution control scheme on the OCS, the existing Federal rules would prevent the Department from

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including the requirements of N.J.A.C. 7:27-17 (or the other provisions of New Jersey's air pollution control rules that were not incorporated by reference at Appendix A) in air permits to OCS sources.

OCS Sources Beyond 25 Miles, 40 CFR 55.3(c)

As mentioned above, the Federal rules proposed to be incorporated by reference include a second air pollution control scheme. See 40 CFR 55.3(c). The EPA elected to adopt a separate scheme for OCS sources located more than 25 miles from a state's seaward boundary. See OCS Final Rule, 57 Fed. Reg. at 40794. Since the CAA affords the EPA greater latitude in determining the control requirements that apply to OCS sources located more than 25 miles from a state's seaward boundary, the Federal rules reflect this flexibility by exempting these sources from the requirements in 40 CFR 55.4, 55.5, 55.12, and 55.14. Specifically, OCS sources located beyond 25 miles of a state's seaward boundary are not subject to the air pollution control requirements of the COA, and therefore, are not required to file a Notice of Intent and are not subject to the COA designation procedures. See the discussion of Notices of Intent, COA designation procedures, consistency update requirements, and air pollution control requirements below.

Miscellaneous Provisions of 40 CFR 55.3 Required to be Adopted

Even though 40 CFR 55.3(a), (d), and (e) will be immaterial should New Jersey become a delegated agency, these provisions will be incorporated into the Department's rulemaking by reference as required by 40 CFR 55.11(b)(1). Specifically, 40 CFR 55.3(a) indicates that OCS sources located in the Gulf of Mexico west of 87.5 degrees longitude are exempt from the EPA's regulations. Given that New Jersey's coastline does not extend to the Gulf of Mexico, this

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provision is not applicable to OCS sources located on New Jersey's seaward boundary.

Additionally, 40 CFR 55.3(d) and (e) set different compliance dates depending on whether the source was new or existing at the time of the passage of the Federal rules in 1992. The distinction between new and existing sources would not impact the Department's implementation and enforcement of 40 CFR Part 55, if it were to become a delegated agency, because there are no sources that would fall under the existing source category.

Notice of Intent, 40 CFR 55.4 and Proposed N.J.A.C. 7:27-32.5, General Procedures

40 CFR 55.4 requires an applicant for a preconstruction permit for an OCS source or for any physical change or change in method of operation that results in an increase in emissions from an OCS source to submit a Notice of Intent (NOI) not more than 18 months prior to submission of the application. As noted above, this provision applies only to OCS sources located within 25 miles of a state's seaward boundary. When submitting an NOI, an applicant must simultaneously provide copies to the Administrator and to the air pollution control agencies of the nearest onshore area and any onshore areas adjacent to the NOA. Pursuant to 40 CFR 55.2, "onshore area" is defined as "a coastal area designated as an attainment, a nonattainment, or an unclassifiable area by EPA in accordance with Section 107 of the [CAA]. If the boundaries of the area designated pursuant to Section 107 do not coincide with the boundaries of a single onshore air pollution control agency, then onshore area shall mean a coastal area defined by the jurisdictional boundaries of an air pollution control agency." An applicant must provide copies of the NOI to the nearest onshore area and all adjacent onshore areas. Pursuant to 40 CFR 55.5, an air pollution control agency of an area that believes it has

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more stringent air pollution control requirements than the NOA may submit a request to the Administrator to be designated as the COA.

40 CFR 55.4 also delineates the items that must be included in an NOI. The necessary items include, but are not limited to, company information, an estimate of the project's potential emissions, and a description of all emission points. 40 CFR 55.2 defines "potential emissions" as "the maximum emissions of a pollutant from an OCS source operating at its design capacity. Any physical or operational limitation to the capacity of a source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on type or amount of material combusted, stored, or processes, shall be treated as a limit on the design capacity of the source if the limitation is Federally enforceable." The Federal rule also mandates that the "emissions from vessels servicing or associated with an OCS source, while at the source and while en route to and from the source when within 25 miles of the source," be taken into account of when determining the potential to emit. Thus, the definition of potential emissions for OCS sources, which the Department proposes to incorporate by reference for the purposes of this subchapter, differs from the Department's existing definition of "potential to emit" in N.J.A.C. 7:27-8 and 22 for onshore sources, which remains unchanged.

As noted above, prior to the anticipated delegation of authority, the Department will develop forms and processes for the submission of all materials required by the incorporated Federal regulations related to OCS sources located off of New Jersey's seaward boundary. Proposed N.J.A.C. 7:27-32.5, General procedures, provides that the Department will communicate information concerning the general procedure for the submission of OCS-related materials, including the submission of an NOI, on the Department's website. Once the forms

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are finalized, the Department's website shall identify the acceptable method(s) of submission of OCS-related materials, which may include hard copy or electronic tender submission or both.

