Attachment A

The White House

Office of the Press Secretary

For Immediate Release May 27, 2010

Remarks by the President on the Gulf Oil Spill

East Room

12:50 P.M. EDT

THE PRESIDENT: Good afternoon, everybody. Before I take your questions, I want to update the American people on the status of the BP oil spill -– a catastrophe that is causing tremendous hardship in the Gulf Coast, damaging a precious ecosystem, and one that led to the death of 11 workers who lost their lives in the initial explosion.

Yesterday, the federal government gave BP approval to move forward with a procedure known as a “top kill” to try to stop the leak. This involves plugging the well with densely packed mud to prevent any more oil from escaping. And given the complexity of this procedure and the depth of the leak, this procedure offers no guarantee of success. But we’re exploring any reasonable strategies to try and save the Gulf from a spill that may otherwise last until the relief wells are finished -– and that’s a process that could take months.

The American people should know that from the moment this disaster began, the federal government has been in charge of the response effort. As far as I’m concerned, BP is responsible for this horrific disaster, and we will hold them fully accountable on behalf of the United States as well as the people and communities victimized by this tragedy. We will demand that they pay every dime they owe for the damage they’ve done and the painful losses that they’ve caused. And we will continue to take full advantage of the unique technology and expertise they have to help stop this leak.

But make no mistake: BP is operating at our direction. Every key decision and action they take must be approved by us in advance. I’ve designated Admiral Thad Allen -– who has nearly four decades of experience responding to such disasters -– as the National Incident Commander, and if he orders BP to do something to respond to this disaster, they are legally bound to do it. So, for example, when they said they would drill one relief well to stem this leak we demanded a backup and ordered them to drill two. And they are in the process of drilling two.

As we devise strategies to try and stop this leak, we’re also relying on the brightest minds and most advanced technology in the world. We’re relying on a team of scientists and engineers from our own national laboratories and from many other nations -– a team led by our Energy Secretary and Nobel Prize-winning physicist, Stephen Chu. And we’re relying on experts who’ve actually dealt with oil spills from across the globe, though none this challenging.

The federal government is also directing the effort to contain and clean up the damage from the spill -– which is now the largest effort of its kind in U.S. history. In this case, the federal, state, and local governments have the resources and expertise to play an even more direct role in the response effort. And I will be discussing this further when I make my second trip to Louisiana tomorrow. But so far we have about 20,000 people in the region who are working around the clock to contain and clean up this oil. We have activated about 1,400 members of the National Guard in four states. We have the Coast Guard on site. We have more than 1,300 vessels assisting in the containment and cleanup efforts. We’ve deployed over 3 million feet of total boom to stop the oil from coming on shore -– and today more than 100,000 feet of boom is being surged to Louisiana parishes that are facing the greatest risk from the oil.

So we’ll continue to do whatever is necessary to protect and restore the Gulf Coast. For example, Admiral Allen just announced that we’re moving forward with a section of Governor Jindal’s barrier island proposal that could help stop oil from coming ashore. It will be built in an area that is most at risk and where the work can be most quickly completed.

We’re also doing whatever it takes to help the men and women whose livelihoods have been disrupted and even destroyed by this spill -– everyone from fishermen to restaurant and hotel owners. So far the Small Business Administration has approved loans and allowed many small businesses to defer existing loan payments. At our insistence, BP is paying economic injury claims, and we’ll make sure that when all is said and done, the victims of

BLOG POSTS ON THIS ISSUE

May 27, 2010 4:47 PM EDT

"Whatever is Necessary to Protect and Restore the Gulf Coast"

The President takes questions from the press on the BP oil spill, making clear that he is in charge of the response, that all hands are on deck, and that those responsible will be held accountable.

May 26, 2010 10:02 PM EDT

The Ongoing Administration-Wide Response to the Deepwater BP Oil Spill: May 26, 2010

The Joint Information Center provides an update from the Gulf Coast on the ongoing Administration-wide response to the Deepwater BP oil spill.

May 26, 2010 12:41 PM EDT

The Ongoing Administration-Wide Response to the Deepwater BP Oil Spill: May 25, 2010

The White House announces that President Obama will travel to the Louisiana Gulf Coast to assess the latest efforts to counter the BP Deepwater Horizon oil spill, joining more than 22,000 people in the region, including many of the brightest scientific minds from both the public and private sector, who are working around the clock to mitigate the oil's impact.

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this disaster will get the relief that they are owed. We're not going to abandon our fellow citizens. We'll help them recover and we will help them rebuild.

And in the meantime, I should also say that Americans can help by continuing to visit the communities and beaches of the Gulf Coast. I was talking to the governors just a couple of days ago, and they wanted me to remind everybody that except for three beaches in Louisiana, all of the Gulf's beaches are open. They are safe and they are clean.

As we continue our response effort, we're also moving quickly on steps to ensure that a catastrophe like this never happens again. I've said before that producing oil here in America is an essential part of our overall energy strategy. But all drilling must be safe.

In recent months, I've spoken about the dangers of too much -- I've heard people speaking about the dangers of too much government regulation. And I think we can all acknowledge there have been times in history when the government has overreached. But in this instance, the oil industry's cozy and sometimes corrupt relationship with government regulators meant little or no regulation at all.

When Secretary Salazar took office, he found a Minerals and Management Service that had been plagued by corruption for years –- this was the agency charged with not only providing permits, but also enforcing laws governing oil drilling. And the corruption was underscored by a recent Inspector General's report that covered activity which occurred prior to 2007 -- a report that can only be described as appalling. And Secretary Salazar immediately took steps to clean up that corruption. But this oil spill has made clear that more reforms are needed.

For years, there has been a scandalously close relationship between oil companies and the agency that regulates them. That's why we've decided to separate the people who permit the drilling from those who regulate and ensure the safety of the drilling.

I also announced that no new permits for drilling new wells will go forward until a 30-day safety and environmental review was conducted. That review is now complete. Its initial recommendations include aggressive new operating standards and requirements for offshore energy companies, which we will put in place.

Additionally, after reading the report's recommendations with Secretary Salazar and other members of my administration, we're going to be ordering the following actions: First, we will suspend the planned exploration of two locations off the coast of Alaska. Second, we will cancel the pending lease sale in the Gulf of Mexico and the proposed lease sale off the coast of Virginia. Third, we will continue the existing moratorium and suspend the issuance of new permits to drill new deepwater wells for six months. And four, we will suspend action on 33 deepwater exploratory wells currently being drilled in the Gulf of Mexico.

What's also been made clear from this disaster is that for years the oil and gas industry has leveraged such power that they have effectively been allowed to regulate themselves. One example: Under current law, the Interior Department has only 30 days to review an exploration plan submitted by an oil company. That leaves no time for the appropriate environmental review. They result is, they are continually waived. And this is just one example of a law that was tailored by the industry to serve their needs instead of the public's. So Congress needs to address these issues as soon as possible, and my administration will work with them to do so.

Still, preventing such a catastrophe in the future will require further study and deeper reform. That's why last Friday, I also signed an executive order establishing the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling. While there are a number of ongoing investigations, including an independent review by the National Academy of Engineering, the purpose of this commission is to consider both the root causes of the disaster and offer options on what safety and environmental precautions are necessary.

If the laws on our books are inadequate to prevent such a spill, or if we did not enforce those laws, then I want to know. I want to know what worked and what didn't work in our response to the disaster, and where oversight of the oil and gas industry broke down.

Let me make one final point. More than anything else, this economic and environmental tragedy –- and it's a tragedy -– underscores the urgent need for this nation to develop clean, renewable sources of energy. Doing so will not only reduce threats to our environment, it will create a new, homegrown, American industry that can lead to countless new businesses and new jobs.

We've talked about doing this for decades, and we've made significant strides over the last year when it comes to investing in renewable energy and energy efficiency. The House of Representatives has already passed a bill that would finally jumpstart a permanent transition to a clean energy economy, and there is currently a plan in the Senate –- a plan that was developed with ideas from Democrats and Republicans –- that would achieve the same goal.

If nothing else, this disaster should serve as a wake-up call that it's time to move forward on this legislation. It's time to accelerate the competition with countries like China, who have already realized the future lies in renewable

energy. And it's time to seize that future ourselves. So I call on Democrats and Republicans in Congress, working with my administration, to answer this challenge once and for all.

I'll close by saying this: This oil spill is an unprecedented disaster. The fact that the source of the leak is a mile under the surface, where no human being can go, has made it enormously difficult to stop. But we are relying on every resource and every idea, every expert and every bit of technology, to work to stop it. We will take ideas from anywhere, but we are going to stop it.

And I know that doesn't lessen the enormous sense of anger and frustration felt by people on the Gulf and so many Americans. Every day I see this leak continue I am angry and frustrated as well. I realize that this entire response effort will continue to be filtered through the typical prism of politics, but that's not what I care about right now. What I care about right now is the containment of this disaster and the health and safety and livelihoods of our neighbors in the Gulf Coast. And for as long as it takes, I intend to use the full force of the federal government to protect our fellow citizens and the place where they live. I can assure you of that.

All right. I'm going to take some questions. I'm going to start with Jennifer Loven.

Q Thank you, Mr. President. This is on, right?

THE PRESIDENT: Yes.

Q You just said that the federal government is in charge, and officials in your administration have said this repeatedly. Yet how do you explain that we're more than five weeks into this crisis and that BP is not always doing as you're asking, for example with the type of dispersant that's being used? And if I might add one more; to the many people in the Gulf who, as you said, are angry and frustrated and feel somewhat abandoned, what do you say about whether your personal involvement, your personal engagement, has been as much as it should be either privately or publicly?

THE PRESIDENT: Well, I'll take the second question first, if you don't mind. The day that the rig collapsed and fell to the bottom of the ocean, I had my team in the Oval Office that first day. Those who think that we were either slow on our response or lacked urgency don't know the facts. This has been our highest priority since this crisis occurred.

Personally, I'm briefed every day and have probably had more meetings on this issue than just about any issue since we did our Afghan review. And we understood from day one the potential enormity of this crisis and acted accordingly. So when it comes to the moment this crisis occurred, moving forward, this entire White House and this entire federal government has been singularly focused on how do we stop the leak, and how do we prevent and mitigate the damage to our coastlines.

The challenge we have is that we have not seen a leak like this before, and so people are going to be frustrated until it stops. And I understand that. And if you're living on the coast and you see this sludge coming at you, you are going to be continually upset, and from your perspective, the response is going to be continually inadequate until it actually stops. And that's entirely appropriate and understandable.

But from Thad Allen, our National Incident Coordinator, through the most junior member of the Coast Guard, or the under-under-under secretary of NOAA, or any of the agencies under my charge, they understand this is the single most important thing that we have to get right.

Now, with respect to the relationship between our government and BP, the United States government has always been in charge of making sure that the response is appropriate. BP, under the Oil Pollution Act of 1990, is considered the responsible party, which basically means they've got to pay for everything that's done to both stop the leak and mitigate the damage. They do so under our supervision, and any major decision that they make has to be done under the approval of Thad Allen, the National Incident Coordinator.

So this notion that somehow the federal government is sitting on the sidelines and for the three or four or five weeks we've just been letting BP make a whole bunch of decisions is simply not true.

What is true is that when it comes to stopping the leak down below, the federal government does not possess superior technology to BP. This is something, by the way -- going back to my involvement -- two or three days after this happened, we had a meeting down in the Situation Room in which I specifically asked Bob Gates and Mike Mullen what assets do we have that could potentially help that BP or other oil companies around the world do not have. We do not have superior technology when it comes to dealing with this particular crisis.

Now, one of the legitimate questions that I think needs to be asked is should the federal government have such capacity. And that's part of what the role of the commission is going to be, is to take a look and say, do we make sure that a consortium of oil companies pay for specifically technology to deal with this kind of incident when it happens. Should that response team that's effective be under the direct charge of the United States government or a private entity? But for now, BP has the best technology, along with the other oil companies, when it comes to

actually capping the well down there.

Now, when it comes to what's happening on the surface, we've been much more involved in the in-situ burns, in the skimming. Those have been happening more or less under our direction, and we feel comfortable about many of the steps that have been taken.

There have been areas where there have been disagreements, and I'll give you two examples. Initially on this top kill, there were questions in terms of how effective it could be, but also what were the risks involved, because we're operating at such a pressurized level, a mile underwater and in such frigid temperatures, that the reactions of various compounds and various approaches had to be calibrated very carefully. That's when I sent Steven Chu down, the Secretary of Energy, and he brought together a team, basically a brain trust, of some of the smartest folks we have at the National Labs and in academia to essentially serve as a oversight board with BP engineers and scientists in making calculations about how much mud could you pour down, how fast, without risking potentially the whole thing blowing.

So in that situation you've got the federal government directly overseeing what BP is doing, and Thad Allen is giving authorization when finally we feel comfortable that the risks of attempting a top kill, for example, are sufficiently reduced that it needs to be tried.

I already mentioned a second example, which is they wanted to drill one relief well. The experience has been that when you drill one relief well, potentially you keep on missing the mark. And so it's important to have two to maximize the speed and effectiveness of a relief well.

And right now Thad Allen is down there, because I think he -- it's his view that some of the allocation of boom or other efforts to protect shorelines hasn't been as nimble as it needs to be. And he said so publicly. And so he will be making sure that, in fact, the resources to protect the shorelines are there immediately.

But here's the broad point: There has never been a point during this crisis in which this administration, up and down up the line, in all these agencies, hasn't, number one, understood this was my top priority -- getting this stopped and then mitigating the damage; and number two, understanding that if BP wasn't doing what our best options were, we were fully empowered and instruct them, to tell them to do something different.

And so if you take a look at what's transpired over the last four to five weeks, there may be areas where there have been disagreements, for example, on dispersants, and these are complicated issues. But overall, the decisions that have been made have been reflective of the best science that we've got, the best expert opinion that we have, and have been weighing various risks and various options to allocate our resources in such a way that we can get this fixed as quickly as possible.

Jake Tapper.

Q Thanks, Mr. President. You say that everything that could be done is being done, but there are those in the region and those industry experts who say that's not true. Governor Jindal obviously had this proposal for a barrier. They say that if that had been approved when they first asked for it, they would have 10 miles up already. There are fishermen down there who want to work, who want to help, haven't been trained, haven't been told to go do so. There are industry experts who say that they're surprised that tankers haven't been sent out there to vacuum, as was done in '93 outside Saudi Arabia. And then, of course, there's the fact that there are 17 countries that have offered to help and it's only been accepted from two countries, Norway and Mexico. How can you say that everything that can be done is being done with all these experts and all these officials saying that's not true?

THE PRESIDENT: Well, let me distinguish between -- if the question is, Jake, are we doing everything perfectly out there, then the answer is absolutely not. We can always do better. If the question is, are we, each time there is an idea, evaluating it and making a decision, is this the best option that we have right now, based on how quickly we can stop this leak and how much damage can we mitigate -- then the answer is yes.

So let's take the example of Governor Jindal's barrier islands idea. When I met with him when I was down there two weeks ago, I said I will make sure that our team immediately reviews this idea, that the Army Corps of Engineers is looking at the feasibility of it, and if they think -- if they tell me that this is the best approach to dealing with this problem, then we're going to move quickly to execute it. If they have a disagreement with Governor Jindal's experts as to whether this would be effective or not, whether it was going to be cost-effective, given the other things that need to be done, then we'll sit down and try to figure that out.

And that essentially is what happened, which is why today you saw an announcement where, from the Army Corps' perspective, there were some areas where this might work, but there are some areas where it would be counter-productive and not a good use of resources.

So the point is, on each of these points that you just mentioned, the job of our response team is to say, okay, if 17 countries have offered equipment and help, let's evaluate what they've offered: How fast can it get here? Is it actually going to be redundant, or will it actually add to the overall effort -- because in some cases, more may not

actually be better. And decisions have been made based on the best information available that says here's what we need right now. It may be that a week from now or two weeks from now or a month from now the offers from some of those countries might be more effectively utilized.

Now, it's going to be entirely possible in a operation this large that mistakes are made, judgments prove to be wrong; that people say in retrospect, you know, if we could have done that or we did that, this might have turned out differently -- although in a lot of cases it may be speculation. But the point that I was addressing from Jennifer was, does this administration maintain a constant sense of urgency about this, and are we examining every recommendation, every idea that's out there, and making our best judgment as to whether these are the right steps to take, based on the best experts that we know of. And on that answer, the answer is yes -- or on that question, the answer is yes.

Chuck Todd.

Q I just want to follow up on the question as it has to do with the relationship between the government and BP. It seems that you've made the case on the technical issues. But onshore, Admiral Allen admitted the other day in a White House briefing that they needed to be pushed harder. Senator Mary Landrieu this morning said it's not clear who's in charge, that the government should be in charge. Why not ask BP to simply step aside on the onshore stuff, make it an entirely government thing? Obviously BP pays for it, but why not ask them to just completely step aside on that front?

And then also, can you respond to all the Katrina comparisons that people are making about this with yourself?

THE PRESIDENT: Well, I'll take your second question first. I'll leave it to you guys to make those comparisons, and make judgments on it, because what I'm spending my time thinking about is how do we solve the problem. And when the problem is solved and people look back and do an assessment of all the various decisions that were made, I think people can make a historical judgment. And I'm confident that people are going to look back and say that this administration was on top of what was an unprecedented crisis.

In terms of shoreline protection, the way this thing has been set up under the oil spill act of 1990 -- Oil Pollution Act -- is that BP has contracts with a whole bunch of contractors on file in the event that there is an oil spill, and as soon as the Deep Horizon well went down, then their job is to activate those and start paying them. So a big chunk of the 20,000 who are already down there are being paid by BP.

The Coast Guard's job is to approve and authorize whatever BP is doing. Now, what Admiral Allen said today, and the reason he's down there today, is that if BP's contractors are not moving as nimbly and as effectively as they need to be, then it is already the power of the federal government to redirect those resources. I guess the point being that the Coast Guard and our military are potentially already in charge as long as we've got good information and we are making the right decisions.

And if there are mistakes that are being made right now, we've got the power to correct those decisions. We don't have to necessarily reconfigure the setup down there. What we do have to make sure of is, is that on each and every one of the decisions that are being made about what beaches to protect, what's going to happen with these marshes, if we build a barrier island, how is this going to have an impact on the ecology of the area over the long term -- in each of those decisions, we've got to get it right.

Q You understand the credibility of BP seems to be so bad -- that there's almost no trust that they're getting --

THE PRESIDENT: I understand. And part of the purpose of this press conference is to explain to the folks down in the Gulf that ultimately it is our folks down there who are responsible. If they're not satisfied with something that's happening, then they need to let us know and we will immediately question BP and ask them why isn't X, Y, Z happening. And those skimmers, those boats, that boom, the people who are out there collecting some of the oil that's already hit shore, they can be moved and redirected at any point.

And so, understandably, people are frustrated, because, look, this is a big mess coming to shore and even if we've got a perfect organizational structure, spots are going to be missed, oil is going to go to places that maybe somebody thinks it could have been prevented from going. There is going to be damage that is heartbreaking to see. People's livelihoods are going to be affected in painful ways. The best thing for us to do is to make sure that every decision about how we're allocating the resources that we've got is being made based on the best expert advice that's available.

So I'll take one last stab at this, Chuck. The problem I don't think is that BP is off running around doing whatever it wants and nobody is minding the store. Inevitably in something this big, there are going to be places where things fall short. But I want everybody to understand today that our teams are authorized to direct BP in the same way that they'd be authorized to direct those same teams if they were technically being paid by the federal government. In either circumstance, we've got the authority that we need. We just got to make sure that we're exercising it effectively.

All right, Steve Thomma.

Q Thank you, sir. On April 21st, Admiral Allen tells us the government started dispatching equipment rapidly to the Gulf, and you just said on day one you recognized the enormity of this situation. Yet here we are 39, 40 days later, you're still having to rush more equipment, more boom. There are still areas of the coast unprotected. Why is it taking so long? And did you really act from day one for a worst-case scenario?

THE PRESIDENT: We did. Part of the problem you've got is -- let's take the example of boom. The way the plans have been developed -- and I'm not an expert on this, but this is as it's been explained to me -- pre-deploying boom would have been the right thing to do; making sure that there is boom right there in the region at various spots where you could anticipate, if there was a spill of this size, the boom would be right there ready to grab.

Unfortunately, that wasn't always the case. And so this goes back to something that Jake asked earlier. When it comes to the response since the crisis happened, I am very confident that the federal government has acted consistently with a sense of urgency.

When it comes to prior to this accident happening, I think there was a lack of anticipating what the worst-case scenarios would be. And that's a problem. And part of that problem was lodged in MMS and the way that that agency was structured. That was the agency in charge of providing permitting and making decisions in terms of where drilling could take place, but also in charge of enforcing the safety provisions. And as I indicated before, the IG report, the Inspecter General's report that came out, was scathing in terms of the problems there.

And when Ken Salazar came in, he cleaned a lot of that up. But more needed to be done, and more needs to be done, which is part of the reason why he separated out the permitting function from the functions that involve enforcing the various safety regulations.