Permit Requirements, 40 CFR 55.6

General Provisions and Proposed N.J.A.C. 7:27-32.5, General Procedures

40 CFR 55.6(a) sets forth general requirements for all OCS permits issued pursuant to 40 CFR Part 55. Specifically, 40 CFR 55.6(a)(1) indicates that an OCS source shall submit a permit application with all of the information necessary to perform any analysis or make any determination required. At a minimum, the information in the application must include a description of how the source will comply with all of the applicable requirements of 40 CFR Part 55. If an applicant seeks an exemption from an air pollution control requirement pursuant to 40 CFR 55.6(a)(2), the request for the exemption must be included in the permit application. Once the request is made by the applicant, the EPA or delegated agency shall act on the request pursuant to the procedures set forth in 40 CFR 55.7, which are discussed in greater detail below.

40 CFR 55.2 defines a "delegated agency" as "any agency that has been delegated authority to implement and enforce requirements of this part by the Administrator, pursuant to 40 CFR 55.11." 40 CFR 55.6(a)(5) indicates that once a state or local air pollution control agency has been delegated the authority to implement and enforce the air pollution control requirements on the OCS, the delegated agency must send a copy of any permit application received, any public comment notice required, and any preliminary determination and final permit action to the EPA administrator through the EPA Regional Office.

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40 CFR 55.6(a)(4) sets forth the obligations of owners or operators of OCS sources. An owner or operator who fails to comply with the application requirements and conditions of the permit will be in violation of the Federal rules. Further, owners and operators have an obligation to notify contractors and subsequent owners and operators of the conditions of the permit. Finally, a permit does not relieve an owner or operator from the responsibility of complying with the provisions of any other applicable Federal laws.

40 CFR 55.6(a)(3) indicates that permit applications will be handled by the Administrator in accordance with the applicable procedures, including the public participation requirements, of 40 CFR Part 71 or 40 CFR Part 124. However, if the Department becomes a delegated agency, the Department may substitute its own procedures for processing permits, including its public participation provisions. See OCS Proposed Rule, 56 Fed. Reg. at 63781; OCS Final Rule, 57 Fed. Reg. at 40798. Proposed N.J.A.C. 7:27-32.5, General procedures, clarifies that the Department will rely on the administrative procedures set forth in N.J.A.C. 7:27-8 and 7:27-22 when processing applications or other filings on behalf of OCS sources that would have been required to obtain a permit pursuant to the applicability provisions of N.J.A.C. 7:27-8 or 7:27-22 if the same source had been located onshore. However, for those OCS sources that would not have been required to obtain a permit pursuant to the applicability provisions of N.J.A.C. 7:27-8 or 7:27-22 if the same source had been located onshore, the Department will process applications and other filings pursuant to the administrative procedures set forth in N.J.A.C. 7:27-8. The only exception will be the requirements for public notice and comment. All new permit applications and permit modification requests filed on behalf of OCS sources that would not have been required to obtain a permit pursuant to the applicability provisions of N.J.A.C.

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7:27-8 or 7:27-22 if the same source had been located onshore will be subject to public notice and opportunity for public comment.

Preconstruction Permits for Sources Located Within 25 Miles

Pursuant to 40 CFR 55.6(b)(2), a permit application for an OCS source shall not be submitted to the Administrator or a delegated agency unless the Administrator has determined whether a consistency update is required in accordance with 40 CFR 55.12. If a consistency update is necessary, the application may not be submitted until the proposed consistency update has been published. 40 CFR 55.12 sets forth the frequency with which consistency updates are conducted by the EPA. As discussed in the Applicability section above, the duty to conduct consistency updates is not delegable to a state or local agency.

40 CFR 55.6(b)(3) recognizes that an applicant for an OCS permit may be required to obtain more than one preconstruction permit. Specifically, multiple permits could be required if a delegated agency issues a separate permit when there are multiple emissions units at a facility; when it is necessary to issue separate PSD and non-attainment area permits; or when a state or local agency has partial delegation and the potential source requires permits from both the state or local agency and EPA. See OCS Proposed Rule, 56 Fed. Reg. at 63781.

Once a preconstruction permit application is submitted by an OCS source whose emissions may affect a Class I area, the Administrator or delegated agency must provide the Federal Land Manager with responsibility for the Class I area with a written notice of the application, including a copy of all of the information contained in the permit application. See 40 CFR 55.6(b)(7). Further, the written notice to the Federal Land Manager must be provided

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Pursuant to 40 CFR 55.6(b)(1), if the Administrator or a delegated agency issues a preconstruction permit to an OCS source within 25 miles of a state's seaward boundary, the permit must contain provisions requiring the source to meet all of the applicable provisions of 40 CFR 55.13 or 40 CFR 55.14. Further, once a preconstruction permit is approved, the construction of the source must be commenced within 18 months. Pursuant to 40 CFR 55.6(b)(4), failure to commence construction within 18 months, discontinuing construction for a period of 18 months, or failing to complete construction within a reasonable time will invalidate a permit.