But I think on a whole bunch of fronts, you had a complacency when it came to what happens in the worst-case scenario.

I'll give you another example, because this is something that some of you have written about -- the question of how is it that oil companies kept on getting environmental waivers in getting their permits approved. Well, it turns out that the way the process works, first of all, there is a thorough environmental review as to whether a certain portion of the Gulf should be leased or not. That's a thorough-going environmental evaluation. Then the overall lease is broken up into segments for individual leases, and again there's an environmental review that's done.

But when it comes to a specific company with its exploration plan in that one particular area -- they're going to drill right here in this spot -- Congress mandated that only 30 days could be allocated before a yes or no answer was given. That was by law. So MMS's hands were tied. And as a consequence, what became the habit, predating my administration, was you just automatically gave the environmental waiver, because you couldn't complete an environmental study in 30 days.

So what you've got is a whole bunch of aspects to how oversight was exercised in deepwater drilling that were very problematic. And that's why it's so important that this commission moves forward and examines, from soup to nuts, why did this happen; how should this proceed in a safe, effective manner; what's required when it comes to worst-case scenarios to prevent something like this from happening.

I continue to believe that oil production is important, domestic oil production is important. But I also believe we can't do this stuff if we don't have confidence that we can prevent crises like this from happening again. And it's going to take some time for the experts to make those determinations. And as I said, in the meantime, I think it's appropriate that we keep in place the moratorium that I've already issued.

Chip Reid.

Q Thank you, Mr. President. First of all, Elizabeth Birnbaum resigned today. Did she resign? Was she fired? Was she forced out? And if so, why? And should other heads roll as we go on here?

Secondly, with regard to the Minerals Management Service, Secretary Salazar yesterday basically blamed the Bush administration for the cozy relationship there, and you seemed to suggest that when you spoke in the Rose Garden a few weeks ago when you said, for too long, a decade or more -- most of those years, of course, the Bush administration -- there's been a cozy relationship between the oil companies and the federal agency that permits them to drill. But you knew as soon as you came in, and Secretary Salazar did, about this cozy relationship, but you continued to give permits -- some of them under questionable circumstances. Is it fair to blame the Bush administration? Don't you deserve some of that?

THE PRESIDENT: Well, let me just make the point that I made earlier, which is Salazar came in and started cleaning house, but the culture had not fully changed in MMS. And absolutely I take responsibility for that. There wasn't sufficient urgency in terms of the pace of how those changes needed to take place.

There's no evidence that some of the corrupt practices that had taken place earlier took place under the current administration's watch. But a culture in which oil companies were able to get what they wanted without sufficient oversight and regulation -- that was a real problem. Some of it was constraints of the law, as I just mentioned, but we should have busted through those constraints.

Now, with respect to Ms. Birnbaum, I found out about her resignation today. Ken Salazar has been in testimony throughout the day, so I don't know the circumstances in which this occurred. I can tell you what I've said to Ken Salazar, which is that we have to make sure, if we are going forward with domestic oil production, that the federal agency charged with overseeing its safety and security is operating at the highest level. And I want people in there who are operating at the highest level and aren't making excuses when things break down, but are intent on fixing them. And I have confidence that Ken Salazar can do that.

Q Is his job safe?

THE PRESIDENT: Yes.

Julianna.

Q Thank you, Mr. President. We're learning today that the oil has been gushing as much as five times the initial estimates. What does that tell you and the American people about the extent to which BP can be trusted on any of the information that it's providing, whether the events leading up to the spill, any of their information?

THE PRESIDENT: Well, BP's interests are aligned with the public interest to the extent that they want to get this well capped. It's bad for their business. It's bad for their bottom line. They're going to be paying a lot of damages, and we'll be staying on them about that. So I think it's fair to say that they want this thing capped as badly as anybody does and they want to minimize the damage as much as they can.

I think it is a legitimate concern to question whether BP's interests in being fully forthcoming about the extent of the damage is aligned with the public interest. I mean, their interests may be to minimize the damage, and to the extent that they have better information than anybody else, to not be fully forthcoming. So my attitude is we have to verify whatever it is they say about the damage.

This is an area, by the way, where I do think our efforts fell short. And I'm not contradicting my prior point that people were working as hard as they could and doing the best that they could on this front. But I do believe that when the initial estimates came that there were -- it was 5,000 barrels spilling into the ocean per day, that was based on satellite imagery and satellite data that would give a rough calculation. At that point, BP already had a camera down there, but wasn't fully forthcoming in terms of what did those pictures look like. And when you set it up in time-lapse photography, experts could then make a more accurate determination. The administration pushed them to release it, but they should have pushed them sooner. I mean, I think that it took too long for us to stand up our flow-tracking group that has now made these more accurate ranges of calculation.

Now, keep in mind that that didn't change what our response was. As I said from the start, we understood that this could be really bad. We are hoping for the best, but preparing for the worst. And so there aren't steps that would have taken in terms of trying to cap the well, or skimming the surface, or the in-situ burns, or preparing to make sure when this stuff hit shore that we could minimize the damage -- all those steps would have been the same even if we had information that this flow was coming out faster.

And eventually, we would have gotten better information because, by law, the federal government, if it's going to be charging BP for the damage that it causes, is going to have to do the best possible assessment. But there was a lag of several weeks that I think shouldn't have happened.

Helen Thomas.

Q Mr. President, when are you going to get out of Afghanistan? Why are we continuing to kill and die there? What is the real excuse? And don't give us this Bushism, "if we don't go there, they'll all come here."

THE PRESIDENT: Well, Helen, the reason we originally went to Afghanistan was because that was the base from which attacks were launched that killed 3,000 people -- I'm going to get to your question, I promise. But I just want to remind people we went there because the Taliban was harboring al Qaeda, which had launched an attack that killed 3,000 Americans.

Al Qaeda escaped capture and they set up in the border regions between Pakistan and Afghanistan. Al Qaeda has affiliates that not only provide them safe harbor, but increasingly are willing to conduct their own terrorist operations initially in Afghanistan and in Pakistan, but increasingly directed against Western targets and targets of our allies as well.

So it is absolutely critical that we dismantle that network of extremists that are willing to attack us. And they are currently --

Q -- a threat to us?

THE PRESIDENT: They absolutely are a threat to us. They're a significant threat to us. I wouldn't be deploying young men and women into harm's way if I didn't think that they were an absolute threat to us.

Now, General McChrystal's strategy, which I think is the right one, is that we are going to clear out Taliban strongholds; we are going to strengthen the capacity of the Afghan military; and we are going to get them stood up in a way that allows us then to start drawing down our troops but continuing to provide support for Afghan in its effort to create a stable government.

It is a difficult process. At the same time, we've also got to work with Pakistan so that they are more effective partners in dealing with the extremists that are within their borders. And it is a big, messy process. But we are making progress in part because the young men and women under General McChrystal's supervision, as well as our coalition partners, are making enormous sacrifices; but also on the civilian side, we're starting to make progress in terms of building capacity that will allow us then to draw down with an effective partner.

Jackie Calmes, New York Times.

Q Thank you, Mr. President. I want to follow up on something -- exchange you had with Chip. Leaving aside the existing permits for drilling in the Gulf, before -- weeks before BP, you had called for expanded drilling. Do you now regret that decision? And why did you do so knowing what you have described today about the sort of dysfunction in the MMS?

THE PRESIDENT: I continue to believe what I said at that time, which was that domestic oil production is an important part of our overall energy mix. It has to be part of an overall energy strategy. I also believe that it is insufficient to meet the needs of our future, which is why I've made huge investments in clean energy, why we continue to promote solar and wind and biodiesel and a whole range of other approaches, why we're putting so much emphasis on energy efficiency.

But we're not going to be able to transition to these clean energy strategies right away. I mean, we're still years off and some technological breakthroughs away from being able to operate on purely a clean energy grid. During that time, we're going to be using oil. And to the extent that we're using oil, it makes sense for us to develop our oil and natural gas resources here in the United States and not simply rely on imports. That's important for our economy; that's important for economic growth.

So the overall framework, which is to say domestic oil production should be part of our overall energy mix, I think continues to be the right one. Where I was wrong was in my belief that the oil companies had their act together when it came to worst-case scenarios.

Now, that wasn't based on just my blind acceptance of their statements. Oil drilling has been going on in the Gulf, including deepwater, for quite some time. And the record of accidents like this we hadn't seen before. But it just takes one for us to have a wake-up call and recognize that claims that fail-safe procedures were in place, or that blowout preventers would function properly, or that valves would switch on and shut things off, that -- whether it's because of human error, because of the technology was faulty, because when you're operating at these depths you can't anticipate exactly what happens -- those assumptions proved to be incorrect.

And so I'm absolutely convinced that we have to do a thorough-going scrub of that -- those safety procedures and those safety records. And we have to have confidence that even if it's just a one-in-a-million shot, that we've got enough technology know-how that we can shut something like this down not in a month, not in six weeks, but in two or three or four days. And I don't have that confidence right now.

Q If I could follow up --

THE PRESIDENT: Sure.

Q Do you -- are you sorry now? Do you regret that your team had not done the reforms at the Minerals Management Service that you've subsequently called for? And I'm also curious as to how it is that you didn't know about Ms. Birnbaum's resignation/firing before --

THE PRESIDENT: Well, you're assuming it was a firing. If it was a resignation, then she would have submitted a letter to Mr. Salazar this morning, at a time when I had a whole bunch of other stuff going on.

Q So you rule out that she was fired?

THE PRESIDENT: Come on, Jackie, I don't know. I'm telling you the -- I found out about it this morning, so I don't yet know the circumstances, and Ken Salazar has been in testimony on the Hill.

With respect to your first question, at MMS, Ken Salazar was in the process of making these reforms. But the point

that I'm making is, is that obviously they weren't happening fast enough. If they had been happening fast enough, this might have been caught. Now, it's possible that it might now have been caught. I mean, we could have gone through a whole new process for environmental review; you could have had a bunch of technical folks take a look at BP's plans, and they might have said, this is -- meets industry standards, we haven't had an accident like this in 15 years and we should go ahead.

That's what this commission has to discover, is -- was this a systemic breakdown? Is this something that could happen once in a million times? Is it something that could happen once in a thousand times, or once every 5,000 times? What exactly are the risks involved?

Now, let me make one broader point, though, about energy. The fact that oil companies now have to go a mile underwater and then drill another three miles below that in order to hit oil tells us something about the direction of the oil industry. Extraction is more expensive and it is going to be inherently more risky.

And so that's part of the reason you never heard me say, "Drill, baby, drill" -- because we can't drill our way out of the problem. It may be part of the mix as a bridge to a transition to new technologies and new energy sources, but we should be pretty modest in understanding that the easily accessible oil has already been sucked up out of the ground.

And as we are moving forward, the technology gets more complicated, the oil sources are more remote, and that means that there's probably going to end up being more risk. And we as a society are going to have to make some very serious determinations in terms of what risks are we willing to accept. And that's part of what the commission I think is going to have to look at.

I will tell you, though, that understanding we need to grow -- we're going to be consuming oil for our industries and for how people live in this country, we're going to have to start moving on this transition. And that's why when I went to the Republican Caucus just this week, I said to them, let's work together. You've got Lieberman and Kerry, who previously were working with Lindsey Graham -- even though Lindsey is not on the bill right now -- coming up with a framework that has the potential to get bipartisan support, and says, yes, we're going to still need oil production, but you know what, we can see what's out there on the horizon, and it's a problem if we don't start changing how we operate.

Macarena Vidal. Not here? Oh, there you are.

Q Mr. President, you announced -- or the White House announced two days ago that you were going to send 1,200 people to -- 1,200 members of the National Guard to the border. I want to -- if you could precise what their target is going to be, what you're planning to achieve with that -- if you could clarify a bit more the mission that they're going to have.

And also on Arizona, after you have criticized so much the immigration law that has been approved there, would you support the boycott that some organizations are calling towards that state?

THE PRESIDENT: I've indicated that I don't approve of the Arizona law. I think it's the wrong approach. I understand the frustrations of the people of Arizona and a lot of folks along the border that that border has not been entirely secured in a way that is both true to our traditions as a nation of law and as a nation of immigrants.

I'm President of the United States; I don't endorse boycotts or not endorse boycotts. That's something that the private citizens can make a decision about. What my administration is doing is examining very closely this Arizona law and its implications for the civil rights and civil liberties for the people in Arizona, as well as the concern that you start getting a patchwork of 50 different immigration laws around the country in an area that is inherently the job of the federal government.

Now, for the federal government to do its job, everybody has got to step up. And so I've tried to be as clear as I could this week, and I will repeat it to everybody who's here: We have to have a comprehensive approach to immigration reform. The time to get moving on this is now. And I am prepared to work with both parties and members of Congress to get a bill that does a good job securing our borders; holds employers accountable; makes sure that those who have come here illegally have to pay a fine, pay back taxes, learn English, and get right by the law.

We had the opportunity to do that. We've done -- we've gotten a vote of a super majority in the Senate just four years ago. There's no reason why we shouldn't be able to recreate that bipartisan spirit to get this problem solved.

Now, with respect to the National Guardsmen and women, I have authorized up to 1,200 National Guardspersons in a plan that was actually shaped last year. So this is not simply in response to the Arizona law. And what we find is, is that National Guardspersons can help on intelligence; dealing with both drug and human trafficking along the borders; they can relieve border guards so that the border guards then can be in charge of law enforcement in those areas. So there are a lot of functions that they can carry out that helps leverage and increase the resources available in this area.

By the way, we didn't just send National Guard. We've also got a package of $500 million in additional resources, because, for example, if we are doing a better job dealing with trafficking along the border, we've also got to make sure that we've got prosecutors down there who can prosecute those cases.

But the key point I want to emphasize to you is that I don't see these issues in isolation. We're not going to solve the problem just solely as a consequence of sending National Guard troops down there. We're going to solve this problem because we have created an orderly, fair, humane immigration framework in which people are able to immigrate to this country in a legal fashion; employers are held accountable for hiring legally present workers.

And I think we can craft that system if everybody is willing to step up. And I told the Republican Caucus when I met with them this week, I don't even need you to meet me halfway; meet me a quarter of the way. I'll bring the majority of Democrats to a smart, sensible, comprehensive immigration reform bill. But I'm going to have to have some help, given the rules of the Senate, where a simple majority is not enough.

Last question, Major.

Q Thank you, Mr. President. Good afternoon.

THE PRESIDENT: Good afternoon.

Q Two issues. Some in your government have said the federal government's boot is on the neck of BP. Are you comfortable with that imagery, sir? Is your boot on the neck of BP? And can you understand, sir, why some in the Gulf who feel besieged by this oil spill consider that a meaningless, possibly ludicrous, metaphor?

Secondarily, can you tell the American public, sir, what your White House did or did not offer Congressman Sestak to not enter the Democratic senatorial primary? And how will you meet your levels of expressed transparency and ethics to convey that answer to satisfy what appear to be bipartisan calls for greater disclosure about that matter? Thank you.

THE PRESIDENT: There will be an official response shortly on the Sestak issue, which I hope will answer your questions.

Q From you, sir?

THE PRESIDENT: You will get it from my administration. And it will be coming out -- when I say "shortly," I mean shortly. I don't mean weeks or months. With respect to the first --

Q Can you assure the public it was ethical and legal, sir?

THE PRESIDENT: I can assure the public that nothing improper took place. But, as I said, there will be a response shortly on that issue.

With respect to the metaphor that was used, I think Ken Salazar would probably be the first one to admit that he has been frustrated, angry, and occasionally emotional about this issue, like a lot of people have. I mean, there are a lot of folks out there who see what's happening and are angry at BP, are frustrated that it hasn't stopped. And so I'll let Ken answer for himself. I would say that we don't need to use language like that; what we need is actions that make sure that BP is being held accountable. And that's what I intend to do, and I think that's what Ken Salazar intends to do.

But, look, we've gone through a difficult year and a half. This is just one more bit of difficulty. And this is going to be hard not just right now, it's going to be hard for months to come. The Gulf --

Q This --

THE PRESIDENT: This spill. The Gulf is going to be affected in a bad way. And so my job right now is just to make sure that everybody in the Gulf understands this is what I wake up to in the morning and this is what I go to bed at night thinking about.

Q The spill?

THE PRESIDENT: The spill. And it's not just me, by the way. When I woke this morning and I'm shaving and Malia knocks on my bathroom door and she peeks in her head and she says, "Did you plug the hole yet, Daddy?" Because I think everybody understands that when we are fouling the Earth like this, it has concrete implications not just for this generation, but for future generations.

I grew up in Hawaii where the ocean is sacred. And when you see birds flying around with oil all over their feathers and turtles dying, that doesn't just speak to the immediate economic consequences of this; this speaks to how are we caring for this incredible bounty that we have.

And so sometimes when I hear folks down in Louisiana expressing frustrations, I may not always think that they're comments are fair; on the other hand, I probably think to myself, these are folks who grew up fishing in these wetlands and seeing this as an integral part of who they are -- and to see that messed up in this fashion would be infuriating.

So the thing that the American people need to understand is that not a day goes by where the federal government is not constantly thinking about how do we make sure that we minimize the damage on this, we close this thing down, we review what happened to make sure that it does not happen again. And in that sense, there are analogies to what's been happening in terms of in the financial markets and some of these other areas where big crises happen -- it forces us to do some soul searching. And I think that's important for all of us to do.

In the meantime, my job is to get this fixed. And in case anybody wonders -- in any of your reporting, in case you were wondering who's responsible, I take responsibility. It is my job to make sure that everything is done to shut this down. That doesn't mean it's going to be easy. It doesn't mean it's going to happen right away or the way I'd like it to happen. It doesn't mean that we're not going to make mistakes. But there shouldn't be any confusion here: The federal government is fully engaged, and I'm fully engaged.

All right. Thank you very much, everybody.

END
1:53 P.M. EDT

Attachment B

OFFICE OF THE SECRETARY
U.S. Department of the Interior

www.doi.gov
News Release

Salazar Calls for New Safety Measures for Offshore Oil and Gas Operations; Orders Six Month Moratorium on Deepwater Drilling

Cancels Western Gulf and Virginia Lease Sales, Suspends Proposed Arctic Drilling

05/27/2010

Contact: Kendra Barkoff (202) 208-6416

WASHINGTON – To improve the safety of oil and gas development in federal waters, provide greater environmental protection and substantially reduce the risk of catastrophic events such as the BP *Deepwater Horizon* oil spill, Secretary of the Interior Ken Salazar today called for aggressive new operating standards and requirements for offshore energy companies and ordered a six-month moratorium on deepwater drilling. He also canceled a pending lease sale in the Gulf of Mexico and a proposed lease sale off the coast of Virginia, and suspended proposed exploratory drilling in the Arctic.

The recommendations in the *30-Day Safety Report* Salazar sent President Obama include a recertification of all Blowout Preventers (BOPs) for floating drilling operations; stronger well control practices, blowout prevention and intervention procedures; tougher inspections for deepwater drilling operations; and expanded safety and training programs for rig workers.

“As we marshal every resource in support of the massive response effort for the BP oil spill, we must take appropriate action to prevent such a disaster in the future,” Secretary Salazar said. “We are taking a cautious approach to offshore oil and gas development as we strengthen safety and oversight of offshore oil and gas operations.”

Secretary Salazar is ordering a moratorium on drilling of new deepwater wells until the Presidential Commission investigating the BP oil spill has completed its six-month review. In addition, permitted wells currently being drilled in the deepwater (not counting the emergency relief wells being drilled) in the Gulf of Mexico will be required to halt drilling at the first safe stopping point, and then take steps to secure the well. Additional safety checks will be imposed on ongoing deepwater drilling activities as they prepare to shut down their operations. The Department of the Interior will be issuing notices to lessees and other documentation necessary to implement the moratorium.

Secretary Salazar said the Administration will continue to take a cautious approach in the Arctic and, in light of the need for additional information about spill risks and spill response capabilities, will postpone consideration of Shell’s proposal to drill up to five exploration wells in the Arctic this summer. In March, Secretary Salazar cancelled the remaining four lease sales in the 2007-2012 program that the previous Administration had scheduled for the Chukchi and Beaufort Seas in the Arctic, and the President formally withdrew Alaska’s Bristol Bay from the oil and gas leasing program. The Department will make decisions about potential future lease sales in Alaska in the 2012-2017 OCS program based on public input, scientific analysis, and the results of on-going investigations and reviews into the BP oil spill. (For a link to a fact sheet on OCS policy, click here.)

The Secretary today also cancelled a proposed 2012 lease sale for offshore Virginia to allow additional consultations with the Department of Defense on military training requirements in the area, and canceled a lease sale for the Gulf of Mexico that was scheduled for August 2010. The findings of the Presidential Commission, environmental reviews, science-based analysis and public input will inform the Secretary's decisions about whether to move forward with other leases sales in the Gulf of Mexico that are currently scheduled for 2011 and 2012, along with decisions about what areas in the Gulf of Mexico and the Atlantic should be considered for inclusion in the 2012-2017 OCS program.