A permit-holder may seek, and the Administrator or a delegated agency may grant, an extension of the 18-month period, if the Administrator or delegated agency is satisfied that the extension request is justified. However, if there are requirements in the Federal or state permit conditions incorporated at 40 CFR 55.13 or 55.14 that are more stringent than the 18-month period or reasonable time standards, the Administrator or the delegated agency must apply the stricter standard. Pursuant to 40 CFR 55.6(b)(5), a preconstruction permit issued pursuant to 40 CFR Part 55 shall remain in effect until it expires under the terms of 40 CFR 55.6(b)(4) or until it is rescinded under a more stringent requirement that has been incorporated by reference in 40 CFR 55.13 or 55.14.

Though the provisions at 40 CFR 55.6(b)(6), (8), and (9) are proposed to be incorporated by reference, these provisions would be irrelevant if the Department were to become a delegated agency. 40 CFR 55.6(b)(6) cites the Administrator's responsibilities if an OCS source

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is subject to action by a Federal agency that might necessitate a review under the National Environmental Policy Act (NEPA). Since this provision specifically references the Administrator and omits any reference to a delegated agency, 40 CFR 44.6(b)(6) imposes no responsibilities on the Department, which in any event is not a Federal agency subject to NEPA. 40 CFR 55.6(b)(8) and (9) would also be immaterial to the Department's implementation and enforcement of the air permitting program on the OCS, because those provisions pertain only to OCS sources that sought a modification to an existing facility within 24 months of the adoption of the Federal rules. New Jersey had no existing sources when the Federal rules were adopted and the 24-month period for a modification has elapsed.

Operating Permits for Sources Located Within 25 Miles

Pursuant to 40 CFR 55.6(c)(1), permits issued to OCS sources located within 25 miles of a state's seaward boundary shall include all applicable operating permit requirements listed in 40 CFR Part 55, including the applicable requirements of the state and local rules incorporated by reference pursuant to 40 CFR 55.13 and 55.14. Likewise, 40 CFR 55.6(c)(2) provides that an existing source will not be eligible for an operating permit unless the source has demonstrated compliance with all of the applicable provisions of 40 CFR Part 55. Finally, if the COA does not have a state permitting program that has been approved pursuant to 40 CFR Part 70, or if EPA has determined the COA is not adequately implementing an approved state permitting program, then the Administrator shall implement and enforce the Federal operating permits program at 40 CFR Part 71 to OCS sources. However, even if the COA does not have an

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approved state permitting program or is not adequately implementing an approved program, the Administrator may still delegate its authority pursuant to 40 CFR 55.11.

Permit Conditions for Sources Located Beyond 25 Miles of a State's Seaward Boundaries

Pursuant to 40 CFR 55.6(d)(1), all applicable operating permit requirements listed in 40 CFR 55.13 shall apply to OCS sources located more than 25 miles from a state's seaward boundary. Further, neither the Administrator nor a delegated agency may issue an operating permit unless that existing OCS source has demonstrated compliance with all of the applicable requirements of 40 CFR Part 55.

There are additional permit requirements listed at 40 CFR 55.6(e) for OCS sources that commenced construction prior to September 4, 1992. Though this provision is proposed to be incorporated by reference, those requirements would be immaterial if the Department were to become a delegated agency, since there were no OCS sources that commenced construction along New Jersey's seaward boundary prior to September 4, 1992.

Request for an Exemption from a Control Technology Requirement, 40 CFR 55.7 and Proposed N.J.A.C. 7:27-32.5, General Procedures

As noted above, an OCS source may request an exemption from an air pollution control requirement. Pursuant to 40 CFR 55.7, all requests for an exemption must be submitted to the Administrator or a delegated agency in one of three ways. If an application for a permit or a permit modification is submitted, a request for an exemption must be submitted simultaneously. If no permit application or modification request is required to be submitted, a

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request for an exemption must be submitted within 60 days of the date that the technology control requirement is promulgated by the EPA. The final method of submission involves existing OCS sources submitting compliance plans pursuant to 40 CFR 55.6(b). Though this provision is proposed to be incorporated by reference, it would be immaterial if New Jersey were to become a delegated agency, because there were no OCS sources off of New Jersey's seaward boundary prior to the initial adoption of 40 CFR Part 55. At such time as the Department becomes a delegated agency, proposed N.J.A.C. 7:27-32.5, General procedures, indicates that information concerning the process for the submission of OCS-related materials, including requests for exemptions from control technology, will be available on the Department's website.

All requests for an exemption, whether submitted to the Administrator or to a delegated agency, must include: (1) information that compliance with the control technology would be technically infeasible or an unreasonable threat to health and safety; (2) proposed substitute requirements; (3) estimates of the emissions reductions that would be achieved by compliance with the original requirement as well as the proposed substitute requirement, and an estimate of the residual emissions; and (4) the identification of emission reductions of a sufficient quantity to offset the estimated residual emissions. See 40 CFR 55.7(b).