"We must proceed with the utmost caution as we examine the many questions that the BP oil spill raises," Salazar said. "Prudence dictates that we pause and examine our drilling systems thoroughly so that we can ensure that this type of disaster does not happen again."

Interior's expedited *Safety Report* recommends a number of specific measures that can be taken on both a short and longer term basis to enhance the safety of offshore oil and gas activities. The report focuses on the two primary failures in the drilling process that may have led to the BP disaster: the loss of well control, and the failure of the blowout preventer (BOP) mechanism.

BOP equipment used on all OCS floating drilling rigs must be re-inspected and receive independent recertification to ensure that the devices will operate as originally designed and that any modifications or upgrades conducted after delivery have not compromised the design or operation of the BOP. Operators must also provide independent verification that the recertified BOP will operate properly with the drilling rig equipment and is compatible with the specific well location, borehole design and drilling plan. Within a year, all operations will require two sets of blind shear rams on BOPs to prevent system failure during an emergency.

The BOPs contain mechanisms designed to shut off the flow of oil and gas, either on command or automatically, when required or when a wellhead is damaged or experiences a blowout. Investigators are seeking to determine why the BOP atop the *Deepwater Horizon* well failed to activate as designed.

Well control design, construction and flow intervention mechanisms and procedures are being strengthened to require expert review and verification and mechanical and physical flow barriers in the drill casings and BOP equipment to prevent blowouts. Tougher requirements will improve the installation and cementing of drill casings in the wellbore to increase safety.

Some of Salazar's recommendations can be carried out immediately through Notices to Lessees, which will advise OCS lessees and operators of the requirements and provide guidance for their implementation. The Department will also immediately undertake an evaluation and revision of the manner in which it conducts drilling inspections on the OCS, and will issue a final rule covering operator Safety and Environmental Management Systems.

Other measures, although identified, are more appropriate to address initially through a formal rulemaking process. The Department will issue an interim final rule within 120 days to address these measures, and will provide a comment period to elicit input that may lead to further adjustments to this final rule.

Interior has identified a number of additional issues associated with the safety of OCS drilling that will benefit from further study and a wider discussion. The Department will therefore immediately provide for the establishment of DOI working groups to further develop measures and recommendations around these issues, seeking input as appropriate from academia, industry, and other technical experts and stakeholders. These issues involve highly technical and complex evaluations that must be undertaken with due care.

These working groups will present recommendations for further safety and environmental protection measures within 6 months, with implementation of the new recommendations through appropriate process within one year. The recommendations from these Departmental working groups may also inform the efforts of the President's new bipartisan National Commission.

On April 30, 2010, President Obama directed Secretary Salazar to prepare the expedited report evaluating additional offshore oil and gas safety measures that could be put into action on an interim basis, even before on-going investigations identify the root cause of the BP oil spill disaster. Interior consulted with a wide range of experts from industry, government, and academia. Draft recommendations were reviewed by seven experts identified by the National Academy of Engineering.

For a link to the 30-day safety report, click here.

For a link to Secretary Salazar's cover letter to the President, click here.

For a link to a fact sheet on OCS policy, click here.

###

FACT SHEET

A COMPREHENSIVE, SCIENCE-BASED OFFSHORE ENERGY PLAN

As part of a comprehensive energy strategy for the country, the Obama Administration has developed an open, science-based approach to determining what areas of the Outer Continental Shelf (OCS) are and are not appropriate for potential oil and gas development. The Administration's OCS strategy spans a revised 2007-2012 leasing program and a new 2012-2017 leasing program that will be developed based on science, environmental analysis, public input, safety, and other important considerations.

Alaska

The Obama Administration's has pursued a **cautious, science-based approach** for determining which areas in the Alaska OCS may – or may not – be appropriate for oil and gas leasing.

- In March, Secretary Salazar **cancelled the remaining four lease sales** in the 2007-2012 program that the Bush Administration had scheduled for the Chukchi and Beaufort Seas in the Arctic. Secretary Salazar determined that the country must take a cautious approach in the Arctic, and gather additional scientific information about resources, risks, and environmental sensitivities before making decisions about potential future lease sales in frontier areas.

- To better understand the resilience of Arctic coastal and marine ecosystems to potential OCS resource extraction activities, along with spill risks and spill response capabilities, Secretary Salazar directed the **United States Geological Survey (USGS) to conduct an initial, independent evaluation of science needs in the region**. The study will summarize what information is available, where knowledge gaps exist, and what research is needed to mitigate risks.

- In March, President Obama also withdrew **Bristol Bay, Alaska** – an area proposed for leasing by the previous Administration – from consideration for oil and gas development through 2017 and cancelled a lease sale that had been scheduled for 2011. Fisheries, tourism, and environmental values in Alaska's Bristol Bay make the area a national treasure and inappropriate for oil and gas drilling.

- Oil and gas companies hold leases for development in the Arctic that were issued under the previous Administration. Shell, which has leases in both the Beaufort and Chukchi Seas in the Arctic, had sought to begin drilling 5 exploratory wells in those areas this summer. Secretary Salazar announced on May 27 that Applications for Permits to Drill those 5 wells will not be considered until 2011 because of the need for further information-gathering, evaluation of proposed drilling technology, and evaluation of oil spill response capabilities for Arctic waters.

- The Administration will decide whether to move forward with a proposed lease sale in the Cook Inlet in Alaska – an area with existing oil and gas infrastructure – based on whether there is interest from industry to develop, on lessons learned from the BP oil spill, and whether environmental analysis shows that additional development can be done responsibly.

- The Department will make decisions about potential future lease sales in Alaska in the 2012-2017 OCS program based on public input, scientific analysis, and the results of ongoing investigations and reviews into the BP oil spill.

Atlantic

The Obama Administration's OCS strategy puts the northern Atlantic off-limits to further consideration for oil and gas development through 2017. As to the Mid and South Atlantic OCS, the Administration has proposed **to gather information** about what oil and gas resources may exist in these planning areas, conduct thorough environmental analysis, and gather public input to determine whether to consider the potential inclusion of those areas in the 2012-2017 five year plan.

- The Obama Administration will conduct a programmatic environmental impact statement (EIS) for seismic studies in the Mid and South Atlantic OCS. Seismic studies will determine the quantity and location of potential energy resources and help guide future decisions about whether to allow oil and gas drilling in the Atlantic Ocean.

- In March, 2010, Secretary Salazar decided to conditionally move ahead with additional reviews of the proposed Lease Sale 220 off the coast of Virginia, which the Bush Administration had included in the 2007-2012 program. Secretary Salazar has made clear, however, that a final decision about whether to move forward with Lease Sale 220 will depend on safety reviews that are under way in response to the BP oil spill and whether leasing off the coast of Virginia can be done in a way that protects the military mission and the environment.

    - On May 27, 2010, Secretary Salazar announced that based on military training requirements and the need to fully consider the recommendations from the Presidential Commission on the BP Deepwater Horizon oil spill, he is cancelling Lease Sale 220.

- At the appropriate time, the Department of the Interior will hold public meetings and conduct an environmental impact statement that will inform decisions about whether any areas in the Mid and South Atlantic should be included in the 2012-2017 program.

Gulf of Mexico

The Obama Administration's OCS strategy recognizes that the Gulf of Mexico holds 70% of the nation's economically recoverable oil and 82% of the economically recoverable gas reserves on the OCS and has existing oil and gas infrastructure to support development. Exploration and production must be conducted safely, responsibly, and subject to environmental analysis, public input, and safety considerations.

- Currently, three lease sales are scheduled for the Central and Western Gulf of Mexico before the end of 2012, not including the August, 2010 lease sale that Secretary Salazar cancelled on May 27, 2010. Each of the remaining three lease sales will be reviewed under the National Environmental Policy Act (NEPA), and will be subject to recommendations and decisions that may arise out of the reviews and investigations of the BP oil spill.

- Environmental analysis and public input will be gathered on potential lease sales in 2012-2017 in the Gulf of Mexico. The Administration also announced in March that it would work with Congress to determine whether and how to potentially open new areas in the Eastern Gulf of Mexico that are currently under Congressional moratorium, subject to environmental reviews, public comment, and other considerations.

Pacific

The Administration's OCS strategy recognizes there is consistent opposition from the public, States, and Members of Congress to expanded offshore development in the Pacific Ocean. No actions are proposed.

Oral Argument Scheduled for:
February 10, 1994

No. 92-1569

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT,
Acting By and Through Its Board of Directors,
Petitioner,

vs.

CAROL M. BROWNER, Administrator,
U.S. Environmental Protection Agency,
and U.S. ENVIRONMENTAL PROTECTION AGENCY,
Respondents.

WESTERN STATES PETROLEUM ASSOCIATION
Intervenor.
on behalf of Respondents

Petition for Review of
Final Rule of the Administrator

BRIEF OF PETITIONER

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WESTERN STATES PETROLEUM ASSOCIATION
Intervenor.
on behalf of Respondents

PETITION FOR REVIEW OF FINAL RULE
PROMULGATED BY THE ADMINISTRATOR

BRIEF OF PETITIONER

Rule 11(a)(1) Certificate as to Parties, Rulings, and Related Cases, and Rule 6(A) Disclosure of Interests.

A. Parties in amici

Appearing as petitioner is:

Santa Barbara County Air Pollution Control District,
State of California

Petitioner has no publicly owned parents, affiliates, or subsidiaries subject to disclosure under rule 6(A). Petitioner is a specially created district pursuant to Chapter 1 of Division 26 of the California Health and Safety Code. Santa Barbara

APCD is also an "Air Pollution Control Agency" as defined in Section 302(b)(3) of the Clean Air Act, 42 U.S.C. Section 7602 (b)(3), authorized and charged with responsibility of attaining and maintaining federal ambient air quality standards in the County of Santa Barbara. Santa Barbara APCD is located on the Central Coast of California and is adjacent 19 oil and gas producing platforms and associated facilities located on the Outer Continental Shelf. Santa Barbara APCD represents the citizens of the County of Santa Barbara whom are affected by air pollution from these sources.

Appearing as respondents are:

Carol M. Browner, Administrator, Environmental Protection Agency.

Environmental Protection Agency.

Appearing as intervenors on behalf of respondents are:

The Western States Petroleum Association.

There are no amici.

B. Ruling Under Review

This case is a challenge to the regulations issued by the Environmental Protection Agency establishing air quality requirements for sources of air pollution located on the Outer Continental Shelf. These standards and requirements were published at 57 Fed. Reg. 40791-40818 (Sept. 4, 1992) and are codified at 40 CFR Part 55.

C. Related Cases

These regulations have not been challenged in any other court. Although petitioner does not consider them to be related, Union Oil Company of California, et al. and the Ventura County Air Pollution Control District have challenged a decision by EPA which designated which state requirements are applicable to eight oil and gas platforms located adjacent to the County of Santa Barbara. These challenges seek to have the Ventura County Air Pollution Control District rules applied to the eight oil and gas platforms rather than those of petitioner. These suits do not involve the same

or similar issues that are raised in petitioner's challenge to the OCS rule and, therefore, are not related. Union Oil and Ventura County APCD have filed their petitions in both the Ninth Circuit Court of Appeals and this court, pending a determination of the proper forum. These cases are:

> *Union Oil, et al. v. EPA* No. 92-1570 (U.S. Court of Appeals for the District of Columbia).
>
> *Ventura County APCD v. EPA*, No. 92-1572 (U.S. Court of Appeals for the District of Columbia).
>
> *Union Oil, et al. v. EPA*, No. 92-70727 (U.S. Court of Appeals for the Ninth Circuit).
>
> *Ventura County APCD v. EPA*, No. 92-70730 (U.S. Court of Appeals for the Ninth Circuit).

DATED: October 21, 1993

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"Authorities chiefly relied upon are marked with an asterisk"

CONGRESSIONAL RECORD

REGULATIONS

MISCELLANEOUS

No. 92-1569

IN THE

United States Court of Appeals

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WESTERN STATES PETROLEUM ASSOCIATION
Intervenor.
on behalf of Respondents

PETITION FOR REVIEW OF FINAL RULE
PROMULGATED BY THE ADMINISTRATOR

BRIEF OF PETITIONER

STATEMENT OF ISSUES

1. Was it arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law for the Administrator of the Environmental Protection Agency to adopt provisions in 40 CFR Section 55.2 to exclude vessels from the definition of "OCS source" when such vessels are not permanently or temporarily attached to the sea bed or erected thereon or not physically attached to an OCS facility?

2. Was it arbitrary, capricious, an abuse of discretion, or otherwise

not in accordance with the law for the Administrator to adopt emission offset requirements in 40 CFR Section 55.5 which are not the same as those of the corresponding onshore area for sources within 25 miles of the state's seaward boundary?

3. Was it arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law for the Administrator to adopt delegation provisions in 40 CFR Section 55.11 which prohibit the delegation of authority by the Administrator to the states or local districts for areas of the OCS beyond 25 miles of the state seaward boundary?[1]

STATUTES AND REGULATIONS

Section 328 of the Clean Air Act, 42 U.S.C. Section 7627, is set forth in Appendix A to this brief. Also contained in the Appendix for the Court's convenience are excerpts from the Congressional Record. The final OCS rule will be contained in the Joint Appendix.

JURISDICTION

Pursuant to Section 328(a), each requirement adopted by the Administrator for the OCS is a standard under Section 111 of the Clean Air Act. Jurisdiction to review actions of the Administrator in promulgating standards under Section 111 is established by Section 307(b) of the Clean Air Act, 42 U.S.C. Section 7607(b).

STATEMENT OF THE CASE

PRELIMINARY STATEMENT

This case concerns the failure of the Administrator of the Environmental Protection Agency ("EPA") to include provisions in a final rule

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[1] In Petitioner's Statement of Non-Binding Issues, a fourth issue was identified that Petitioner has since chosen not to pursue.

issued on September 4, 1992 which apply "the same" air quality requirements to Outer Continental Shelf ("OCS") sources as are applied in the adjacent corresponding onshore area of the state, even though Congress added Section 328 to the Clean Air Act in 1990, 42 U.S.C. Section 7627, which specifically requires such a result. In particular, EPA adopted a rule which does not fulfill the fundamental mandate of Section 328 to apply "the same" requirements to OCS sources as are or will be applicable in California for air pollution from marine vessels in transit and for offsets. The Administrator's failure to provide for the regulation of in transit marine vessels is particularly distressing given the plain language of the statute, its legislative history, and the large amount of pollution generated by OCS vessels. Additionally, despite the plain language of Section 328 that requires the delegation of authority the Administrator has under the Act to implement and enforce OCS requirements, the Administrator refused to include in the OCS rule any provision which would allow for the consideration of delegation of authority for OCS sources located more than 25 miles from a state's seaward boundary.

I. REGULATION OF OUTER CONTINENTAL SHELF AIR POLLUTION UNDER SECTION 328 OF THE CLEAN AIR ACT.

Among the many sweeping revisions to the Clean Air Act ("Act") adopted by Congress in 1990 was Section 328, 42 U.S.C Section 7627, which transferred to the Environmental Protection Agency ("EPA") from the Department of Interior ("DOI") the authority to regulate air pollution from OCS sources adjacent to all states of the United States along the Pacific, Atlantic and Arctic Coasts, including Florida but excepting the OCS adjacent to the other states on the Gulf of Mexico. Section 328 further directed the Administrator to adopt a rule ("OCS rule") regulating pollution from OCS sources within one year of the adoption

of the 1990 Clean Air Act Amendments.

Section 328 sets forth two basic requirements for the OCS rule. First, the Administrator is required to promulgate requirements for all OCS sources that will achieve the attainment and maintenance of federal and state air quality standards. Second, for OCS sources within 25 miles of the seaward boundary of any state covered by the OCS rule,

> "such requirements shall be the same as would be applicable if the source were located in the corresponding onshore area, and shall include, but not be limited to, State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting."

42 U.S.C. Section 7627(a), emphasis added.

On September 4, 1992, the Administrator promulgated the final OCS rule as 40 CFR Part 55, at 57 Federal Register, No. 173, 40791. This action fulfilled the Administrator's duty to issue the OCS rule, however, the Administrator failed in two key respects to apply "the same" requirements to OCS sources that are applied in the corresponding onshore area of the state. These deficiencies concern the Administrator's failure to provide for the regulation of air pollution from marine vessels in transit and the failure to apply onshore mitigation requirements regarding "offsets," even though the plain and unmistakable language of the Act require such a result. Additionally, the Administrator did not include in the OCS rule any provisions for the delegation of authority to the states for areas of the OCS beyond 25 miles of the states' seaward boundary, even though the plain language of Section 328 requires that such applications be granted if they are "adequate."

II. AIR POLLUTION FROM OCS DEVELOPMENT HAS SEVERELY IMPACTED SANTA BARBARA COUNTY.

Santa Barbara County has a long history of dealing with OCS development and its associated impacts. In the 1980's alone, Exxon, U.S.A. and

Chevron, U.S.A., as operators and part owners, each constructed separate OCS projects consisting of a total of six OCS platforms adjacent to Santa Barbara County. These OCS platforms supplemented an already considerable number of OCS facilities off the coast of Santa Barbara County, which now number 19 in all. Additionally, four more platforms are just to the southeast and adjacent to Ventura County, but still close to Santa Barbara County. (See Map at p. 6, *infra*.) Of the existing 27 OCS facilities adjacent to the State of California, 23 are either adjacent to or near Santa Barbara County.

Air pollution from OCS sources adjacent Santa Barbara County is significant. During the rulemaking process, EPA's own analysis showed that OCS facilities adjacent to Santa Barbara County, including marine vessels, generate 1,470 tons of oxides of nitrogen ("NO_x") and 685 tons of hydrocarbons per year. Costs Associated with EPA Air Quality Regulations for Outer Continental Shelf Sources, September 1992, at A-39, JA 532. Additionally, of the 1,470 tons of NO_x generated annually, 45 percent (673 tons) of the OCS total is from support marine vessels associated with oil and gas development. *Ibid.* OCS development requires a substantial amount of shore-based support, including equipment, crews and supplies, almost all of which is transported by crew and supply boats. A.T. Kearney, Control Costs Associated With Air Emission Regulations for OCS Facilities, Sept. 30, 1991, at 21, JA 079. For OCS facilities adjacent to Santa Barbara County, the crew and supply boats primarily originate out of Port Hueneme located in Ventura County to the south, resulting in vessel trips of a minimum of 37 miles and a maximum of 130 miles. Kearney, Exhibit 12, at 52, JA 110. The resulting pollution from crew and supply boats associated with an individual platform was estimated to range from 26.2 to 92 tons of NO_x per year. *Ibid.*

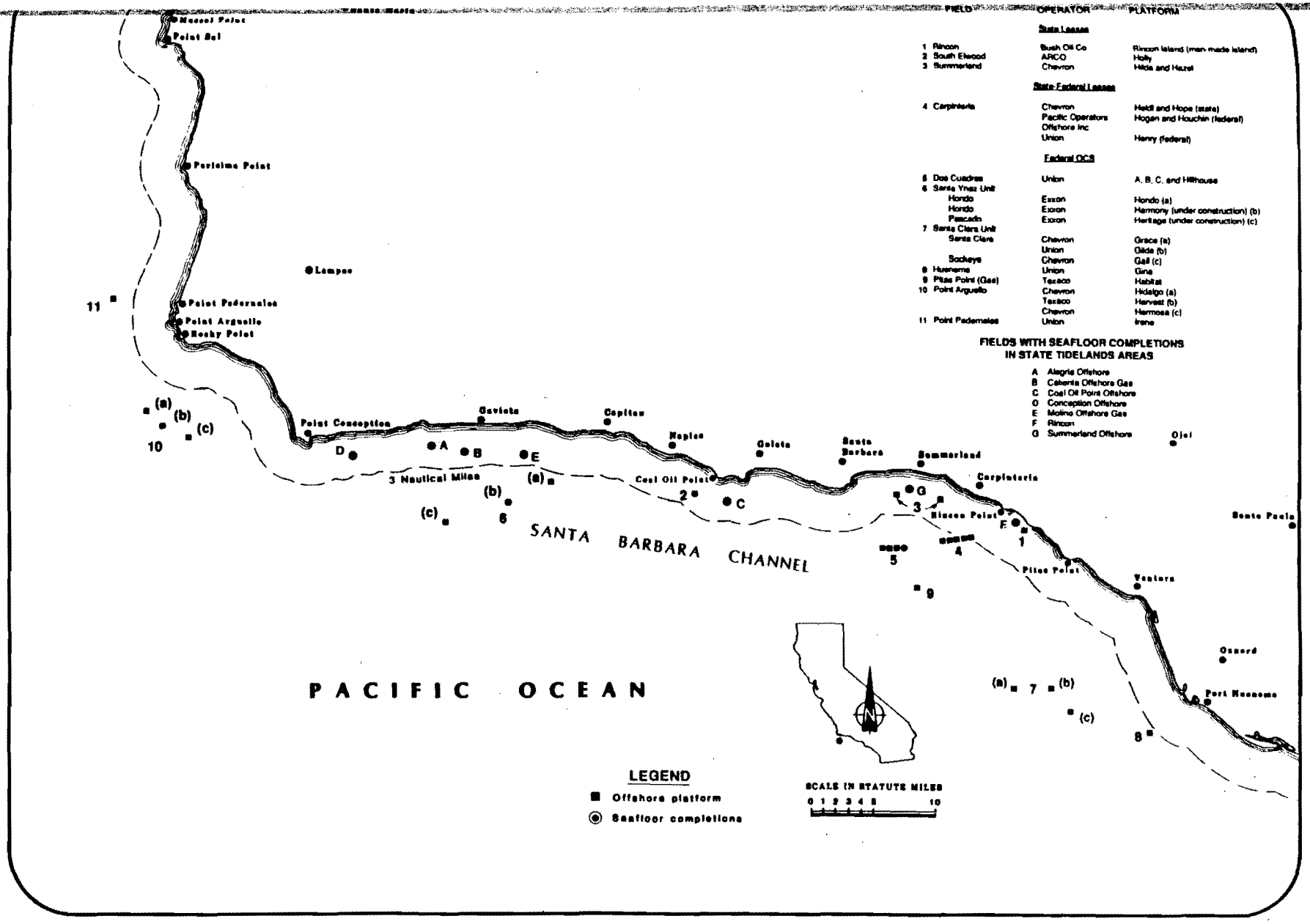

Figure 7b. California offshore platforms and islands in state and federal waters.

Santa Barbara County is a designated nonattainment area for both the state and federal ozone standards.[2] As such, the Santa Barbara County Air Pollution Control District ("Santa Barbara APCD") is required to adopt air quality attainment plans which provide for the regulation of onshore businesses, at significant expense, to reduce air pollution and meet the federal and state standards. The most recent federal mandate Santa Barbara APCD is required to meet is set forth in Section 182a of the Act, 42 U.S.C. Section 7511a, which requires the submission of an attainment demonstration by November, 1993.

Santa Barbara APCD has already required the application of controls on marine vessels for several oil and gas projects and these have been found to be highly cost-effective and have even resulted in substantial cost savings for the marine vessel operators by reducing fuel consumption. The California legislature has also adopted California Health and Safety Code Section 43013(b), which mandates that the California Air Resources Board develop a rule to regulate air pollution from marine vessels by December 31, 1994. See Appendix A. The OCS rule adopted by the Administrator prohibits the application of such state requirement to OCS vessels. Therefore, even though vessels in California State waters will be regulated, OCS vessels need not comply under the OCS rule adopted by the Administrator.

III. PAST REGULATION BY THE DEPARTMENT OF INTERIOR WAS NONEXISTENT AND DIVISIVE.

Prior to the adoption of the Section 328 and the OCS rule, OCS development adjacent to California was regulated by DOI pursuant to Section 5(a)8 of the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. Section 1334(a)(8). DOI generally did little to safeguard air quality, despite persistent and strong

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[2] Ozone is a pollutant that is not itself emitted but is formed out of the chemical reaction in sunlight of NO_x and reactive hydrocarbons.

objections and many lawsuits from the State of California and others. This was reflected in the legislative history for Section 328 as one of the reasons the amendment to the law was needed. The following is an excerpt from a report submitted into the Congressional Record by Congressman Lagomarsino.

> Under current federal regulation, these major sources of air pollution are not required to be mitigated or controlled. Large discrepancies exist in the regulation of air pollution from virtually identical onshore and OCS sources. In some areas, EPA requires stringent pollution controls onshore and within state waters to improve coastal air quality, while the Interior Department allows unmitigated OCS pollution under the provisions of the Outer Continental Shelf Lands Act.

136 Cong. Record, No. 149, Oct. 26, 1990, at H 12889.

EPA also acknowledged the problem in the Preamble to the Draft OCS rule, stating that California had been strongly critical of DOI's regulation of OCS development because DOI refused to incorporate basic air quality mitigation requirements into OCS projects, even though virtually identical projects in California state waters were providing such mitigation.

> Historically in California, the onshore community felt that OCS emission sources were not bearing a fair share of the burden of air pollution control. Onshore sources were subject to increasingly stringent controls while virtually identical sources operated on the OCS with very few controls and little mitigation. The onshore community generally disagreed with the DOI argument . . . [that] the distance of OCS sources from shore reduced their effects on onshore air quality and therefor [sic] reduced the need for controls and offsets. The result was a confrontational atmosphere in which the onshore community felt that OCS activity was encouraged at the expense of air quality or economic growth onshore. Start-up of OCS sources was often delayed by years due to extended litigation and negotiations on air quality issues. As a result, a trend developed for new OCS platforms constructed adjacent to California to apply controls to reduce emissions and obtain offsets to mitigate the impacts of remaining emissions.

56 Fed. Reg., No. 234, (Dec. 5, 1991) 63774, 63775 (col. 2), JA 145.

The problem for areas such as Santa Barbara County was that OCS development was causing or contributing to violations of the federal and state ozone standards. This was an extremely unfair result given the fact that onshore businesses, including oil and gas development in California coastal waters, were being stringently regulated in order to bring the County into attainment with the federal and state standards. This problem was cited in the report submitted into the Congressional Record by Congressman Lagomarsino as a primary concern that led to the adoption of Section 328 and its mandate that "the same" requirements that apply within the state also apply to adjacent OCS sources.

> Of primary concern is the fact that OCS air pollution is causing or contributing to the violation of federal and state ambient air quality standards in some coastal regions, with the potential that unmitigated OCS pollution will prevent certain coastal regions from attaining federal and state clean air standards. In Santa Barbara and other coastal regions, unmitigated OCS emissions could entirely negate the effect of all onshore emission reductions relied upon to achieve federal and state clean air standards. The adoption of more stringent regulations onshore to compensate for the effect of these unmitigated OCS emissions could only be done, if at all, with great cost to onshore industries and with substantial disruption to life-styles of coastal residents. The magnitude of OCS pollution and the fact that the prevailing winds bring much of this pollution onshore has lead the Environmental Protection Agency to express concern about the onshore air quality impacts from OCS development.

136 Cong. Record, No. 149, Oct. 26, 1990, at H 12889, (col. 3).

The impact of OCS development on California air quality is more than just an issue of equity or interference with Santa Barbara County's efforts to attain the federal and state ozone standards. Any air shed can accommodate only a limited amount of pollution and still meet federal and state air quality standards.

In spite of this limitation, DOI's practice of permitting OCS development without significant mitigation not only shifted the cost of meeting air quality standards to onshore sources, it also jeopardized the possibility of new or expanded growth of onshore businesses because of the large amount of pollution generated by OCS sources. This was acknowledged in the report inserted into Congressional Record in the House.

> Coastal economic development goals can only be achieved through the permitting and regulation of many low-polluting facilities. While keeping within allowable air quality standards, over ten times as much low-polluting development can be permitted, as compared to highly polluting development. Application of the same requirements of all offshore and onshore projects will preclude a few "dirty" projects from using up an air basin's remaining capacity to absorb pollutant [sic] and thereby impede future development.

136 Cong. Record. No. 149, Oct. 26, 1990, at H 12889. (col. 3).

In the same report, it was also acknowledged that the pollution problem caused by OCS development related to both the platforms and associated marine vessels and that existing control technology can significantly reduce this pollution.

> Uncontrolled operational emissions from an OCS platform and associated Marine vessels can exceed 500 tons of oxides of nitrogen (NO_x) and 100 tons of reactive hydrocarbons annually. Uncontrolled platform construction emissions can exceed 350 tons of NO_x while drilling an exploratory OCS well can cause emissions in excess of 100 tons NO_x. Existing pollution control technology can significantly reduce these pollution levels.

Ibid.

In this context, Congress adopted Section 328 to bring fairness and relief to coastal states that were being unfairly impacted by air pollution from OCS development. The concept is simple and fair - - OCS sources shall comply with "the

same" requirements as applied in the corresponding onshore area of the state. With the adoption of Section 328, Congress sought to bring to an end years of dispute and confrontation. The only thing remaining was for the Administrator to adopt an OCS rule that achieved this goal.

IV. THE RULEMAKING PROCESS.

To accomplish the goal of requiring OCS sources to comply with state air quality requirements, EPA primarily relied on incorporating state and local regulations into federal law. See Appendix A to 40 CFR Part 55--Listing of State and Local Requirements Incorporated by Reference into Part 55, by State. JA 558. The bulk of the OCS rule addresses procedural requirements, such as designation of corresponding onshore areas ("COA"), exemption requests, delegation, and consistency updates. On two substantive points, EPA has adopted a rule that departs from the requirements of the state -- regulation of marine vessels in transit and offsets. On a procedural issue, EPA has also adopted provisions for delegation that depart from the requirements of the Act by precluding any consideration of delegation of authority to the states for OCS facilities located more than 25 miles from the state's seaward boundary, even though Section 328 plainly states that such a delegation shall occur if a state's program is found to be "adequate" by the Administrator.

A. The Exclusion of Marine Vessels from Complying with "the same" Control Requirements as Applied in the State.

Section 328(a)(4)(C) identifies what is <u>included</u> in the term "OCS source." This provision is <u>nonexclusive</u>, and makes clear the fact that all activities previously regulated or authorized under the OCSLA are now regulated under Section 328 of the Clean Air Act. It does not undermine the fundamental requirement of Section 328(a), which is that OCS sources shall comply with the

same requirement as would be applicable if the source were located in the corresponding onshore area of the state. Section 328(a)(4)(C) provides, in part:

> (C) Outer Continental Shelf source. The terms "Outer Continental Shelf source" and "OCS source" include any equipment, activity, or facility which--
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> > (i) emits or has the potential to emit any air pollutant,
> > (ii) is regulated or authorized under the Outer Continental Shelf Lands Act, and
> > (iii) is located on the Outer Continental Shelf or in or on waters above the Outer Continental Shelf.[3]

42 U.S.C. § 7627(a)(4)(C), emphasis added.

Despite the plain language of Section 328(a)(4)(C), EPA adopted a definition of "OCS source" in the OCS rule that is both exclusive and inconsistent with the legislative history. EPA's definition states, in part:

> *OCS source* means any equipment, activity, or facility which:
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> (1) emits or has the potential to emit any air pollutant;
> (2) is regulated or authorized under the Outer Continental Shelf Lands Act ("OCSLA") (43 U.S.C. § 1331 *et seq.*); and
> (3) is located on the OCS or in or on waters above the OCS.[4]

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[3] The rest of the Section 328(a)(4)(C) provides:

> "Such activities include, but are not limited to, platform and drill ship exploration, construction, development, production, processing, and transportation. For purposes of this subsection, emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source, shall be considered direct emissions from the OCS source." (emphasis added.)

[4] The OCS rule goes on to provide as follows:

> The definition shall include vessels only when they are:

40 CFR § 55.2, 57 Fed.Reg. at 40807, emphasis added. JA 551.

After blatantly changing the statutory definition of Section 328 from a non-exclusive provision to an exclusive one, ("means" substituted for "include"), EPA then determined that the OCSLA did not "authorize or regulate" marine vessels in transit and, therefore, any state requirements for the control of air pollution from marine vessels in transit would not be applied to OCS vessels. In the Preamble to the OCS rule, EPA states:

> Only the vessel's stationary source activities may be regulated, since when vessels are in transit, they are specifically excluded from the definition of OCS source by statute. In addition, only the stationary source activities of vessels at dockside will be regulated under Title I of the Act (which contains NSR and PSD requirements), since EPA is prohibited from directly regulating mobile sources under that title. See *NRDC v. EPA*, 725 F.2d 761 (DC Cir. 1984.) Part 55 thus will not regulate vessels en route to or from an OCS source facility as "OCS sources," nor will it regulate any of the non-stationary source activities of vessels while at dockside. Section 328 does not provide EPA authority to regulate the emissions from engines being used for propulsion of vessels. Any state or local regulations that go beyond these limits will not be incorporated into the OCS rule.

Preamble to OCS rule, 57 Fed.Reg. at 40793-40794 (col. 1) JA 537-538.

EPA did take the position in rulemaking that it could regulate emissions from marine vessels pursuant to Title II of the Clean Air Act and that, if such a regulation was adopted, the OCS rule will be revised. On this issue, EPA stated:

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(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 or § 4(a)(1) of OCSLA (43 U.S.C. §1331 *et seq.*); or

(2) physically attached to an OCS facility, in which case only the stationary source aspects of the vessels will be regulated.

> If the mobile source emissions of vessels are regulated under future regulations developed pursuant to title II of the Act, the OCS rule will be revised accordingly.

Ibid.

Santa Barbara APCD strongly supports an EPA regulation of marine vessels under Title II. However, there is no assurance EPA will ever adopt such a regulation or, if it does, when it will be adopted. Additionally, EPA's comment in the Preamble that such a regulation would be incorporated into the OCS rule appears impossible because the OCS rule definition for "OCS source" does not include vessels in transit. Therefore, the definition of "OCS source" in the rule appears to squarely block incorporation of any Title II requirements into the OCS rule because of the narrow definition adopted by EPA. EPA's rule is, therefore, at odds with EPA's own statement of intent.

The failure to allow for the inclusion of Title II requirements in the OCS rule is even more problematic for California, which is allowed under Section 209 of the Act to impose more stringent requirements than those of EPA for "non-road" engines (including marine vessels), provided a waiver is obtained from EPA. 42 U.S.C. § 7543(e). With such a waiver, California can proceed with the regulation of vessels well before EPA develops a national marine vessel rule. Additionally, the State may also have more stringent regulations than those adopted by EPA, assuming EPA eventually adopts a marine vessel rule.[5] Under the OCS rule definition adopted by EPA, California's requirements cannot be incorporated into the OCS rule, even though such requirements are adopted pursuant to Title II of the Act and Section 328 clearly states that the same requirements applied in the state shall be applied to OCS sources. The result is that air pollution from vessels

[5] The Section 209 waiver process has been used by California to regulate automobile emissions much more stringently than the rest of the nation.

in transit on the OCS will not have to be controlled pursuant to the OCS rule even though vessels in state waters will be subject to control requirements.[6] The inequity will continue.

B. The OCS Rule's Offset Requirements Allow a Substantial and Unfair Advantage to OCS Sources.

Section 328 plainly and unmistakably requires, for OCS sources within 25 miles of a state's seaward boundary, the requirements "shall be the same as if the source were located in the corresponding onshore area, and shall include, but not be limited to, State and local requirements for . . . offsets . . . " 42 U.S.C § 7627(a).

Despite the clear language of the Act, EPA adopted substantive requirements for offsets which substantially depart from onshore requirements. In 40 CFR Section 55.5(d), the OCS rule requires, in part:

> (d) *Offset requirements.* Offsets shall be obtained based on the requirements imposed in the COA, and in accordance with the following provisions:
>
> . . .
>
> (2) To determine whether an offset is on the landward or seaward side of a proposed source or modification, a straight line shall be drawn through the proposed source or modification parallel to the coastline. Offsets obtained on the seaward side of the line will be considered seaward of the source, and offsets obtained on the landward side will be considered landward.
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> (3) Offsets obtained between the site of the proposed source or modification and the state seaward boundary shall be obtained at the base ratio for the

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[6] In many instances, vessels operating on the OCS will originate in California and, therefore, be subject to any rule adopted by California, as least while in State waters. Unfortunately, this does not resolve the problem. First, many of the types of controls may effect operational parameters of vessels, such as simple timing retard of ignition in the engine. Such restrictions can be ignored or altered on the OCS if no regulatory requirement prohibits such conduct. Second, if such controls are implemented on the OCS without a regulatory mandate, the operator may claim any reduction as a "voluntary reduction" and attempt to use it as an "offset." Any offset credit would simply transfer the pollution to a new source rather than eliminating it altogether.

> COA. No discounting or penalties associated with distance between the proposed source and the source of emissions reductions shall apply.
>
> (4) Offsets obtained on the landward side of the state seaward boundary will be subject to onshore discounting and penalties associated with distance as required in the COA to be applied in the following manner. A straight line shall be drawn from the site of the proposed source or modification to the source of the offsets. The point at which this lines crosses the state seaward boundary shall be treated as the site of the proposed source or modification for the purpose of determining the amount of offsets required.

EPA stated in the Preamble that the rationale for imposing these requirements is that it "would provide an incentive for OCS sources to obtain their offsets from the landward side of the OCS source." 57 Fed.Reg. at 40796, (col. 2), JA 540. The basic effect of this provision, however, is that it limits the ability of the COA to apply "distance discounting," which is a procedure whereby the offset ratio is increased as the distance increases between the offset source and the new source.[7] For example, these offset provisions of Section 55.5(d)(3) prohibit the application of higher offset ratios, regardless of distance, if the offsets are obtained on the landward side of the new source but still on the OCS. This inequitable arrangement means that distance discounting that is applied to sources in the state cannot, in such instances, be applied to OCS sources.

C. The Delegation Provisions of the OCS Rule Do Not Allow For Consideration of an Application for Delegation For OCS Sources Farther Than 25 Miles From a State's Seaward Boundary.

Section 328(a)(3) provides that "each State adjacent to an OCS

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[7] Typically, there is a base offset trading ratio, which under Santa Barbara's Rule 205C is 1.2:1. For example, for every 1 ton of new pollution generated by the new source that requires offsets (which is 25 tons or more), an existing source must reduce its pollution by 1.2 tons. For example, a new source that would generate 50 tons of NO_x per year would require 60 tons of offsets at the base ratio of 1.2:1. This ratio increases if the offset source is located more than 15 miles from the new source.

source" may submit regulations for implementing and enforcing the requirements of Section 328 and, if the Administrator finds such regulations "adequate, the Administrator shall delegate to that State any authority the Administrator has under this Act to implement and enforce such requirements." 42 U.S.C. § 7627(a)(3).

During rulemaking, several commenters requested that EPA adopt an OCS rule that at least allowed for the consideration of such applications; however, EPA refused for what are essentially policy reasons. EPA did not dispute the plain language of the statute; rather, EPA only stated that it was "more efficient to have the federal government retain authority than to have a state agency try to implement and enforce purely federal requirements." Preamble to OCS rule, 57 Fed.Reg. at 40801-40802. JA 545-546.

There are currently no OCS sources located more than 25 miles from the seaward boundary of the State of California. This is primarily due to the depth of the water, however, petroleum exploration and production in such waters will be possible with the development of new technology. Santa Barbara APCD's objection is that EPA intends that the OCS rule prohibit, on its face, any delegation of such authority. Therefore, if Santa Barbara wishes to challenge this provision timely, it must do so within 60 days of promulgation as required by Section 307(b) of the Clean Air Act, 42 U.S.C. Section 7607(b).

SUMMARY OF ARGUMENT

Pursuant to Section 328 of the Clean Air Act, EPA is required to adopt a rule for OCS sources which applies "the same" requirements for air quality "as would be applicable if the source were located in the corresponding onshore area . . ." Section 328 further requires the Administrator to delegate any authority to implement and enforce such requirements to a state if that states adopts and submits to EPA regulations and requirements that are found "adequate."

EPA has adopted an OCS rule that fails to provide for the application of state requirements for emissions from marine vessels in transit. This is contrary to the plain and unmistakable language of Section 328 to apply "the same" requirements to OCS sources that are applied in the corresponding onshore area of the state. Since the statute is not ambiguous, EPA has no discretion. Rather, as stated by the Supreme Court in *Chevron, U.S.A., INC. v. Natural Resources Defense Council ("Chevron v. NRDC")*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984) where the intent of Congress is clear, "that is the end of the matter, for the court as well as the agency, must give effect to the unambiguously expressed intent of Congress." Since the language of Section 328 is plain and unmistakable that "the same" requirements shall be applied to OCS sources as are applied to sources in the state.

EPA has attempted to avoid regulating marine vessels in transit under Section 328 by narrowly reading the definition of "OCS source" found in Section 328(a)(4)(C). EPA's narrow interpretation is unreasonable because this provision simply states that the term "OCS source includes . . . activities . . . authorized or regulated under the [OCSLA]." In contrast, EPA has adopted a definition in the OCS rule that states "OCS source means . . . activities . . . authorized or regulated under the [OCSLA.]" This Court and others have previously held that where Congress uses nonrestrictive terms in a statute, the statute is unambiguous and EPA may not restrict the scope of that statute through administrative interpretation. *Natural Resources Defense Council v. Reilly,* 983 F.2d 259, 268 (D.C. Cir. 1993). Therefore, EPA's departure from the unambiguous terms of Section 328 cannot be sanctioned.

The legislative history also clearly supports a conclusion that Congress intended that vessels in transit be regulated under Section 328. In particular, the

Conference Report states that the provisions of Section 328 will "ensure that the cruising emissions from marine vessels are controlled and offset as if they were part of the OCS facility's emissions." 136 Congressional Record, No.# 150, Oct. 27, 1990, at S 16983, (col. 1).

Petitioner strongly submits that the language of the statute is unambiguous and further inquiry beyond this point is not needed. If the Court does conclude that some ambiguity exists in Section 328 regarding the regulation of marine vessels in transit, Santa Barbara APCD submits that the clear legislative history as set forth in the Conference Report demonstrates that Congress intended that emissions from marine vessels be controlled and, therefore, the interpretation adopted by EPA is not one that Congress would sanction. *Chevron v. NRDC, supra,* 467 U.S. at 845, 104 S.Ct. at 2783. On this basis, EPA's narrow reading of the application of Section 328 cannot be allowed to stand.