A request for an exemption may be granted if the Administrator or a delegated agency makes a finding that compliance with the control technology would be technically infeasible or an unreasonable threat to health and safety. If the Department becomes a delegated agency, 40 CFR 55.7 outlines the process the Department would be required to follow from the time it receives a request for an exemption through the final decision.

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To begin, 40 CFR 55.7(c)(1) requires a delegated agency to transmit a copy of a request for an exemption to the Minerals Management Service (MMS) of the United States and the U.S. Coast Guard (Coast Guard) within five days of receipt. Pursuant to 40 CFR 55.7(f)(1), a request for an exemption that is submitted with a permit application shall be processed as part of the permit application. Further, a delegated agency must use its own administrative procedures, which the Administrator has deemed adequate, to process the permit application and request for exemption. See 40 CFR 55.7(f)(1).

Regardless of whether a request for an exemption is submitted as part of or independent of a permit application, the mandate set forth in 40 CFR 55.7(c) requires a delegated agency to consult with MMS and the Coast Guard. In 2010, the MMS was restructured and all of the renewable energy-related management functions of the Department of the Interior (DOI) were consolidated under the Bureau of Ocean Energy Management (BOEM). See Department of the Interior, Secretarial Order Nos. 3302 (June 18, 2010) and 3299A2 (August 29, 2011), <https://www.doi.gov/elips/browse>. Hence, the reference to the MMS in 40 CFR 55.7(c) is obsolete and a delegated agency would be required to consult and reach a consensus with BOEM and the Coast Guard before it grants or denies a request for an exemption.

After a delegated agency forwards a request for an exemption to BOEM and the Coast Guard, the three agencies will have 90 days to reach a consensus on the request for an exemption. If a consensus is reached, the delegated agency may issue a preliminary determination on the request for the exemption. If there is no consensus reached within the 90 days, the delegated agency must automatically refer the matter to the Administrator on the

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91st day after the delegated agency's receipt of the request. As a result, a request for an exemption submitted to a delegated agency could follow one of four procedural paths, which are outlined below. The exact path will depend on whether the request is submitted independent of or as part of a permit application and whether a consensus is reached among the delegated agency, BOEM, and the Coast Guard.

No Consensus: Request for an Exemption Submitted Independent of a Permit

Application

If a delegated agency is unable to reach a consensus with BOEM and the Coast Guard, the request for an exemption must be referred to the Administrator on the 91st day after the delegated agency's receipt of the request. If that request for an exemption is made independent of a permit application, the Administrator will process the request for an exemption pursuant to the applicable procedures set forth in 40 CFR 55.7(c), (d), and (f). Once the request for an exemption is referred to the Administrator, the delegated agency would no longer have the authority or responsibility to grant or deny the request. However, the delegated agency would be responsible for implementation and enforcement, once the Administrator issues a final decision on the request. See 40 CFR 55.7(c)(5).

No Consensus: Request for an Exemption Submitted with a Permit Application

Pursuant to 40 CFR 55.7(f)(1), a request for an exemption that is submitted with a permit application shall be processed as part of the permit application. A delegated agency shall use its own procedures to provide for public notice and comment on the request. If a request for an exemption is referred to the Administrator because the agencies could not reach

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consensus, the delegated agency would no longer have the authority or responsibility to grant or deny the request for an exemption from a control technology.

However, the delegated agency would retain the authority and responsibility for processing the OCS permit application. Indeed, 40 CFR 55.7 recognizes that the two independent decision-making processes (the permit and the request for an exemption) would move forward simultaneously. If a delegated agency issues a preliminary determination on the OCS permit application before the Administrator provides notice of its preliminary determination on the request for an exemption, 40 CFR 55.7(c)(4) requires the delegated agency to include a notice of the opportunity to comment on the Administrator's preliminary determination. Moreover, 40 CFR 55.6(a)(2)(ii) prohibits a delegated agency from issuing a final permit before the Administrator issues the final determination on the request for the exemption.

Consensus Reached: Request for an Exemption Submitted with a Permit Application

If a delegated agency reaches consensus with BOEM and the Coast Guard on a request for an exemption and that request is submitted as part of a permit application, 40 CFR 55.7(f)(1) requires the delegated agency to process the exemption request as part of the permit application and follow the delegated agency's administrative procedures and public notice requirements. Public notice and an opportunity to comment on the preliminary determination are necessary components of any delegated agency's administrative process.

The Department has proposed N.J.A.C. 7:27-32.5, General procedures, which would require all OCS permit applications, including those accompanied by a request for an exemption from an air pollution control requirement, to adhere to the administrative procedures set forth

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in either N.J.A.C. 7:27-8 or 7:27-22. Both subchapters contain public notice and comment procedures. Thus, if the Department becomes a delegated agency, the Department's existing regulatory scheme would require the preliminary determination on the request for an exemption, reached via consensus with BOEM and the Coast Guard, to be released as part of the Department's notice and comment provisions. If a draft permit is not released as part of the notice and comment provisions of N.J.A.C. 7:27-8 or 7:27-22, the Department will provide public notice and comment for the preliminary determination on the request for an exemption as required by the Federal rules.

Consensus Reached: Request for an Exemption Submitted Independent of a Permit Application

If a delegated agency reaches a consensus with BOEM and the Coast Guard and the request for an exemption is submitted independent of an OCS permit application, the delegated agency must issue a preliminary determination within 90 days from the date the request was received by the agency. Additionally, 40 CFR 55.7(f)(2) requires the delegated agency to comply with the administrative process outlined in 40 CFR 55.7(f)(4). Thus, if the Department becomes a delegated agency, a preliminary determination on a request for an exemption would need to be processed according to the Federal requirements, which are explained below.

Pursuant to 40 CFR 55.7(f)(i) through (iv), which is proposed to be incorporated by reference, the Department will need to make available in the COA and the NOA a copy of the preliminary determination, a copy of all materials submitted by the requester, and a copy of or a summary of all other materials the Department considered in making the preliminary

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Determination to Grant a Request for an Exemption from a Control Technology

Pursuant to 40 CFR 55.7(d), when the Administrator or a delegated agency proposes to grant a request for an exemption from a control technology, the preliminary determination must include proposed substitute control requirements and the necessary offsets for residual emissions. 40 CFR 55.2 defines “residual emissions” as “the difference in emissions from an OCS source if it applies the control requirement(s) imposed pursuant to [40 CFR] § 55.13 or § 55.14 and the emissions from that source if it applies a substitute control requirement pursuant to an exemption granted under [40 CFR] § 55.7.” The ratio of offsets necessary will depend on whether the OCS source is located within 25 miles of the state’s seaward boundary or beyond 25 miles of a state’s seaward boundary.

40 CFR 55.7(e)(2)(i) provides that a new OCS source located within 25 miles of the COA’s seaward boundary is required to offset residual emissions, in the same manner as other new source emissions in the COA. Further, a new source must obtain the necessary offsets based on the applicable requirements of the COA. See 40 CFR 55.5(d) and 55.7(e)(2)(i). Thus, all new

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OCS sources for which New Jersey is the COA will be required to obtain offsets pursuant to the applicable New Jersey rules at N.J.A.C. 7:27-18.

When a new or existing OCS source is located within 25 miles of a state's seaward boundary and the COA does not have offset requirements, 40 CFR 55.7(e)(ii) and (iii) set forth specific emission offset ratios that must be followed. These provisions would not apply to OCS sources located off of New Jersey's seaward boundary because New Jersey's existing regulatory scheme has offset requirements and New Jersey does not have an existing OCS source requiring offsets.

For OCS sources located beyond 25 miles of a state's seaward boundary, the OCS source must obtain emissions reductions at a ratio determined by the Administrator to be adequate.

Review of a Final Decision on a Request for an Exemption from a Control Technology

40 CFR 55.7(f)(5), which is proposed to be incorporated by reference, provides that the requestor or any other person who filed comments on a preliminary determination may petition the Administrator for review of the final decision on a request for an exemption from a control technology. A person who did not submit comments on the preliminary determination may seek review only on the changes from the preliminary to the final determination.

Monitoring, Reporting, Inspections, and Compliance, 40 CFR 55.8

OCS sources shall be subject to all monitoring and compliance requirements set forth at 40 CFR 55.13 and 55.14. Likewise, all monitoring, reporting, inspection, and compliance requirements under the CAA shall apply to OCS sources. However, pursuant to 40 CFR 55.8(d),

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a delegated agency must consult with BOEM and the Coast Guard prior to executing any inspections.

Enforcement, 40 CFR 55.9

An OCS source's failure to comply with any provision of 40 CFR Part 55 or its permit shall be considered a violation of section 111(e) of the CAA. 42 U.S.C. 7411(e). Moreover, all enforcement provisions of the Clean Air Act apply to OCS sources. If the Administrator or a delegated agency orders an OCS source to cease operation of any piece of equipment pursuant to enforcement under Part 55, the shutdown will be coordinated with BOEM and the Coast guard to ensure safety. Under 40 CFR 55.11(d) and (e), a delegated state may implement and enforce the OCS requirements under state law. And upon delegation, a state may use any state authority to enforce any permit condition or other requirement.

Fees, 40 CFR 55.10

If EPA delegates the authority to implement and enforce any portion of 40 CFR Part 55 to a delegated agency, then the delegated agency collects fees in accordance with the rules in the COA. Therefore, if New Jersey becomes a delegated agency, the fees identified in N.J.A.C. 7:27-8 and 7:27-22 will be payable to the Department, rather than EPA.