With regard to offsets, EPA has departed from the explicit language of Section 328 which states that "the same" requirements applied in the state shall be applied to OCS sources "and shall include, but not be limited to, State and local requirements for . . . offsets . . ." Despite this plain and unambiguous language, EPA has adopted substantive provisions in the OCS rule that limit the application of state requirements for offsets, to the advantage and benefit of OCS sources. This departure from the requirements of Section 328 clearly fails to pass the first prong of the analysis of the Supreme Court in *Chevron v. NRDC*, and must be set aside.

The Administrator has also failed to follow the requirements of Section 328 with regard to delegation. Section 328(a)(3) plainly and unambiguously states that each "State adjacent to an OCS source" included under Section 328(a) may be delegated authority to implement and enforce OCS requirements if the "Administrator finds that the State regulations are adequate." Despite this language,

EPA has simply concluded that delegation is not appropriate for OCS sources beyond 25 miles of the seaward boundary of a state. To this end, EPA has adopted an OCS rule that, on its face, does not allow for delegation of authority for such OCS sources. Since this is contrary to the plain and unambiguous language of the statute, it fails the first prong of the Supreme Court's analysis in *Chevron v. NRDC* and must be set aside.

ARGUMENT

I. STANDARD OF REVIEW.

Under the Clean Air Act, EPA's adoption of a rule may not stand if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law or in excess of statutory jurisdiction, authority, or limitations, or short of statutory right. 42 U.S.C. § 7607(d)(9). This Court's review of EPA's construction of the Act is subject to the analysis laid out by the Supreme Court in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council ("Chevron v. NRDC")*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). As stated by the Supreme Court, two questions present themselves in this analysis.

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

Chevron v. NRDC, 467 U.S. at 842-843, 104 S.Ct. at 2781-2782. The Supreme Court

further stated that if a "court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is law and must be given effect." *Chevron v. NRDC*, 467 U.S at 843 n. 9, 104 S.Ct. at 2881-2782 n. 9. Where the language of the statute is "plain and unmistakable," a court need not proceed beyond the first step of the *Chevron* analysis. *American Petroleum Institute v. Reilly*, 983 F.2d 259, 266 (D.C. Cir. 1993). Only if the statute is ambiguous or silent may an agency charged with administering that statute then interpret it, "unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned." *Chevron v. NRDC*, 467 U.S at 845, 104 S.Ct. at 2783, quoting *United States v. Shimer,* 367 U.S. 374, 382, 81 S.Ct. 1554, 1560, 1561, 6 L.Ed.2d 908 (1961).

Santa Barbara County APCD submits that for all of the issues presented in this case, EPA's actions do not satisfy the first prong of the Supreme Court's analysis in *Chevron* and, therefore, must be set aside.

II. EPA's FAILURE TO PROVIDE FOR THE REGULATION OF MARINE VESSELS IN TRANSIT IS CONTRARY TO THE PLAIN LANGUAGE OF SECTION 328 AND ITS LEGISLATIVE HISTORY.

A. EPA's Action Fails to Meet the First Prong of the *Chevron* Analysis.

1. Section 328 Commands That All Requirements of the State be Applied to OCS Sources Within 25 Miles of the State's Seaward Boundary, Including Emissions Controls and Emission Limitations.

When Congress enacted Section 328 of the Clean Air Act in 1990, this provision was intended to end years of disputes and inequities regarding the regulation of OCS air pollution sources. In Section 328 Congress required that the air pollution control requirements for OCS sources "shall be the same" as those that would apply if the source were located in the corresponding onshore area. Section

328 also clearly states that such requirements "shall include" but are not limited to those for emission controls, emission limitations, and offsets.

> **Section 328. Air Pollution from Outer Continental Shelf activities**
> **(a) General Provisions.** (1) Applicable requirements for certain areas. Not later than 12 months after the enactment of the Clean Air Act Amendments of 1990, following consultation with the Secretary of the Interior and the Commandant of the United States Coast Guard, the Administrator, by rule, shall establish requirements to control air pollution from Outer Continental Shelf sources located offshore of the States along the Pacific, Arctic and Atlantic Coasts, and along the United States Gulf Coast off the State of Florida eastward of longitude 87 degrees and 30 minutes ("OCS sources") to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of title I [42 U.S.C. §§ 7470 et seq.]. For such sources located within 25 miles of the seaward boundary of such States, such requirements shall be the same as would be applicable if the source were located in the corresponding onshore area, and shall include, but not be limited to, State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting.

42 U.S.C. § 7627(a), emphasis added.

The first and primary task for determining the intent of Congress is to employ traditional tools of statutory construction. *Chevron v. NRDC*, 467 U.S at 843 n. 9, 104 S.Ct. at 2881-2782 n. 9. Under accepted canons of statutory interpretation, a court must interpret statutes as a whole, giving effect to each word. *Boise Cascade Corp. v. Environmental Protection Agency* 942 Fed.2d 1427 (9th Cir. 1991.)

The plain and unmistakable language of Section 328 requires the Administrator to control air pollution from any source on the OCS to the same extent as "if the source were located in the corresponding onshore area." "OCS sources" refers to sources of air pollution on the OCS adjacent to one of the states described in Section 328(a), (which is all coastal states except those located on the

Gulf of Mexico, but including Florida). The plain and ordinary meaning of this language is that all requirements of the COA apply to sources of air pollution on the OCS. No exception is made for marine vessels, therefore, if the COA has requirements for the control of air pollution from marine vessels in transit, those requirements shall be applied, "as if the source were located in the [COA]."

2. The Provision in Section 328 That States Which Activities are Included in the Term "OCS Source" Cannot Be Reasonably Read to Exclude Marine Vessels in Transit.

During rulemaking and in the final OCS rule, EPA's position has been that it cannot apply state requirements for the control of air pollution from vessels in transit because of the provisions of Section 328(a)(4)(C).

Section 328(a)(4)(C) describes which activities are "include[d]" in the term "OCS source." This provision not only describes what is included in the term, it also describes when a vessel's emissions "shall" be considered as "direct emissions" from an OCS source. The requirement that certain vessel emissions shall be included as direct emissions for an associated OCS source has the effect of requiring this result, even if the state's requirements do not similarly include such a provision. In this regard, Section 328 sets a minimum requirement, regardless of the provisions of the states.

> (C) Outer Continental Shelf source. The terms "Outer Continental Shelf source" and "OCS source" include any equipment, activity, or facility which--
>
> > (i) emits or has the potential to emit any air pollutant,
> > (ii) is regulated or authorized under the Outer Continental Shelf Lands Act, and
> > (iii) is located on the on the Outer Continental Shelf or in or on waters above the Outer Continental Shelf.
>
> Such activities include, but are not limited to, platform and drill ship exploration, construction, development, production, processing, and transportation. For purposes of this subsection, emissions from any vessel servicing or associated with an OCS source, including emissions

> while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source, shall be considered direct emissions from the OCS source.

42 U.S.C. § 7627(a)(4)(C), emphasis added.

The plain and unambiguous language of Section 328(a)(4)(C) does not limit the definition of "OCS source" set forth in Section 328(a); rather, 328(a)(4)(C) simply states what this term "includes." In particular, and significantly, it does not exclude marine vessels or any other OCS source of air pollution that would be subject to the requirements of the adjacent state through Section 328(a). If Congress had wished to limit the term "OCS source" to those activities identified in Section 328(a)(4)(C), it would have stated that "OCS source means - - ." In contrast, for the terms "Outer Continental Shelf," "Corresponding onshore area," and "new OCS source" in the very same subsection of Section 328, Congress chose to use the word "means" for purposes of definition. See 42 U.S.C. § 7627(a)(4)(A) (B) & (D). Clearly, Congress expressed a different intent when it chose to use a different word -- OCS sources "include" -- when identifying OCS sources subject to onshore requirements. See *Boise Cascade Corp. v. EPA*, 942 F.2d 1427, 1432 (9th Cir. 1991), the "use of different words in the same sentence of a statute signals that Congress intended to distinguish between them."

It is also well founded that where Congress has chosen to use a non-exclusive term in a statute, EPA may not ignore the use of that term and limit the scope of the statute. For example, this Court has recently stated that the "use of the plural defeats any implication that Congress intend EPA to consider only [the singular]." *Natural Resources Defense Council v. Reilly,* 983 F.2d 259, 268 (D.C. Cir. 1993), invalidating EPA's consideration of only one technology where the Act clearly required EPA to evaluate vapor recovery "systems." Where Congress has used language that shows it intended to not restrict the scope of a statute, there is no

ambiguity and EPA may not interpret the statute narrowly. *Natural Resources Defense Council v. EPA*, 915 F.2d 1314, 1320 (9th Cir. 1990), invalidating EPA's interpretation of the Clean Water Act because "[b]y using the plural 'lists,' Congress foreclosed EPA from restricting the scope of paragraph C to waters on the B list. Since the language of paragraph C is unambiguous, there is no need to resort to extrinsic sources to interpret the statute." (emphasis added.)

Where the language of the statute is "plain and unmistakable," a court need not proceed beyond the first step of the *Chevron* analysis. *American Petroleum Institute v. Reilly*, 983 F.2d 259, 266 (D.C. Cir. 1993). Congress plainly chose a non-exclusive word to describe what sources are included in the term "OCS sources." There is no ambiguity. Therefore, the plain and unmistakable terms of Section 328(a) must be given effect and EPA is required to apply all state requirements for air pollution control to OCS sources, including those for marine vessels in transit.

3. The Legislative History Shows that Congress Intended that Emission Controls be Applied to Marine Vessels in Transit.

If necessary, when construing a statute, a court will look at the legislative history as well as the words of the statute to "divine the intent of Congress, which of course binds both agency and court." *Natural Resources Defense Council v. Environmental Protection Agency* 822 F.2d 104, 111 (D.C. Cir. 1987). Santa Barbara APCD submits that the language of Section 328 is clear and unambiguous and, therefore, there is no need to resort to the legislative history. If such an inquiry is made, however, it further supports Santa Barbara APCD's position.

The legislative history on this issue is short, but unmistakably clear. The Clean Air Conference Report was inserted into the Congressional Record in the Senate by Senator Baucus, who prefaced his action by stating: "Mr. President,

I . . . would like to insert in the RECORD at this point an explanation that is much more detailed than the statutory language." There was no objection and the following analysis was submitted as part of the Conference Report:

> Marine vessels emissions, including those from crew and supply boats, construction barges, tugboats, and tankers, which are associated with an OCS activity, will be included as part of the OCS facility emissions for the purpose of regulation. Air emissions associated with stationary and in transit activities of the vessels will be included as apart of the facility's emissions for vessel activities within a radius of 25 miles of the exploration, construction, development or production location. This will ensure that the cruising emissions from marine vessels are controlled and offset as if they were part of the OCS facility's emissions.

136 Congressional Record, No.# 150, Oct. 27, 1990, at S 16983, (col. 1), emphasis added. One day earlier, the same analysis, as it pertained to OCS activities, was also inserted into the Congressional Record for the House by Congressman Lagomarsino. 136 Congressional Record, No.# 149, Oct. 26, 1990, at H 12890.

These statements in the Congressional Record point to the fact that Congress intended vessel emissions shall be included as part of the OCS facility's emissions for the "purpose of regulation" and that such emissions will be "controlled and offset." This statement of intent together with the unambiguous language of the statute prohibits EPA from adopting a regulation that does not accomplish this result.

B. If Section 328 Were Found to be Ambiguous, EPA's Interpretation is Not One Congress Would Have Sanctioned.

Santa Barbara APCD strongly urges the Court to find that there is no ambiguity in Section 328 and that all state requirements for the control of air pollution from the OCS shall be applied, including those for marine vessels. Petitioner believes that no further inquiry beyond the plain language of Section 328

is necessary. If the Court does proceed to the second prong of the *Chevron v. NRDC* analysis, petitioner submits EPA's interpretation still cannot stand.

If a statute is ambiguous or silent on an issue, the agency charged with administering that statute may reasonably interpret it, "unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned." *Chevron v. NRDC*, 467 U.S at 845, 104 S.Ct. at 2783, quoting *United States v. Shimer,* 367 U.S. 374, 382, 81 S.Ct. 1554, 1560, 1561, 6 L.Ed.2d 908 (1961).

EPA's conclusion that it may not regulate emissions from vessels in transit is based entirely on the reference in Section 328(a)(4)(C) that "OCS source" includes any equipment, activity, or facility which-- "(ii) is authorized or regulated under the [OCSLA]." As stated earlier, the last part of this definition states that:

> Such activities include, but are not limited to, platform and drill ship exploration, construction, development, production, processing, and transportation. For purposes of this subsection, emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source, to be included as direct emissions from the OCS source.

42 U.S.C. § 7627(a)(4)(C). EPA's response to this language is that EPA will include emissions from vessels in transit in the OCS source's "potential to emit" calculations. In the Preamble, EPA states:

> All vessel emissions related to OCS activity will be accounted for by including vessel emissions in the "potential to emit" of an OCS source. Vessel emissions must be included in offset calculations and impact analyses, as required by Section 328 and explained in the NPR.

57 Fed.Reg. at 40794, (col. 1), JA 538.

The problem with EPA's interpretation is that while it allows for the provision for offsets for vessel emissions associated with an OCS source, within 25

miles of that source, this interpretation does not allow for the imposition of "emission controls" or "emission limitations," as required by Section 328(a). As such, EPA's rule allows for the offsetting but not the control of in-transit vessel emissions.[8] This interpretation is plainly at odds with the Conference Report, which states:

> Air emissions associated with stationary and in transit activities of the vessels will be included as part of the facility's emissions for vessel activities within a radius of 25 miles of the exploration, construction, development or production location. This will ensure that the cruising emissions from marine vessels are **controlled and offset** as if they were part of the OCS facility's emissions.

136 Congressional Record, No.# 150, Oct. 27, 1990, at S 16983, emphasis added. At a minimum, this legislative history, which is in the Congressional Record for both the House and the Senate, states the intent of Congress that the definition of "OCS source" set forth in Section 328 shall allow for the "control and offset" of emissions from vessels in transit. A plainer interpretation is that this statement shows that Congress never intended to limit the application of the air pollution control requirements of the state to only stationary sources; rather, this statement shows that Congress meant what it said when it stated "OCS source includes," but obviously is not limited to, activities identified in Section 328(a)(4)(C).

EPA's comment on the legislative history was that "[i]t could be argued that project emissions are controlled if they are offset, and the amount of offsets is irrelevant." Response to Comments at 6, JA 430. This response ignores that Congress used both terms, "offsets" and "controls," in Section 328(a) and in the legislative history. The "use of different words in the same sentence of a statute

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[8] The failure to require emission controls is significant because offsets are only applied to new projects. Without the authority to impose emission limitations on existing vessels, the substantial amount of pollution currently being generated from OCS vessels cannot be regulated.

signals that Congress intended to distinguish between them." *Boise Cascade Corp. v. EPA, supra*, 942 F.2d at 1432. Plainly, Congress knew the difference between the two terms.

Based on this legislative history, Santa Barbara APCD submits that EPA's interpretation is not one Congress would sanction because the OCS rule only provides for offsets, but not emission controls, to mitigate in-transit vessel air pollution. If EPA's interpretation is not one that would be sanctioned by Congress, it must be set aside. *Chevron v. NRDC*, 467 U.S at 845, 104 S.Ct. at 2783.

III. EPA's FAILURE TO APPLY THE OFFSET REQUIREMENTS OF THE CORRESPONDING ONSHORE AREA FAILS TO MEET THE FIRST PRONG OF THE *CHEVRON* ANALYSIS.

In the OCS rule at 40 CFR Section 55.5(d), EPA has adopted detail requirements for offsets. Typically, the rules of the state set a minimum offset requirement for sources that "trigger" offsets. This base ratio in Santa Barbara is 1.2:1, i.e., for every new ton of pollution generated, the new source must reduce pollution at another source as mitigation ("offset") by at least 1.2 tons. Santa Barbara APCD Rule 205C. It is also typical that the offset ratio increases as the distance between the new source and the offset source increases. The increase is necessary because the effectiveness of the mitigation decreases when it is located farther away from the new source.

Section 328(a) explicitly mandates that OCS sources within 25 miles of the state's seaward boundary shall comply with the state requirements, including those for offsets.

> For such sources located within 25 miles of the seaward boundary of such States, such requirements shall be the same as would be applicable if the source were located in the corresponding onshore area, and shall include, but not be limited to, State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting.

There is no ambiguity in the statute. There is no gap in the statute. Despite this explicit requirement in the Act, EPA significantly modified the offset requirements for OCS sources. In 40 CFR Section 55.5(d), the OCS rule requires, in part, the following:

> (d) *Offset requirements.* Offsets shall be obtained based on the requirements imposed in the COA, and in accordance with the following provisions:
>
> . . .

The "following provisions" referenced in Section 55.5(d), above, go on to restrict the application of distance discounting. See discussion at pp. 15-16, *supra.*

There are two problems with EPA's requirements for offsets. One, they establish significant relief from offset requirements for OCS sources by restricting the application of distance discounting may be applied by the COA.[9] Second, and most significant for this Court, EPA has departed from the clear directive of Section 328(a) that the Administrator shall apply "the same" requirements to OCS sources as would apply if that source were located in the COA. Instead of applying state requirements, EPA has developed its own supplemental requirements that serve to reduce the amount of mitigation OCS sources must provide, even though if the same source were located in the state, no such reduction would be allowed.

Where Congress has directly spoken on an issue, and its intent is clear, "that is the end of the matter, for the court as well as the agency, must give effect to the unambiguous expressed intent of Congress." *Chevron v. NRDC*, 467

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[9] Notwithstanding the departure from the State requirements, the significant substantive problem with EPA's formula is that it prohibits distance discounting when offsets are obtained between the OCS source and the state's seaward boundary but makes no allowance for the fact that this would allow a new source to obtain offsets from another OCS source fifty miles or more away and at the base offset ratio of the COA.

U.S. at 842-843, 104 S.Ct. at 2781-2782. As such, whatever good intentions or policies EPA may have been trying to implement, this provision cannot stand and must be invalidated with directions to EPA that it adopt an OCS rule that requires application of the offset requirements of the COA.

IV. EPA's FAILURE TO ALLOW FOR DELEGATION OF AUTHORITY FOR OCS AREAS BEYOND 25 MILES OF THE SEAWARD BOUNDARY OF A STATE FAILS TO MEET THE FIRST PRONG OF THE *CHEVRON* ANALYSIS.

In Section 328(a)(3), Congress has provided a statutory mechanism in the Act for any state adjacent to an OCS source covered by Section 328(a) to promulgate and submit requirements to the Administrator for implementing and enforcing OCS requirements. Further, if the Administrator finds that the state regulations are "adequate," the Administrator is required to delegate to the state any authority the Administrator has under the Act to implement and enforce those requirements.

> (3) State procedures. Each State adjacent to an OCS source included under this subsection may promulgate and submit to the Administrator regulations for implementing and enforcing the requirements of this subsection. If the Administrator finds that the State regulations are adequate, the Administrator shall delegate to that State any authority the Administrator has under this Act to implement and enforce such requirements. Nothing in this subsection shall prohibit the administrator from enforcing any requirement of this section.

42 U.S.C § 7627(a)(3), emphasis added.

Pursuant to the plain and unambiguous language of the statute, any state "adjacent to an OCS source included under [Section 328(a)]" may seek a delegation of authority from EPA to implement and enforce any authority the Administrator has under the Act to implement and enforce such requirements.

In 40 CFR Section 55.11, EPA has provided for delegation for

adjacent OCS sources within 25 miles of a state's seaward boundary. For adjacent OCS sources beyond 25 miles of a state's seaward boundary, the OCS rule is silent. It provides, in part:

> **§ 55.11 Delegation.**
> (a) The governor or the governor's designee of any state adjacent to an OCS source subject to the requirements of this part may submit a request to the Administrator for authority to implement and enforce the requirements of this OCS program within 25 miles of the state seaward boundary, pursuant to section 328(a) of the Act.
> . . .

57 Fed. Reg. at 40812, (col. 3) JA 556 (emphasis added.) Although the OCS rule does not explicitly prohibit delegation of authority for OCS sources located farther than 25 miles from the state's seaward boundary, EPA made it clear during the rulemaking process and in the Preamble to the OCS rule and Response to Comments that EPA's intent was to not allow for the consideration of an application for delegation for sources beyond 25 miles of a state's seaward boundary. In the Preamble, EPA states:

> Several commenters questioned why EPA was not delegating authority for sources beyond 25 miles from the states' seaward boundaries. They pointed out that the statute required EPA to delegate all of its authority under section 328 if the state program was adequate. However, for sources beyond 25 miles, only federal requirements were incorporated into this part. In this situation, EPA believes that it is more efficient to have the federal government retain authority than to have a state agency try to implement and enforce purely federal requirements. The state agency would have to treat sources within 25 miles with one set of rules and procedures and sources beyond 25 miles with a second set of rules and procedures.