Federal Requirements that Apply to All OCS Sources, 40 CFR 55.13

As described in the heading, 40 CFR 55.13 identifies every Federal air pollution control requirement that applies to all OCS sources. Further, this provision clarifies that, if a

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requirement in 55.13 conflicts with a requirement in 55.14, the more stringent requirement shall apply.

Federal Requirements that Apply to OCS Sources Located Within 25 Miles of States' Seaward Boundaries, 40 CFR 55.14

In contrast, 40 CFR 55.14 identifies, by individual state, the state and local air pollution control requirements that the EPA has incorporated by reference into its rules as applicable to OCS sources within 25 miles of the identified state's seaward boundaries. The New Jersey-specific provisions are set forth in 40 CFR 55.14(d)(15), which identifies the applicable provisions of New Jersey's State Implementation Plan (SIP), and 55.14(e)(15), which identifies the applicable provisions of New Jersey's rules.

Specific Designation of Corresponding Onshore Areas, 40 CFR 55.15

40 CFR 55.15, which is proposed to be incorporated by reference, provides a list of OCS facilities for which the EPA has designated a COA.

40 CFR 55, Appendix A

40 CFR Part 55 Appendix A lists the titles of the state and local requirements that are contained within the documents incorporated by reference into the Federal rules at 40 CFR 55.14.

Miscellaneous

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In addition to the definitions incorporated by reference, the proposed rules contain State-specific definitions at proposed N.J.A.C. 7:27-32.4. In order to use abbreviations throughout the rule, the Department has defined “EPA” as the United States Environmental Protection Agency, the “CFR” as the United States Code of Federal Regulations, “NOI” as a notice of intent, which shall have the meaning provided in 40 CFR 55.4(a), and the “OCS” as the outer continental shelf as defined in 40 CFR 55.2.

N.J.A.C. 7:27-32.6 references the Department’s rules with respect to claims of confidentiality, which are in N.J.A.C. 7:27-1.6 through 1.30, and advises those contemplating submissions that confidentiality claims cannot be processed electronically. Finally, proposed N.J.A.C. 7:27-32.7 is a severability provision. The provision is intended to allow the subchapter to remain in effect, even if one or more of the provisions is deemed unconstitutional or invalid.

Social Impact

The Department anticipates that the proposed new rules, which incorporate the Federal rules by reference, will have no social impact.

The Federal rules that the Department proposes to incorporate by reference were primarily designed to safeguard the air quality of onshore areas by controlling air pollutants emitted by sources on the OCS. See OCS Proposed Rule, 56 Fed. Reg. at 63778. As discussed in the Summary, the Federal rules are intended to attain and maintain air quality standards as well as ensure compliance with Part C of Title I of the CAA on the OCS.

The Federal regulations apply two different standards to OCS sources, depending on the proximity of the OCS source to the seaward boundary of a state. If a source is within 25 miles

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of the seaward boundary of a state, the source is subject to all Federal, state, and local requirements identified in the regulations or incorporated by reference into the Federal regulations (state and local). If the source is more than 25 miles from a state's seaward boundary, the source must comply with the applicable Federal standards identified in 40 CFR Part 55, only.

The Department's proposed rules will not change the air quality standards or administrative requirements, including the public notice requirements, set forth in the Federal rules being incorporated by reference. The Department is not proposing to modify the control requirements that the EPA currently implements and enforces on the OCS of New Jersey's seaward boundary. Rather, the sole purpose of the rulemaking is to allow the State to request delegation of authority to implement and enforce the air pollution control program on the OCS of New Jersey's seaward boundary. Accordingly, the Department anticipates that there will be no direct or quantifiable social impact as a result of the proposed new rules. By incorporating the existing Federal regulations by reference, the proposed new rules will allow the State to request delegation. If the authority is delegated, the Department, rather than the EPA, will oversee the Federally mandated air pollution control scheme on the OCS of New Jersey's seaward boundary.

Economic Impact

The Department anticipates that the proposed new rules, which incorporate the Federal rules by reference, will have a small economic impact. As mentioned in the Summary above, the purpose of this rulemaking is to incorporate by reference the appropriate portions of the

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Federal rules, which will allow the State to request delegation of authority to implement and enforce the air pollution control program on the OCS of New Jersey's seaward boundary.

Whether the rules are implemented and enforced by the EPA or the Department will have no bearing on the costs applicable to existing or proposed sources located on the OCS. The standards for air pollution control on the OCS and the costs of compliance will remain the same.

With respect to the potential costs to the State, the Department anticipates that there will be some additional expense associated with the implementation and enforcement of the air permitting program on the OCS. The Department anticipates that these costs will consist primarily of staff time. However, the potential number of applicants for an air permit on the OCS is limited because an applicant would be required to hold a lease on the outer continental shelf. BOEM's regulations mandate a highly structured process leading up to the award of a lease and through the construction and operations phase. See 30 CFR Part 585. Since 2009, BOEM has issued only two leases off the seaward boundary of New Jersey. See <https://www.boem.gov/Lease-and-Grant-Information>. Moreover, some of the additional expense incurred with respect to staff time will be offset by the fees the Department will collect pursuant to 40 CFR 55.10 upon delegation. For this reason, the Department anticipates that the administrative costs incurred as a result of the proposed rules and any subsequent delegation of authority will be minimal.