57 Fed.Reg. at 40801-40802, (col. 3), JA 545-546. In the Response to Comments, EPA similarly stated that delegation of authority for areas beyond 25 miles "is not appropriate." Response to Comments, Final Rulemaking, Sept. 1992 at 54, JA 478.

This interpretation by EPA is inconsistent with the plain language of

Section 328. Rather, Section 328 states that delegation may be sought by any state "adjacent to an OCS source." If Congress had wished to limit delegation to sources within 25 miles of the state, it could have done so. The plain and unmistakable language of the Act clearly allows states to apply and be considered for delegation of authority for sources beyond 25 miles. Where Congress has directly spoken on an issue, and its intent is clear, "that is the end of the matter, for the court as well as the agency, must give effect to the unambiguous expressed intent of Congress." *Chevron v. NRDC*, 467 U.S. at 842-843, 104 S.Ct. at 2781-2782.

Santa Barbara APCD also submits that EPA's rationale that it is "more efficient" to have the federal government retain authority over "purely federal requirements" is inconsistent with other EPA delegations of authority for new source performance standards ("NSPS") and national emission standards for hazardous air pollutants ("NESHAP") under Sections 111(c) (42 U.S.C. § 7411) and 112(d) (42 U.S.C § 7412(d)) of the Clean Air Act. In both of these instances, state and local governments implement and enforce requirements that are "purely federal."

Santa Barbara APCD does not dispute that EPA will have discretion in considering any application for delegation to determine if it is "adequate." However, this discretion should not be extended so far as to allow EPA to refuse to even consider such an application, regardless of its merit. Therefore, EPA should be directed by this Court to further consider this issue and promulgate requirements that allow for a delegation of authority for OCS sources located adjacent to a state more than 25 miles from the state's seaward boundary.

CONCLUSION

For the reasons stated herein, Santa Barbara APCD submits that EPA has adopted an OCS rule, critical portions of which depart from the clear and unmistakable intent of Congress as expressed by the plain language of Section 328

of the Act and its legislative history. Petitioner requests that this Court rule invalid the provisions of the OCS rule which: exclude the regulation of marine vessels in transit; require the provision of offsets in a manner inconsistent with those of the corresponding onshore area; and fail to provide for delegation of authority for OCS sources located more than 25 miles from a state's seaward boundary. Petitioner further requests that EPA be directed to adopt modifications to the OCS rule consistent with the determinations of this Court.

Dated: October 21, 1993

Respectfully submitted,

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Outer Continental Shelf

Air Regulations

40 CFR Part 55

Response to Comments Document

Final Rulemaking

September, 1992

Docket No. A-91-76

TABLE OF CONTENTS

I. INTRODUCTION

This document contains comments received during the public comment period for the Notice of Proposed Rulemaking (NPR) for 40 CFR part 55, published December 5, 1991, followed by EPA responses to those comments. Many comments, especially when several comments were received on the same issue, were paraphrased and/or consolidated. The original comment letters and public hearing testimony can be found in EPA Docket No. A-91-76. The docket is available for public inspection and copying at the following locations: (1) U.S. Environmental Protection Agency Region 9, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105, and (2) U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 in Room M-1500. These locations are open to the public Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

Appendix A contains a list of acronyms used in this document and the phrases they represent. Appendix B contains a list of all parties who submitted written comments or gave hearing testimony on the proposal. Appendix C contains a list of the individual state and local rules incorporated by reference into part 55 upon which EPA received comments and indicates the action EPA has taken in response to these comments.

II. RESPONSES TO PUBLIC COMMENTS

A. Regulation and Preamble

1. Authority and Scope (§55.1)

1-1 Comment: Clarify that §328 not only authorizes EPA to take this action, it mandates it. It also mandates equity between onshore sources and sources located within 25 miles of the states' seaward boundaries.

Response: The rule has been changed to indicate this action is mandated. It is also correct that the statute mandates that the requirements for sources within 25 miles of states' seaward boundaries be the same as the requirements in the onshore area.

2. Definitions (§55.2)

2-1 Comment: EPA should change the definition of COA so that sources beyond 25 miles from states' seaward boundaries would have a COA.

Response: There are two reasons for the COA designation. First, for sources located within 25 miles of states' seaward boundaries the COA designation determines the set of requirements that shall apply. For sources located beyond 25 miles from states' seaward boundaries EPA determines the requirements that shall apply so there is no need to extend the COA designation for this reason. Second, a COA designation allows delegation of EPA authority to implement and enforce the rule to the air pollution control agency in the COA. Since EPA will implement and enforce the OCS program beyond 25 miles form states' seaward boundaries there is no need to extend the COA designation for this reason either.

2-2 Comment: The definition of COA and NOA should be modified so that a proposed source will trigger the definitions. For example, "NOA" means, with respect to any [proposed] OCS source, the onshore area geographically closest to that [proposed] source." Bracketed words added by commenter.

Response: It appears that the purpose of this comment is for EPA to clarify the fact that proposed sources as well as existing sources are subject to the requirements of the designated COA. This is important in light of the many preconstruction requirements that exist onshore and EPA has incorporated language into the final rule to reflect the fact that proposed sources are indeed subject to the requirements of the rule.

2-3 Comment: The definition of exploratory source is too vague for operations in the Arctic region. Arctic exploratory operations can involve non-drilling activities such as the construction of ice and gravel islands and vehicular traffic over ice roads. We suggest that EPA add the words "and any related construction activities" at the end of the sentence.

Response: The activities used as examples are often regulated separately from the stationary source. Construction activities are usually addressed in the local rules, including the extent to which they may be considered part of the source. Vehicular emissions are likely to be treated as mobile source emissions, subject to regulation under a different title of the CAA. The goal of this rule is to emulate the onshore regulatory regime as closely as possible within 25 miles of states' seaward boundaries. To expand definitions in the manner suggested would increase the possibility of overlap and conflict between the definitions of this rule and the onshore rules.

2-4 Comment: The definition of modification should be changed to allow de minimus increases in emissions without subsequent pre-construction requirements.

Response: This suggestion would violate the definition of modification given in the statute and the directive that the OCS requirements within 25 miles of states' seaward boundaries be the same as those onshore. As such, the definition of modification that applies is that given by the regulations incorporated into §§55.13 and 55.14; these are the requirements of the COA or the applicable federal regulations if the source is located beyond 25 miles from states' seaward boundaries. De minimus levels are set, however, in the applicable federal, state and local regulations that have been incorporated into part 55.

2-5 Comment: It is unclear whether the definition for NOA includes only the mainland or also includes offshore islands.

Response: The definition includes not only the mainland but also offshore islands if these islands are part of a state under EPA jurisdiction. In addition, the State of Hawaii is included under EPA jurisdiction.

2-6 Comment: The definition of the OCS should be incorporated verbatim from the OCSLA. This would prevent future changes to the OSCLA from affecting 40 CFR part 55. Comment was also received urging EPA to define OCS to track any future changes to the OCSLA.

Response: EPA revised the definition of OCS to track any future changes in the OSCLA. EPA believes that this decision will prevent any confusion regarding the applicability of this rule due to changes in the OCSLA.

2-7 Comment: The definition of onshore area should be made more precise since it serves as the basis for many of the other sections of the rule, such as permitting and offset requirements. Since under §107 of the CAA designations are frequently made on a broad geographic scale, a more logical division is by onshore permitting area. This appears to be what EPA intended but the rule should be more explicit, specifically recognizing that the intended onshore area (NOA or COA) can be smaller than the area designated pursuant to §107 of the CAA.

Response: The definition of onshore area in the proposed rule was taken directly from the language of the statute; however, the commenter is correct in stating that it may be inadequate for the purpose of implementing the rule. In the final rule the definition of onshore area has been refined to clarify that if the jurisdiction of an onshore permitting authority has boundaries that are different than the onshore area designated under the provisions of §107 of the CAA, and it is recognized by EPA as having authority to adopt and enforce air pollution control requirements under the CAA then the onshore area (NOA and COA) shall coincide with the jurisdictional boundaries of the onshore permitting authority.

2-8 Comment: The definition of potential emissions should be modified to include idling emissions of vessels.

Response: The definition of potential emissions given in §55.2 includes emissions from vessels servicing or associated with an OCS source "while at the source, and while en route to or from the source when within 25 miles of the source." Thus, idling emissions of vessels will be included in the potential emissions when associated with an OCS source. However, idling emissions that are not associated with a specific OCS source will not be included in any source's potential emissions.

2-9 Comment: The definition of "residual emissions" does not account for an OCS source located beyond 25 miles from states' seaward boundaries that needs an exemption.

Response: The definition does account for sources beyond 25 from states' seaward boundaries miles that may need to obtain emission reductions due to an exemption. However, the proposed rule did not provide any restrictions or guidance on the acquisition of emission reductions by such sources. There are no existing guidelines or precedents for this situation; therefore, §55.7 was modified to include language to allow the Administrator to determine the emission reduction requirements for such sources on an individual basis.

VESSELS

2-10 Comment: Definition of OCS source should specifically exclude all vessels except drill ships. Other vessels would be exempt from control under part 55 even if a vessel control regulation was incorporated into part 55 by virtue of being in a SIP.

Response: "OCS source" is defined by the statute and EPA does not have the authority to make exclusions to the statute within the rule. However, EPA does not anticipate direct regulation of vessels other than drill ships under part 55.

2-11 Comment: Many commenters argued that vessels should be considered OCS sources. Some added arguments to the statutory language argument discussed in the NPR and are listed below:

a. It is recorded in the legislative history that vessels should be controlled as well as offset.

b. Vessels produce 1/3 as many emissions as platforms themselves.

c. Environmental regulation of vessels had been found valid, as long as the regulations did not specify the design or construction of the vessels.

d. Local APCDs have authority over vessels under California state law.

e. DOI issued a development and production permit for platform Julius that regulated vessels.

f. The statutory definition of OCS source just says "includes" as so can also mean vessels.

Conversely, there were many comments supporting EPA's position and requesting that EPA clarify that vessels are not being directly regulated.

Response: In general arguments a - d and f do not override the legal argument based on the statutory language. It can be argued that project emissions are controlled if they are offset, and the amount of offsets is irrelevant. Whether or not local APCDs have authority under state law is irrelevant, since this is an area of federal jurisdiction. Additionally, the more specific language in the statute overrides the broad language which merely lists types of activities that might be included under the definition of "OCS source."

Finally, DOI did propose regulations to control vessels but never promulgated a final rule. Thus, DOI does not currently have regulations to control vessels, nor do vessels require DOI authorization to operate; therefore, vessels do not meet all the specific criteria as necessary to be defined as an OCS source.

2-12 Comment: DOI approved a DPP for platform Julius that included vessel emission control measures.

Response: Julius is a non-existent platform so this argument is based on actions that never occurred. DOI did not require vessel emission controls as a condition of approving the DPP for Julius. Onshore agencies found methods to legally force OCS sources to comply with control technology requirements, which were then included as part of the DPP. They were included in the DPP because it contains all the requirements that a platform must meet.

2-13 Comment: Helicopters should be regulated as vessels.

Response: EPA disagrees, the common definition of vessel does not cover helicopters.

2-14 Comment: Exploratory drill ships should not be regulated, at least not as new sources simply because they moved to a new location.

Response: EPA disagrees.

2-15 Comment: Exempting vessels while treating their emissions as if they are emitted directly from the facility will make it more difficult to find offsets.

Response: It is also possible offsets will be easier to find because existing platforms may create offsets by reducing vessel emissions.

2-16 Comment: If EPA does not regulate vessels under §328, the agency should set a timetable to begin regulation of vessels under title II of the CAA.

Response: EPA is currently investigating control of vessel emissions but it is too early to set a timetable for regulation development. At present, EPA is trying to determine the relative importance of a large number of possible emission reduction regulations. The regulations with the highest priority will be those that result in the required amount of emissions reductions in the most economical manner.

3. Applicability (§55.3)

3-1 Comment: To comply with the intent of Congress new sources should be required to comply with the rule on November 15, 1991, and existing sources should be required to comply with the rule by November 15, 1993.

Response: The statute says that the effective dates are based on the date of promulgation of the regulations, not on the date of enactment of §328.

3-2 Comment: OCS regulations and onshore regulations must have the same effective dates.

Response: The statute does not mandate that the OCS regulations and onshore regulations have identical effective dates. EPA must update the rule to maintain consistency. Therefore, there is the possibility that the effective date onshore and on the OCS will be different.

3-3 Comment: The preamble, referring to the definition of "new source" under NSPS in one instance mistakenly used "promulgated" rather than the correct word "proposed."

Response: The comment is correct. This mistake has been corrected in the final rule.

3-4 Comment: Activities previously approved by MMS as part of a single plan should be treated as one project and be initially allowed to comply with the requirements of the MMS approved permits if the first phase has begun prior to the promulgation of part 55. These sources would then follow the EPA requirements for existing sources when such requirements become mandatory.

Response: Section 328 of the CAA explicitly states that new sources shall comply with the OCS requirements on the date of promulgation, and existing OCS sources shall comply on the date 24 months thereafter. The statute further defines "new OCS source" as a new source within the meaning of §111(a) of the CAA and "existing OCS source" as any OCS source other than a new OCS source. In brief, §111(a) defines a new source as "any stationary source, the construction or modification of which is commenced after the publication of regulations (or if earlier, proposed regulations)." Previously approved MMS sources will be considered existing sources to the extent that they have demonstrated that they have commenced construction prior to December 5, 1991. Projects that have been approved by MMS as part of a single plan will be treated as one project to the extent that they meet the definition of a single source defined by the applicable OCS requirements referenced in §§55.13 and 55.14. The above determinations shall be made on a case-by-case basis.

3-5 Comment: There is currently no development on tract P0409. If development is proposed in the future it should be considered as a new source.

Response: If no development has been proposed for this tract any future development would definitely be considered as a new source. If development has been proposed the project's status as an existing or new source will be evaluated when the NOI is received.

3-6 Comment: EPA's language in this section is much narrower than provided for in the statute. §55.3(c) should be amended to provide that OCS sources beyond 25 miles from states' seaward boundaries should be subject not only to the federal requirements of §55.13 but also to the state and local requirements contained in §55.14. However, another commenter questioned whether EPA had the authority to impose state and local requirements beyond 25 miles from states' seaward boundaries.

Response: EPA has the authority to apply more stringent (or less stringent) requirements to sources beyond 25 miles from states' seaward boundaries but chooses not to at this time. Congress was clear in its intent that state and local requirements apply to sources within 25 miles of states' seaward boundaries. If they had intended EPA to extend these controls to sources beyond the 25 mile zone then the statute would have so stated. EPA has required sources beyond the 25 mile zone to comply with federal requirements. In the future, if EPA determines that more stringent controls are necessary to protect ambient standards then additional requirements will be proposed for sources located beyond 25 miles from states' seaward boundaries and these could be based on state and local requirements.

3-7 Comment: Congress intended that facilities located beyond 25 miles from states' seaward boundaries be subject to less stringent controls than those within 25 miles of states' seaward boundaries.

Response: EPA believes that Congress intended to give EPA the flexibility to determine the stringency of the requirements for OCS sources located beyond 25 miles from states' seaward boundaries. Should the density of development on the outer OCS produce impacts that warrant more stringent controls, EPA will then promulgate such requirements.

3-8 Comment: There is no indication that Congress endorses the presumption that pollutants will normally migrate from an area of low concentration to an area of high concentration.

Response: It has been proven in numerous studies that pollutants can migrate from an area of low concentration to an area of high concentration. Transport of pollutants is not based on a simple diffusion process but is due to meteorological conditions, such as wind.

3-9 Comment: The need for emission reductions on the OCS, particularly beyond the 25 mile zone, should be justified. This rule appears to require emission reductions regardless of whether there is a need to do so.

Response: Section 328 does not limit EPA's authority to control air pollution to the area within 25 miles of states' seaward boundaries. Congress was simply much more specific regarding the requirements of control for this zone. The rule does not actually require emissions reductions beyond 25 miles from states' seaward boundaries; the rule merely controls the growth of emissions in this area. If a PSD increment is ever exceeded for a pollutant in this area then the rule could require emission reductions before new projects could be permitted.

4. Requirements to Submit an NOI (§55.4)

4-1 Comment: A few commenters stated that the restriction on NOI requirements for sources beyond 25 miles from states' seaward boundaries should be removed. Commenters expressed two reasons: 1) since state and local agencies must be delegated authority over the permitting process of facilities greater than 25 miles from shore, the NOI process (which is the vehicle for making COA determinations) must then apply to all applications; 2) advance notice and review of a project will speed up the permitting procedures.

Response: EPA will retain authority to issue permits to sources located beyond 25 miles from states' seaward boundaries. The final rule includes timelines for EPA to perform consistency updates (See §55.12 of the final rule). In addition, at this time only federal requirements will apply beyond 25 miles, and these requirements apply on the OCS independent of §328; therefore, the NOI process is not necessary to ensure the applicability of new federal requirements to OCS sources located beyond 25 miles from states' seaward boundaries.

4-2 Comment: Several commenters stated that existing sources planning to modify should be required to submit a NOI. This would trigger a consistency update review and ensure that the modification would have to meet the same requirements as an onshore modification.

Response: EPA concurs. In the NPR, modifications that trigger preconstruction requirements were considered new sources as defined by §328 and §111(a) of the CAA. Section 55.4(a) has been amended to clarify that the NOI requirement applies only to new sources and modifications to existing sources located within 25 miles of states' seaward boundaries. The definitions of new source and modification have also been clarified in §55.2 to reflect the intent that was stated in the NPR: an offshore modification will be treated as if the modification occurred onshore. That is, the onshore definition of modification will apply and regulations that would apply to such an onshore modification will apply. The NOI for modifications triggers consistency updates but not the COA procedure.

4-3 Comment: The NOI language does not set a minimum time period for submitting the NOI before the permit application, which previous drafts set at 240 days. EPA should set a minimum time period between filing of NOI and subsequent filing of the application for a preconstruction permit.

Response: EPA concurs. The NPR was not clear that the application cannot be submitted until after the COA is determined and consistency updates proposed. EPA intended that an application could not be submitted until after the COA designation is made because until that time it is not clear what requirements will apply or which agency will be the permitting agency. Sections 55.4 and 55.12 have been amended to clarify that the permit application cannot be submitted until the COA has been determined and consistency updates proposed.

4-4 Comment: The commenter supports the requirement for new OCS sources to file a of NOI at least 8 months and no more than 18 months prior to applying for a permit.

Response: This comment was referring to an earlier draft of the proposal. The NPR did not set a minimum time for submitting the NOI before the permit application, but requested comments on the timelines for the NOI/COA procedure. The final regulation includes timelines for the COA designation and consistency update processes, as set forth in §55.12.

4-5 Comment: The NOI/COA process might be better done through a more generic application by the local air districts, rather than on a case by case basis.

Response: As stated in the NPR, EPA does not currently have the resources or adequate data to make area-wide COA designations. This would require a comparative analysis of all onshore regulations and an evaluation of probable impacts of future OCS sources. All onshore regulations will be in a state of flux over the next several years due to changes mandated by the CAAA, so the relative stringency of onshore programs can be expected to change. The anticipated changes to onshore programs, combined with the uncertainty of the location of future OCS development, make it infeasible for EPA to make area-wide designations at this time.

4-6 Comment: Sources should submit the NOI to the Administrator and the delegated agency "simultaneously."

Response: Section 55.4(a) has been amended to require that the applicant submit the NOI to the EPA Administrator through the Regional Office and at the same time to the air pollution control agencies of the NOA and onshore areas adjacent to the NOA.

4-7 Comment: In addition to a public notice, NOIs should be sent to the Governors of affected states and the permitting authorities of affected onshore areas, or at the very least to the NOA.

Response: The NOI is intended to alert those areas that could qualify as the COA of the construction of an OCS source. A copy or summary of all materials used in the COA process, including the NOI, will be available in the affected areas and from EPA during the public comment period.

4-8 Comment: Since the requirements for the NOI are less extensive than would apply to a permit application, it should be made clear that the scope and contents of the NOI will not in any way limit the permit process itself.

Response: The comment reflects EPA's intent. Section 55.4 has been amended to incorporate the suggestion.

4-9 Comment: The NOI requirements should be modified as follows:

> **Condition 8 should state: "Other information required by any applicable requirements...for all pollutants regulated at the part 55 source."**
>
> **Condition 9 should include citation and description of applicable state and federal air pollution control requirements, including requirements that will become effective during the term of a permit, if such requirements have been promulgated at the time of the permit application.**

Response: Prior to the designation of the COA, the applicant will not know which onshore area requirements will be applicable to a proposed source. One purpose of the NOI is to trigger the COA designation and consistency update processes. The NOI submittal requirements are intended to gather information about the emission characteristics and proposed impacts of the proposed source such that EPA can make a COA designation. The applicant must address regulatory requirements in the permit application.

4-10 Comment: A few commenters requested that the language exempting exploratory sources from Condition 10 should be deleted.