Environmental Impact

The Department anticipates that the proposed rules will have no environmental impact. As discussed in the Summary, the purpose of this rulemaking is to incorporate by reference the

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appropriate portions of the Federal rules, which will allow the State to request delegation of authority to implement and enforce the air pollution control program on the OCS of New Jersey's seaward boundary. The Federal rules are intended to ensure attainment and maintenance of the Federal and state ambient air quality standards and ensure compliance with the requirements in the CAA for the prevention of significant deterioration of air quality on the outer continental shelf. As noted in the Social Impact, the Federal rules that the Department proposes to incorporate by reference were primarily designed to safeguard the air quality of onshore areas by controlling air pollutants emitted by sources on the OCS.

Federal Standards Statement

N.J.S.A. 52:14B-23 requires State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

The proposed new rules incorporate Federal rules by reference. In short, the proposed rules meet, but do not exceed, the regulations issued by the EPA. Accordingly, no Federal standards analysis is required.

Jobs Impact

The Department anticipates that the proposed new rules will have no impact on job creation or retention in the State. The proposed new rules are not modifying an existing air quality standard; rather, the proposed rules would allow the EPA to delegate to the

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Department the authority to implement and enforce the Federal requirements. Employment will not be impacted as a result of the delegation.

Agriculture Industry Impact

The proposed new rules should have no impact on the State's agriculture industry. The proposed rules would allow the EPA to delegate to the State the authority to implement and enforce the existing Federal requirements applicable to sources on the OCS.

Regulatory Flexibility Analysis

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated the reporting, recordkeeping, and other compliance requirements that the proposed new rules would impose upon small businesses. The Regulatory Flexibility Act defines the term "small business" as "any business which is a resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 fulltime employees." See N.J.S.A. 52:14B-17. As mentioned previously, the proposed rules will not modify an existing air quality standard; rather, the adoption of the proposed rules would allow the State to request delegation of authority to implement and enforce the Federal requirements. Since the Department would only be implementing and enforcing the same Federal requirements currently being implemented and enforced by the EPA, the delegation of this authority should have no impact on the reporting, recordkeeping, and other compliance requirements of the new rules because the requirements will remain the same.

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Housing Affordability Impact

In accordance with N.J.S.A. 52:14B-4.1b, the Department has evaluated the proposed new rules to determine their impact, if any, on the affordability of housing and the average costs of housing in the State. As mentioned previously, the proposed rules will not modify an existing air quality standard; rather, the adoption of the proposed rules would allow the State to request delegation of authority to implement and enforce the Federal requirements. Since the proposed rules neither impose new requirements nor confer new direct benefits upon homeowners, builders, or other providers of housing, the Department has determined that the proposed rules will evoke no change in the overall cost associated with housing in the State.

Smart Growth Development Impact Analysis

In accordance with N.J.S.A. 52:14B-4.1b, the Department has evaluated the proposed new rules to determine the impact, if any, on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The adoption of the proposed rules would allow the State to request delegation of authority to implement and enforce the Federal requirements on the OCS. Therefore, the rules will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

In accordance with N.J.S.A. 52:14B-4(a)(2) and N.J.S.A. 2C-48B-2, the Department has evaluated this rulemaking and determined that it will not have an impact on pretrial

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detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed new rules follows:

CHAPTER 27

AIR POLLUTION CONTROL

SUBCHAPTER 32. OUTER CONTINENTAL SHELF AIR REGULATIONS

N.J.A.C. 7:27-32.1 Applicability

Upon delegation of authority by the Administrator of the EPA to the Department, this Subchapter shall apply to the owner or operator of any OCS source within 25 miles of a state's seaward boundary for which New Jersey is the corresponding onshore area (COA) and to the owner or operator of any OCS source beyond 25 miles of New Jersey's seaward boundary for which New Jersey is the nearest onshore area, as authorized under Section 328 of the Federal Clean Air Act Amendments and 40 CFR Part 55.

N.J.A.C. 7:27-32.2 Incorporation by reference of the Code of Federal Regulations

- (a) Portions of this subchapter that are incorporated by reference from the CFR shall be understood in the manner set forth in this section.
- (b) Unless specifically excluded by these rules, when a provision of the CFR is incorporated by reference, all notes, comments, appendices, diagrams, tables, forms, figures, publications, and cross-references are also incorporated by reference.

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(c) Supplements, amendments, or other changes including, without limitation, repeals or stays that affect the meaning or operational status of a Federal regulation incorporated by reference, brought about by either judicial or administrative action and adopted or otherwise noticed by the EPA in the Federal Register, shall be paralleled by a similar automatic update to the New Jersey rule so that the New Jersey rule will have the same meaning and status as its Federal counterpart.