Response: Exploratory sources are not subject to the COA designation process (see §II.D. of the NPR). The NOI process will trigger only the consistency update process for these sources. Therefore, general information regarding the source's impacts is not necessary at the NOI stage, but will likely be considered in any subsequent permitting action.

4-11 Comment: The rule should be more specific in what is required for an NOI submitted for an exploratory source since there is no need for a COA designation. Specifically, the rule should state that the rather open-ended information requested in §55.4 (b) (9) and (10) do not apply to exploration activities.

Response: Section 55.4(b)(9) requests general information necessary to determine the applicability of onshore requirements such that EPA may expeditiously perform a consistency update. Case-by-case requirements can be discussed at a pre-submittal meeting with EPA. Exploratory sources are specifically stated to be exempt from paragraph 55.4(b)(10).

4-12 Comment: A few commenters stated that exploratory sources should not be exempt from the NOI requirements. Another commenter stated that exploratory operations must not be exempt from emission controls, and that the cumulative effects from possibly a number of simultaneous exploratory operations in one area could be avoided by allowing just one exploratory drilling per lease, per area, at one given time.

Response: Exploratory sources are only exempt from §55.4(b)(10), the requirement to submit "such other information as necessary to determine the source's impact in onshore areas." Since the COA will be the NOA for exploratory sources (see §II.D of the NPR), such impact information is not necessary. The applicant will have to submit all other information required by the NOI process for consistency update purposes, and the exploratory source will be subject to all the emission control requirements of the NOA. In addition, should exploration lead to a production and development source, that proposed source will be subject to the full COA designation process.

The following comments support EPA's proposal and do not require a response.

4-13 Given the limitations of the California Permit Streamlining Act, the NOI process will ease permit processing burdens for onshore jurisdictions.

4-14 Many comments, including those submitted by industry affected by the rule, support the requirement to submit a NOI and provisions for determining the COA following submittal of the NOI.

4-15 The commenter supports the review of the OCS rule whenever an OCS source files an NOI to ensure that the OCS rules are consistent with onshore rules.

5. Designation of the COA (§55.5)

EXPLORATORY SOURCES

5-1 Comment: Many commenters agree that the NOA should automatically be designated as the COA for exploratory sources. They believe that since an exploratory operation is so short in duration that the COA designation process is technically inappropriate, administratively burdensome, and costly.

Response: EPA has carefully considered the designation of the COA for exploratory sources and believes that the presumptive designation of the NOA as the COA is a sound decision from technical, legal, and policy perspectives. If an exploratory operation is followed by a proposed development and production operation, that operation shall be subject to the full COA designation process.

5-2 Comment: It should be made clear that the NOA will be the COA for exploratory sources and that §55.5(b) does not apply.

Response: This comment has been incorporated into the rule. Section 55.5(a) now reads: *Proposed Exploratory Source.* The NOA shall be the COA for exploratory sources as defined in §55.2 of this part. §55.5(b), (c), and (f) are not applicable for exploratory sources. Future conditions might cause the Administrator to reconsider automatic designation of the NOA as the COA, at which time the Administrator may propose changes to this provision of part 55.

5-3 Comment: Automatic designation of the NOA as the COA for exploratory sources is a step in the right direction but does not go far enough. EPA has not provided enough relief for temporary sources from the time consuming and onerous permitting and NSR procedures. The same rationale that was used to justify that decision can be used to justify a temporary source provision that would exclude certain specified activities from permitting and NSR requirements. Specific suggestions included the following changes to §§ 55.2 and 55:3:

> **§55.2 Definitions**
> **"Temporary OCS source" (or operation) means any OCS source that is temporary in duration and is accomplished by equipment that is inherently designed to be moved from one location to another.**
>
> **§55.3 Applicability**
> **(f) Any temporary source that is on location and functioning for less than 60 days is excluded from the requirements of this part.**

Response: In accordance with §328, OCS sources, including temporary sources, must be subject to the same requirements that would be applicable if the operation were located in the COA. EPA does not believe that the rationale that justifies a presumptive designation of the COA can justify the exemption of temporary sources from the applicable controls of the COA. In designating the NOA as the COA for exploratory sources, EPA has met the requirement of §328 to designate a COA. But to exempt temporary sources from appropriate and applicable controls would clearly be in violation of §328 because then OCS sources would not be subject to the same requirements as if they were located in the COA.

5-4 Comment: Although supportive of the automatic designation of the NOA as the COA for exploratory sources, many commenters took issue with the statement in the NPR that it is unlikely that an activity of such limited duration would hinder the air pollution control efforts of the area in question. Commenters argued that exploratory sources can be large sources of NOx emissions and in the aggregate the effect may not be temporary, even though individual operations are. The emission inventory is made up of many small sources, each contributing in a small way to the overall problem and during smog season, any additional pollution can hinder an area's efforts to attain and maintain the NAAQS. Since the attainment status for ozone is based on exceeding the ozone standard during any hour, the operation of a drilling rig may have a substantial negative effect on the efforts of the onshore area to attain and maintain the NAAQS. Despite what they believe is EPA's flawed rationale for this decision, some commenters stated that proposing that the NOA be designated as the COA for exploratory sources is acceptable. Other commenters however, objected to the automatic designation of the NOA as the COA for exploratory sources based on portions or all of the preceding statement. Finally, one commenter stated that the presumptive designation of the NOA for exploratory sources is a departure from the requirements of §328.

Response: EPA did not intend to imply that exploratory drilling operations do not contribute to the degradation of air quality because of their short duration. Rather, EPA was simply pointing out that the area of impact is highly dependent on meteorological conditions. The temporary nature of exploratory operations and the uncertainty as to their exact commencement and duration does not allow a reliable impact analysis to be performed because accurately predicting the meteorological conditions for a short and specific time frame combine to make the results of any impact analysis extremely questionable. For production platforms, which have an expected lifetime of 30 years, the predominant area of impact can be determined with greater confidence. Therefore, in the interest of streamlining the regulatory process EPA decided that the NOA shall automatically be designated as the COA for exploratory operations. EPA is not exempting exploratory sources from control requirements. The control requirements of the NOA shall apply. In summary, EPA has determined that the presumptive COA designation for exploratory sources meets the agency's statutory obligations and is within the Administrator's authority.

5-5 Comment: If exploratory sources are not to be subjected to the COA designation process then alternatively, EPA should make COA designations accounting for transport of emissions to downwind areas.

Response: This is the substantively same as area-wide COA designations, an idea EPA has already rejected for reasons set forth in the NPR.

5-6 Comment: It was suggested that no more than one operation per calendar year, per air basin, should be treated as a temporary operation with regard to any onshore area. Emissions that are not otherwise controlled or offset shall be included in the emissions from any development and production activities in the air basin, prorated over the lifetime of the development and production activity.

Response: EPA does not have the authority to implement this suggestion because it does not meet the statutory requirement that nearshore OCS requirements be "the same as" onshore requirements. Furthermore, this provision would require owners and operators of completely unrelated operations to be responsible for the mitigation of another business' emissions. Finally, this provision would require offsets for temporary operations in most cases. Offsets are seldom required for permanent operations that occur in onshore attainment areas, and are infrequently required for temporary operations in nonattainment areas.

THE COA PROCESS

5-7 Comment: The rule should state that the COA shall be determined only once in the source's lifetime. Future modifications subject to the NOI process would then trigger only the consistency update portion.

Response: EPA concurs and the final rule has been modified to reflect this limitation. The actual language appears in §55.4. Since the statute does not mention any reevaluation of the COA at any time, EPA interprets the statute to intend that an OCS source be subject to the COA designation process only once. The result is a more stable OCS regulatory system that more closely resembles the onshore regulatory system.

5-8 Comment: When rules become more stringent in the adjacent NOA and allowable emissions are revised downward this must trigger a parallel revision in allowable offshore emissions. If this is covered under §55.12 it should be cross-referenced here for clarity.

Response: It does not seem appropriate to cross-reference the consistency update process in §55.5. When the rules of the COA (which may be the adjacent NOA) are changed EPA will update part 55 in a timely manner, to maintain consistency between the requirements for onshore and offshore sources. The timing of consistency updates is covered in §55.12. Sections 55.3 and 55.6 already state that OCS sources located within 25 miles a states' seaward boundaries are subject to, and must comply with the requirements of the COA as set forth in §§55.13 and 55.14.

5-9 Comment: EPA has proposed to consider the COA designation only when an NOI has been received. Future COA designations should be proactive rather than waiting for an NOI submittal. An advance COA designation process would simplify and accelerate the administrative regulatory process and would allow onshore air districts more time to plan. One possible method would be to make generic COA determinations, to be agreed to by the onshore air pollution control agencies. Area-wide COA determinations should be made for all onshore areas adjacent to the lease sales scheduled in the MMS five year plan, 1992-1997, and if necessary fine tuned when an NOI is received.

Response: The final rule requires the Administrator to make a preliminary COA designation within 150 days of the receipt of the NOI. EPA has examined the COA process in detail and believes that the final rule contains a process that balances the need for expeditious processing with the need to provide for adequate deliberation and public comment.

EPA did consider making area-wide COA determinations but decided that adequate information, technology, and resources are not currently available. In addition, the language of the statute indicates that COA determinations were intended to be made on a case-by-case basis(see NPR). If the information and technology become available to EPA in the future the agency may reevaluate this decision.

5-10 Comment: In making COA designations, EPA should consider the designations of platforms in close proximity. Sources in the same general area would have the same COA, providing some consistency.

Response: EPA acknowledges the logic of platforms that are adjacent to one another having the same COA. It is unlikely that a hopscotch pattern of COA designations will develop. The process to determine COA's should prevent this from occurring because if a platform has gone through the full COA designation process and another platform proposes to locate nearby, the same logic will apply to the second platform that applied to the first. However, it is possible that an eligible area may not request COA designation for a platform, so the possibility does exist for platforms in close proximity to have different COAs.

5-11 Comment: There is apparently no officially recognized definition of how the boundaries of the counties are projected into state waters.

Response: This rule is not applicable to sources located in state waters and the COA designation is not based on a projection of county boundaries into federal waters. The COA is designated based on the NOA and the potential of a source's emissions to hinder a more stringent downwind area's attainment efforts.

5-12 Comment: The COA should be the area most frequently impacted by the OCS source's emissions.

Response: The frequency with which a source's emissions impact an area will be considered if the requesting area meets the primary criteria for designation as the COA, namely: the area has more stringent requirements than the NOA; the emissions from the proposed source can reasonably be expected to be transported to the area; and the transported emissions are expected to hinder the requesting area's efforts to attain or maintain ambient standards and comply with part C of title I. Only after these criteria are met will the frequency of transport conditions or the severity of impacts be considered.

5-13 Comment: Why is there no consideration of all downwind areas, including Class I areas, that may suffer impacts, even though they are not the nearest shore locations? Another commenter requested that §55.5 of the regulations be modified to require notification of any Class I area manager affected by OCS emissions, not just the adjacent Class I areas.

Response: The entire purpose of the COA designation process is to consider the effects of OCS emissions on downwind areas. Any downwind area may request designation as COA. If EPA determines that the requesting area has more stringent requirements and the application of those requirements will result in a greater benefit, the requesting area will be designated as the COA and the more stringent requirements shall apply to the OCS source.

The COA process requires that the manger of a potentially affected Class I area be notified if a COA designation request is received by EPA. Under the PSD program the term "adjacent" when applied in connection with a Class I area has generally been determined very broadly. Therefore, to clarify EPA's intent, the language of the statute has been changed in the final draft to require notification of the manager of any Class I area that may potentially be affected by the emissions of the proposed source. This is consistent with the language contained in §55.6.

5-14 Comment: Scientific data is required to prove that pollutants will move from an area of lower concentration (over water) to an area of higher concentration. It appears that this is the premise for the designation of a COA with more stringent requirements. Presumably the COA has more stringent requirements because it suffers from higher ambient concentrations. This assumption and the entire COA premise must be justified.

Response: EPA does not need to justify the COA process; it is a requirement of §328 and Congress clearly intended that EPA implement a process to designate a COA for each OCS source. EPA has ample proof that pollutants are transported from an area of low concentration to an area of higher concentration. Transport of air pollutants is more than simple diffusion of molecules through still air. Meteorological conditions such as winds and topographical features such as mountain ranges play a dominant role in the transport and formation of air pollution.

5-15 Comment: Arbitrary COA designations must be strictly avoided.

Response: EPA is forbidden by law to act arbitrarily or capriciously and has no intention of doing so.

5-16 Comment: Many commenters felt strongly that a permitting agency with delegated authority should always be the permitting agency, even when the COA is not the NOA. Once authority has been delegated to the COA the district will have the permitting experience and expertise to implement the requirements of part 55. Another commenter stated that if the COA has been delegated permitting authority, EPA cannot exercise permitting authority over sources in that COA.

Response: In light of the large number of convincing comments received, EPA has reconsidered its position and amended the final rule to allow the delegated agency in the COA to implement and enforce the OCS program. If there is no delegated agency in the COA then EPA will implement and enforce the rule. The Administrator reserves the authority to act as the implementing agency if the NOA and the COA are in different states.

5-17 Comment: The regulation itself should handle cross-jurisdictional issues rather than EPA handling them on a case-by-case basis.

Response: EPA agrees; however, in the event an issue cannot be resolved the Administrator may assist in its resolution.

The following comments do not require a response.

5-18 Comment: Commenter agrees with EPA's basis for designating a COA other than the NOA.

5-19 Comment: Some commenters believe that there will be few requests for COA designation. Thus, the COA designation process will usually be completed in 90 days and this process will not routinely delay the permitting process.

5-20 Comment: Many commenters expressed support for the general provisions by which a COA is designated and for EPA's source specific approach to COA designations. It was felt that if EPA makes COA designations for existing and currently proposed OCS sources and uses the NOI process for future designations, area-wide designations are not necessary.

5-21 Comment: Support was expressed for EPA's efforts to expedite the COA designation process, particularly in view of the short drilling windows in Arctic areas.

ADMINISTRATIVE PROCEDURES

5-22 Comment: There must be more than one location in the NOA where the materials submitted in support of a COA designation request can be reviewed along with the Administrator's preliminary determination.

Response: It is standard procedure to make informational documents available at the Regional EPA office and at the office of the local APCD. Any interested party may call one of these offices and request copies of these documents. This provides the most cost effective means of providing public access to these documents.

5-23 Comment: To expedite the COA process the commenter suggests that EPA make a preliminary decision 120 days from the original submittal of the NOI and make a final determination within 180 days of the submission of the NOI.

Response: EPA carefully considered the amount time required for industry and regulatory agencies to complete the work involved and the time needed for public comment. Based on the time needed to complete these required activities EPA believes that the COA process is as expeditious as can be reasonably achieved in practice.

5-24 Comment: The owner/operator of the affected emissions source must be notified of any COA designation request.

Response: EPA agrees that the owner and operator of the OCS source should be notified. Section 55.5(f)(2) has been modified to include the proposed source in the notification procedure.

5-25 Comment: The permitting authority should have 60 days from the date of receipt of the NOI to file a request for designation as the COA.

Response: This comment was incorporated by reference from a previous set of comments and was addressed by including the suggestion in the NPR.

5-26 Comment: The public comment period is not long enough and should be extended from 30 to 60 days.

Response: EPA has determined that 30 days is an adequate period of time to receive public comment. A longer comment period cannot be justified in light of the already lengthy permitting process, beginning with the NOI.

5-27 Comment: When there is a dispute over a COA designation request the source should be required to perform advanced point source modeling of OCS emissions.

Response: EPA may require modeling to determine the COA on a case-by case basis.

5-28 Comment: The authority to designate the COA should not be retained by the Administrator. In the case of California, the California ARB could appropriately be delegated this authority. However, another commenter stated that delegation of the authority to designate the COA would be in violation of the Appointments Clause of the U.S. Constitution.

Response: EPA will retain authority to designate the COA based on the language of the statute. Section 328 provides that the Administrator may delegate to states the authority to implement and enforce the OCS requirements. Until EPA designates the COA, the applicable requirements are not determined and there are no requirements for the state to implement and enforce. It thus appears from the structure of the statute that the authority to designate the COA must remain with he Administrator. There may also be constitutional issues with delegating the COA designation function since there would be no state law to implement until the COA was designated (see §II.K of the NPR).

5-29 Comment: The statute provides for an area with more stringent standards based on the potential of the source to "affect" that area's efforts to attain and maintain air quality standards. A commenter stated that the preamble should use the term "affect" rather the "hinder" to mirror the language of the statute.

Response: The statute does use the word "affect" as cited by the commenter. The efforts of the other area can be "affected" in either a positive or a negative fashion. If the area's efforts are affected in a positive fashion then there is no rationale for EPA to designate the other area as the COA. However, if the other area's efforts are being affected in a negative fashion, then EPA should take action by designating the other area as the COA. Following this line of reasoning, EPA has decided that "hinder" more accurately conveys the intent of Congress.

5-30 Comment: The statute states that the COA may be another area that may "reasonably" be expected to be affected by emissions from the OCS source. The use of the word "reasonably" implies a probability rather than merely a possibility.

Response: EPA agrees with this interpretation of the statute.

5-31 Comment: Several commenters stated that EPA should take public comment before making a preliminary designation of a COA. The EPA loses valuable public input by proposing a COA prior to soliciting public comment. EPA should not pre designate a COA.

Response: The rule specifies that EPA will take public comment before making any final COA designation. This procedure is analogous to taking comment on a proposed rule prior to a final rulemaking or an attainment designation under §107 of the CAA. This will allow adequate opportunity for public comment. The statute itself does not require EPA to take public comment on COA designations, although it explicitly requires public comment for other EPA decisions such as the granting of exemption requests.

5-32 Comment: The rule should make clear that the demonstration required of the requesting area would not necessarily include modeling. This should be only a last resort if less rigorous methods fail to demonstrate transport.

Response: The rule does not require modeling to demonstrate transport. It is left to the requesting area to determine the content of the demonstration. EPA will consider all information submitted by the deadline.

5-33 Comment: The content of an adequate demonstration should be specified more completely. Suggestions ranged from requiring a very low burden of proof from the requesting area to requiring a rigorous demonstration by the requesting area.

Response: EPA maintains that the Administrator must have discretion to evaluate COA demonstrations on a case-by-case basis. This rule applies to a wide variety of local environments. Any attempt to set rigid criteria for evaluating COA demonstrations could impede the Administrator's ability to make appropriate designations. Each of the suggestions submitted by commenters may be considered by EPA when making a COA designation, depending on the circumstances of the situation.

5-34 Comment: A COA should be determined for platform Julius with no finding on its status as an existing or new source, or the rule should state that Julius will be considered a new source and that its COA will be determined according to the procedures of the rule.

Response: EPA believes that it would be precipitous to designate a COA for Julius at this time. If the project does eventually go forward, an NOI must be submitted and the status of Julius as a new or existing platform will be determined at that time. Julius will then be subject to the COA process.

5-35 Comment: If two or more areas request designation as the COA will the Administrator designate the COA based on which eligible area has the most stringent requirements?

Response: Initially, the Administrator will determine which area has the most stringent requirements, but this is only the first step in the designation process. The COA must also be affected by the emissions and those emissions must be found to hinder the efforts of the requesting area to attain and maintain the ambient standards and meet the requirements of PSD. If these criteria are met, the Administrator will consider the relative benefits to the areas in question before making a COA designation.

The following comments are closely related and a single response has been prepared.

5-36 Comment: Santa Barbara is the proposed COA for the platforms: Unocal A, B, C, Henry, Hillhouse, Hogan, Houchin, and Habitat. The commenters believe that Ventura should be the COA for these platforms. These platforms are very close to both Ventura and Santa Barbara but in all cases are closer to Santa Barbara. All commenters stated that Ventura is affected by emissions from these platforms due to prevailing wind patterns and the proximity of the platforms to the Ventura coastline.

5-37 Comment: Ventura County APCD requested a six month delay in the designation of COAs for all existing sources off the coast of California. During this six month period, the County wants to perform a stringency analysis. At this time, the County currently lacks authority to collect information from the platform operators. Also, since the rule has not yet been promulgated, the County is unsure what constitutes an adequate demonstration.

5-38 Comment: Industry commenters pointed out that since all the platforms in question have pipelines to onshore facilities in Ventura it would cause an unreasonable economic and administrative burden to designate Santa Barbara as the COA. Because operational changes to either the onshore or offshore facility could necessitate changes to the permits for both facilities it would be simpler for industry to work with a single permitting agency. Industry fears that potential conflicts between permitting agencies could impede the permitting process.

Response: None of the commenters presented evidence that Ventura currently has more stringent rules than Santa Barbara and without this evidence EPA cannot designate an area other than the NOA as the COA.

The purpose of designating COAs for existing platforms is to allow those facilities adequate time to ascertain which rules apply to each facility and perform all the required engineering, purchasing and permitting activities within 24 months of final promulgation, as required by the statute. Any delay in the designation of COAs would lessen the chances of these facilities to achieve timely compliance.