(d) In the event that there are inconsistencies or duplications in the requirements of the provisions incorporated by reference from the CFR and the rules set forth in this subchapter, the provisions incorporated by reference from the CFR shall prevail.

(e) On or after [*the operative date of this rule*], new Federal rules, amendments, supplements, and other changes, brought about through administrative or judicial action, automatically incorporated through the prospective incorporation by reference process shall be effective upon publication in the Federal Register and operative on the date listed by EPA as the effective date in the relevant Federal Register Notice.

(f) The following provisions are incorporated by reference within this subchapter:

40 CFR 55.1	Statutory authority and scope
40 CFR 55.2	Definitions
40 CFR 55.3	Applicability
40 CFR 55.4	Requirements to submit a notice of intent

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40 CFR 55.6	Permit Requirements
40 CFR 55.7	Exemptions
40 CFR 55.8	Monitoring, reporting, inspection, and compliance
40 CFR 55.9	Enforcement
40 CFR 55.10	Fees
40 CFR 55.13	Federal Requirements that apply to OCS sources
40 CFR 55.14	Requirements that apply to OCS sources within 25 miles of states' seaward boundaries, by state
40 CFR 55.15	Specific designation of corresponding onshore area

Appendix A to Part 55

N.J.A.C. 7:27-32.3 Document availability

(a) Copies of the CFR (40 CFR Part 55) as adopted and incorporated by reference herein are available for review at gov.ecfr.io.

(b) Copies of the CFR may also be obtained online by visiting the website of the United States Government Publishing Office at <https://www.govinfo.gov/app/collection/cfr/>.

N.J.A.C. 7:27-32.4 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“CFR” means the United States Code of Federal Regulations.

“EPA” means the United States Environmental Protection Agency.

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“NOI” means notice of intent and shall have the meaning provided in 40 CFR 55.4(a).

“OCS” means the outer continental shelf as defined in 40 CFR 55.2.

N.J.A.C. 7:27-32.5 General procedures

(a) Information pertaining to the filing of an NOI, an OCS permit application, including but not limited to a preconstruction permit, an operating permit, and a modification to a permit, as well as a request for an exemption from a control technology, is available on the Department's website at <http://www.nj.gov/dep/aqpp> and at the following address:

Department of Environmental Protection

Division of Air Quality

Air Quality Permitting Program

401 East State Street

Mail Code 401-02

PO Box 420

Trenton, New Jersey 08625-0420

The Department's website shall identify the acceptable method(s) of submission of OCS-related materials, which will include one or more of electronic submission, or submission in hard copy.

(b) All applications and other filings, submitted on behalf of an OCS source that would have been required to obtain a permit pursuant to the applicability provisions of N.J.A.C. 7:27-8 or 7:27-22 if the same source had been located onshore, shall be processed in accordance with

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the corresponding administrative procedures set forth in N.J.A.C. 7:27-8 or 7:27-22,

respectively.

(c) All applications and other filings, submitted on behalf of an OCS source that would not have been required to obtain a permit pursuant to the applicability provisions of N.J.A.C. 7:27-8 or 7:27-22 had the same source been located onshore, shall be processed in accordance with the administrative procedures of N.J.A.C. 7:27-8, except that all applications for new permits and permit modifications shall be subject to public notice and the opportunity for public comment.

(d) A request for an exemption from a control technology requirement that has been filed in conjunction with a permit application under this subchapter, shall be processed as part of the permit application and adhere to the administrative requirements set forth in (b) and (c) above. If there is no requirement for notice and an opportunity for public comment because the permit application has been denied, the Department shall provide public notice and comment for the preliminary determination on the request for an exemption as required by the Federal rules incorporated by reference into this subchapter.

(e) A request for an exemption from a control technology requirement that is not filed in conjunction with a permit application or another permit-related filing, shall be processed pursuant to the administrative and public participation procedures set forth in the Federal rules incorporated by reference into this subchapter.

N.J.A.C. 7:27-32.6 Confidentiality

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All information submitted to the Department pursuant to this subchapter shall be public information, unless the person submitting the information asserts a confidentiality claim in accordance with the procedures set forth at N.J.A.C. 7:27-1.6 through 1.30 and the Department determines that the information is entitled to confidential treatment in accordance with N.J.A.C. 7:27-1.8 through 1.30. Information submitted electronically cannot be handled confidentially. Therefore, information submitted pursuant to a confidentiality claim must be submitted in paper form only, and the claims of confidentiality must be asserted by clearly marking the information as required by N.J.A.C. 7:27-1.6. .

N.J.A.C. 7:27-32.7 Severability

If any section, subsection, provision, clause, or portion of this subchapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which the judgment was rendered and it shall not affect or impair the remainder of this subchapter or the application thereof to other persons.