EPA is designating Santa Barbara as the COA for platforms: Unocal A, B, and C, Henry, Hillhouse, Hogan, Houchin, and Habitat. Lacking substantial proof that the requesting area has more stringent requirements for the control and abatement of pollution control than those of Santa Barbara County, EPA must designate the NOA as the COA.

5-39 Comment: If the platform and its associated onshore facility are subject to different sets of requirements, it will be confusing to review two complex sets of environmental regulations before making changes to the operations of either onshore or connected OCS facilities.

Response: This is an unfortunate reality that also occurs onshore. However, it does not provide the Administrator adequate grounds under the statute to designate a COA other than the NOA.

5-40 Comment: When a platform and its associated onshore facilities are subject to the requirements of different onshore areas, it is probable that conflicts will evolve between the state or local onshore permitting agencies. Emission reductions at an onshore facility could result in emission increases at the platform. In this example, one agency could perceive a benefit to air quality while the other agency could perceive an impairment to air quality.

Response: This may be a valid concern and in such cases EPA could act as an intermediary to resolve such disputes and expedite the permit process.

5-41 Comment: If the Administrator makes a decision on a COA request prior to the 60 days allowed, the decision should immediately be made public.

Response: The language of the rule allows for earlier public notice if the Administrator makes a decision prior to the deadline.

The following comment does not require a response.

5-42 Comment: The Administrator's retention of the authority to designate the COA was endorsed.

OFFSETS

5-43 Comment: Offsets should comply with the requirements of the CAA and the ETPS.

Response: The rule requires that all offsets must comply with the requirements of the CAA and the regulations thereunder. This language also applies to offsets obtained pursuant to the requirements of §55.7.

5-44 Comment: OCS sources should be subject to the same requirements applicable in the COA, including offset ratios based on distance between the source obtaining offsets and the source providing offsets. Not all offsets obtained onshore have a beneficial effect in the areas of high ambient concentration, a fact considered in the development of the offset requirements for onshore areas.

Response: The intent of the statute was to protect and improve onshore air quality and protect the public health. Applying distance based discount ratios can encourage an OCS source to obtain offsets from its seaward rather than from its landward side. EPA believes that onshore air quality will improve more rapidly if onshore and nearshore emissions are reduced preferentially over emissions located seaward of the OCS source. That is why the proposed rule did not include discount penalties for offsets obtained on the landward side of the proposed source.

After a thorough review of comments, EPA recognized that completely eliminating discount ratios for offsets obtained onshore would not always result in a net air quality benefit to the affected onshore area. Each onshore area has crafted offset requirements with the aim of reducing emissions and impacts on the areas that experience violations of the ambient standards. However, the existing onshore offset requirements did not consider OCS sources when they were conceived and thus, the technical rationale behind the onshore offset requirements sometimes breaks down when applied to OCS sources.

The final rule has been revised to create three geographic zones, each with different requirements for the purpose of applying distance penalties. The first zone lies seaward of the OCS source, the second zone lies between the OCS source and the state seaward boundary, and the third zone extends from the state seaward boundary inland. Offsets obtained in the first zone are subject to all the offset requirements of the COA, and any distance penalties are calculated based on the distance between the OCS source and the source of offsets. Offsets obtained in the second zone are obtained at the base ratio required in the COA, and no distance penalties will apply. Offsets obtained in the third zone are subject to the offset requirements of the COA, but for the purpose of calculating the distance between the OCS source and the source of offsets, a straight line shall be drawn from the OCS source to the onshore source of offsets. The point at which this line crosses the state seaward boundary shall be treated as the site of the OCS source for the purpose of applying offset requirements.

5-45 Comment: Offsets must result in a net air quality benefit. Without distance discounting it may be difficult or impossible to make a finding of net air quality benefit.

Response: The final rule includes offset discounting and penalties for offsets obtained onshore and offsets obtained seaward of the proposed source. This should alleviate the concern of finding a net air quality benefit.

5-46 Comment: Industry suggested that when distance discounting applies, the distance should be measured along a line perpendicular from the coastline to the source of offsets. This avoids excessive penalties in cases where the source of offsets may be a large distance from the proposed source but not much further from the coast than the proposed source.

Response: EPA considered this suggestion carefully and elements were incorporated into the final rule.

5-47 Comment: The concept of offsets will come under increasing scrutiny in the coming years due to the rapidly advancing state of computerized air quality modeling. Within a short time, models to demonstrate neutral or beneficial effects of proposed offsets will be required. The NPR unduly restricts the permitting agency's ability to apply the latest advances and remedies related to offsets on the OCS.

Response: If the changes anticipated by the commenter are implemented onshore, they will be incorporated into 40 CFR part 55 for application on the OCS.

5-48 Comment: Two APCD's commented that while it may not be necessary to apply exactly the same offset requirements to offshore sources some discounting may still be necessary. The solution suggested was that no discounting or penalties would be apply to offsets obtained on the coastal side of a line drawn through the proposed source parallel to the coastline and the state boundary. Discounting and penalties would apply to the distance between the source of offsets and the state boundary.

Response: EPA agrees that some form of distance discounting is required and the final rule contains requirements similar to the above proposal. This is discussed in response to a previous comment and in the preamble to the final rule.

5-49 Comment: One APCD commented that all onshore offset transactions are discounted to fund the community offset bank devised to lessen the impact on small business. The district feared that the exemption from distance discounting would also exempt OCS offset transactions from the requirement to contribute to the community bank.

Response: If every offset transaction in the air district is discounted, the discount would be considered part of the base ratio for offset transactions and apply to all offsets obtained by OCS sources.

5-50 Comment: If the NOA is not the COA, the rule should allow sources to obtain offsets in the NOA if the NOA receives a substantial amount of emissions from the OCS source. If the NOA is not the COA, and both areas are nonattainment for the same pollutant, offsets should come from the NOA because offsets obtained in the COA would be unlikely to reduce ambient concentrations of the nonattainment pollutant in the NOA.

Response: This rule allows sources to obtain offsets in either the NOA or the COA, as long as the offsets meet the requirements of the CAA and the regulations thereunder. It is unlikely that a net air quality benefit could be guaranteed if all offsets had to be obtained in the NOA. However, EPA's belief is that if emissions from an OCS source impact a more stringent area (the COA), then other emissions generated in the NOA will also impact the COA. Thus, offsets obtained in the NOA should usually provide a net air quality benefit in the COA.

5-51 Comment: EPA should note that offsets are not restricted to nonattainment areas. They could be required in attainment or unclassified areas.

Response: The commenter is correct.

5-52 Comment: No offsets should be allowed for bringing existing facilities into compliance with BACT requirements.

Response: Existing onshore sources are not required to undergo BACT determinations, therefore BACT is not required on existing OCS sources. BACT is intended as new source control technology, and tends to be more stringent than retrofit requirements. Therefore, if an existing OCS facility applies BACT it would accrue offsets in the amount of emission reductions in excess of the emission reductions required by the COA requirements.

5-53 Comment: It is preferred from an air quality standpoint for a source to control its own emissions rather than obtain offsets.

Response: EPA agrees with this basic philosophy. The purpose of offsets is to mitigate the impact of the emissions that remain after a new source complies with all applicable emission reduction requirements.

The following comment does not require response.

5-54 Comment: Commenter supports the proposed offset requirements but is constrained to note that it creates a dichotomy in regard to selection of a COA over the NOA as the area reasonably expected to be impacted by OCS emissions.

6. Permit Requirements (§55.6)

DELEGATION OF PERMITTING AUTHORITY

6-1 Comment: It is unfair to require sources not currently in existence (as of the publication date of the NPR) to comply with the requirements upon promulgation.

Response: The commenter is correct that under the requirements of the CAA any source commencing construction between the date of the NPR and the date this rule is final will be considered a new source for the purposes of compliance and must comply with the rule upon the date of promulgation. This is a requirement of the CAA and EPA does not have the discretion to change the compliance date for sources considered to be new under §111(a) of the CAA. EPA has revised the permit rules to allow this category of sources time to obtain the necessary permits. See §55.6(e). Such sources must comply with all applicable emission reduction requirements during the permitting process or be considered in violation of part 55.

6-2 Comment: Several commenters stated that there is not a statutory basis for EPA to retain authority for implementing the permitting program beyond 25 miles and that this authority should be delegated to state or local agencies with adequate programs.

Response: EPA will retain authority to implement the OCS program for, and thus issue permits to, sources located beyond 25 miles from states' seaward boundaries.

6-3 Comment: EPA should not assume permitting authority when the COA is not the NOA, unless the COA has not received OCS delegation.

Response: EPA concurs. Based on the compelling comments received during the public comment period, EPA has revised part 55 to allow delegation of implementation and enforcement authority of part 55 to the COA in the case where the NOA is not designated as the COA.

MEANS FOR COMPLIANCE WITH PART 55: MODIFICATION EXEMPTIONS/ COMPLIANCE PLANS/ OPERATING PERMITS

6-4 Comment: It was suggested that all existing sources be required to submit a compliance plan that would describe the schedule and method for compliance with the requirements of the COA.

Response: This comment was incorporated by reference from a previous set of comments and was addressed by including the suggestion in the NPR.

6-5 Comment: Numerous comments (more than 30) were received on the issue of how to ensure that existing sources come into compliance within 24 months of the promulgation of part 55 in light of EPA's proposed exemption from preconstruction requirements for such modifications. The comments ranged from assertions that all modifications to come into compliance with the regulation should require NSR or preconstruction permits prior to modification, to a recommendation that only modifications that result in an increase of emissions above some unspecified "de minimus level" should not be subject to any compliance review at all and that concurrent debottlenecking or expansion projects should not be subject to NSR.

Several commenters stated that sources would make costly modifications to facilities that may not meet onshore requirements and subsequent enforcement would be difficult. For the most part commenters agree that NSR requirements (such as BACT or modeling) should not be applied, but they felt that preconstruction permits or enforceable compliance plans should be required. If the proposed compliance plan approach is maintained in the final regulation, several commenters felt that the compliance plans should be enforceable, subject to public comment and review, and that fees should be collected for their review.

Specifically several commenters stated that paragraph (b)(8) should be modified to require that the applicant submit a compliance plan for approval by the Administrator or delegated agency prior to performing the modification, and that the regulation should make provisions for the Administrator or delegated agency to charge fees for the review and approval of the plan based on the hours of staff time spent for such a review. Other commenters suggested that the rule specify that EPA or the delegated agency review the compliance plan under a specified timeline. In addition, a few commenters stated that the regulations should be revised to reflect the requirement for existing OCS sources to obtain preconstruction permits for modifications that are required as a result of modification or adoption of new RACT or BARCT regulations.

Response: Section 55.6 exempts from preconstruction requirements (i.e. NSR requirements and preconstruction permits) those sources that perform modifications solely to come into compliance with part 55 within 24 months and that do not result in an increase in emissions of any regulated pollutant above any de minimus level set forth in the applicable requirements of §§55.13 and 55.14. Those sources not requiring a preconstruction permit must submit a compliance plan to the permitting agency. Sources subject to COA operating permit requirements are still required to obtain such permits within 24 months.

In response to the comments and to ensure that both the reviewing agency and existing source benefit from the submittal of a compliance plan, §55.6(9) has been amended to require that the reviewing agency provide comments to the source within 45 days of submittal of the compliance plan. The source must in turn respond to such comments as required.

EPA must implement the OCS program if it is not delegated to a state or local agency, and approval or denial of a compliance plan would constitute a final agency action subject to review. EPA is concerned that preconstruction permits or a compliance plan that requires approval would not leave existing sources with enough time to come into compliance.

EPA does not believe that compliance plans must be enforceable to be effective. The intent of a compliance plan is to ensure that existing sources make appropriate modifications in a timely manner in order to comply with all applicable requirements within 24 months. The compliance plan should facilitate communication between the source and reviewing agency, which should in turn expedite the operating permit review and eliminate costly oversights. EPA maintains that existing sources must meet all applicable requirements of part 55 within 24 months regardless of the status of the compliance plan.

6-6 Comment: Onshore facilities, even if they possess a preconstruction permit or a permit to operate, are still subject to newly adopted requirements necessary for SIP or other purposes. OCS sources cannot be exempt from this new rule without violating the fundamental requirement that the regulation of OCS sources be the same as that of onshore sources.

Response: This comment was received in reference to §55.6(b), the exemption from preconstruction requirements for modifications to existing sources made to comply with part 55 within 2 years. The commenter expresses concern that §55.6 (b) would exempt an OCS source from requirements incorporated into part 55. The referenced exemption is only for preconstruction requirements triggered by modifications to existing sources necessary to comply with part 55. The modification must be made within 24 months of promulgation of the OCS regulations, it must be made solely to comply with part 55, and it cannot result in an increase in emissions above any NSR de minimus levels set in the applicable state and local regulations incorporated into part 55. This requirement will not exempt an existing OCS source from any control technology requirements, RACT, or BARCT, and it is not applicable to future control technology requirements adopted for the purposes of compliance with attainment or maintenance planning or any state or federal requirement.

6-7 Comment: Commenter suggests that "new source review" be substituted for "preconstruction" in paragraph 55.6(b)(7).

Response: EPA believes that "preconstruction" is a more general term than NSR. Not all agencies refer to preconstruction requirements as NSR; to some, NSR denotes only non-attainment, major source, or federal requirements.

EPA received the following comments regarding operating permits to which a single response has been prepared.

6-8 Comment: Existing sources should be required to apply for operating permits no less that 180 days prior to the compliance date.

6-9 Comment: Existing OCS sources that require operating permits under the COA's rules should be required to submit permit applications for all sources within 90 days of the compliance date.

6-10 Comment: OCS sources required to have operating permits under the onshore rules should be required to apply for those permits within 90 days after the promulgation date of the rule.

6-11 Comment: The rule should require OCS sources to apply for and obtain operating permits.

6-12 Comment: All sources should be required to get a federally enforceable permit to operate.

6-13 Comment: OCS sources must obtain operating permits in accordance with state and local onshore requirements.

Response: Section 328 and part 55 require that existing sources comply with the OCS rule within 24 months of promulgation of the rule. This includes obtaining, not simply applying for, any operating permits required by the COA. EPA acknowledges the concern that existing sources may not allow enough time for the onshore area to process the permit application. However, due to the varying permit processing times of agencies, EPA does not believe it is appropriate, or in the best interest of the permitting agency or applicant, to specify a submittal date that may conflict with onshore timelines. Existing sources have been put on notice of the onshore requirements and need to plan accordingly to receive required operating permits by the compliance deadline.

PERMIT APPLICATIONS

6-14 Comment: All technical information submitted in support of a permit should be prepared, signed, sealed and dated by a professional engineer (P.E.) registered in the state of the COA. This should include information submitted to support an exemption.

Response: There is no precedent or requirement under the CAA for EPA to require that permit applications be signed by a professional engineer. EPA assumes that OCS sources employ competent engineers to perform their analyses and that such analyses will be reviewed by engineers at the air pollution control agencies. In addition, there are many aspects of a permit application, such as modeling, for which it may be inappropriate for a P.E. to accept liability.

6-15 Comment: Sources should be required to consult with the delegated agency to determine the applicable requirements before submitting an application.

Response: EPA believes it is in the best interest of an OCS source to consult with the delegated agency to determine the applicable requirements before submitting an application as this will expedite the review process and avoid costly oversights. EPA does not believe that it is necessary to make consultation an enforceable requirement. Section 55.6(a)(1)(ii) does require that the application include a description of all the requirements of part 55 that "the applicant believes, after diligent research and inquiry, will apply to the source" (emphasis added).

6-16 Comment: The rule must require, not request, that the permit application include any exemption request and that the request be accompanied by suggested alternative controls, an estimate of residual emissions, and preliminary information regarding the acquisition of offsets.

Response: This comment was incorporated by reference from a previous set of comments; the suggestion was included in the NPR.

6-17 Comment: The rule proposes that an exemption request be submitted with either the construction or operating permit application. It is somewhat unclear whether the applicant can request an exemption at some later date.

Response: An exemption that the applicant believes is necessary at a later date would likely require a permit amendment, since such exemption is for required control technology. The request can then be submitted with the application for a permit amendment or the revised permit application, if the permit has not yet been issued. If a permit is not required, an exemption can be submitted to the appropriate agency within 90 days from the date the requirement was promulgated by EPA. For existing sources that must come into compliance with part 55 within 2 years and that meet the requirements of §55.6(b)(8), any exemption requests must be submitted with the compliance plan.

TIMELINES FOR PERMIT ISSUANCE AND EXPIRATION

6-18 Comment: If the COA's regulations require a shorter period for permit invalidation if the issued permit is not used, the shorter period should apply.

Response: This comment was incorporated by reference from a previous set of comments; the suggestion was included in the NPR.

6-19 Comment: The regulations should include a prohibition of default permit issuance similar to that contained in proposed 40 CFR §70.8(e). The California Permit Streamlining Act (G.C. §65920) contains short time limitations, and default permit issuance provisions, that could threaten evasion of the §328 requirements.

Response: EPA acknowledges that the California Permit Streamlining Act may conflict with the control technology exemptions procedures given in §55.7 of the proposal. Technical, health and safety exemptions from required controlled technology are allowed by the §328 and the required agency review is necessarily linked to permit application processing. EPA has amended §§55.6, 55.7, and 55.12 to prevent timeline conflicts.

6-20 Comment: Due to the nature of off-shore construction, which involves a very complicated and lengthy approval process due to many issues other than air quality, we recommend that there be some leniency, or extension with respect to the 18-month limitation. In the end of the first sentence it is not clear what is meant by reasonable time or whether this allows an exception to the 18-month requirement.

Response: Section 55.6(b)(3) states that an approval to construct will expire if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months of more, or if construction is not completed within a reasonable time. "Reasonable time" should be read as that continuous construction schedule defined in the permit application and is not an exception to the other criteria. This paragraph further states that the 18 month period may be extended if the administrator or delegated agency believes that the applicant has made a showing that the extension is justified. This will provide flexibility for OCS sources. It is established EPA policy that sources obtaining extensions are subject to all new or interim requirements and a reassessment of applicable control technology when the extension is granted. It should also be noted that §55.6(b)(3) does not supersede more stringent requirements contained in applicable federal, state, or local permittin egulations, as this would conflict with the statute.

NOTIFICATION REQUIREMENTS

The following comments were received regarding §55.6(a)(2), which states that the Administrator will follow the applicable procedures of 40 CFR part 124 in processing permit applications. A single response has been prepared.

6-21 Comment: Reliance on the relatively loose public notice procedures for the PSD program to address applications in non-attainment areas appears questionable. Appropriate edits to part 124 must be made as part of this rulemaking in order for a clear process to be established. Alternatively, the analogous or applicable procedures that EPA intends to apply from part 124 must be made explicit.

6-22 Comment: Reference to part 124 is unacceptable, explicit requirements should be given.

6-23 Comment: At this time, 40 CFR 124 is inadequate to meet the public notice requirements of this part.

Response: Explicit public notice requirements are given in §§55.5 and 55.7 for COA designations and control technology exemptions respectively. For permit issuance, EPA maintains that it is appropriate for EPA to use the federal procedures for decision making given in part 124 that are used for most federally issued permits. As stated in the preamble, EPA will modify part 124 to make it specifically reference OCS permits issued by EPA. Until part 124 has been modified, EPA will use those procedures in part 124 applicable to PSD permits.

6-24 Comment: Comment: Although in general EPA appears to have done a creditable job of providing for public participation, we would very much like to have some assurance in these regulations that this will not be lost in the course of delegation. For some reason public participation and education are often the first casualty in the delegation process.

Response: The EPA Administrator will delegate implementation and enforcement authority to a state if the Administrator determines that the state's regulations are adequate. Section 55.11 has been changed to clarify that the agency requesting delegation must have adequate administrative procedures, including public notice and comment procedures. Hence, public notice and comment procedures will be reviewed by EPA for adequacy prior to such delegation. In addition, part 55 specifies public notice requirements for COA designations and exemption requests and requires that the delegated agency send a copy of any public comment notice required by federal, state, or local permit regulations to EPA.

6-25 Comment: Prominent newspaper announcement of EPA decisions is good, but public comment period should be 60 days instead of 30 days.

Response: Although we recognize the concern expressed in the comments, a 30 day comment period is standard agency procedure. We suggest that groups who are concerned about potentially overlooking OCS-related public notices contact the appropriate agency and put their names on the direct mailing list for such notices.

6-26 Comment: Public notice should be given not only in newspapers, but also in local radio and television news programs.

Response: The standard agency procedure is to require public notice in a prominent newspaper and through direct mail to interested parties. The added expense of requiring the use of non-print media is difficult to justify. We do, however, encourage interested parties to sign up on the direct mailing list of permitting agencies or to pursue their own use of non-print media to facilitate information dissemination.

6-27 Comment: The regulation should allow the delegated agency 10 days to send a copy of any preliminary determination and final action to the Administrator.

Response: Section 55.6(a)(5)(ii) of the NPR requires the delegated agency to send a copy of any preliminary determination or final permit action to EPA on the date of the determination. By "date of determination" EPA means that date that the draft or final permit is issued to the applicant or made available for public review and comment. EPA, in effect, needs simply to be copied on all such actions. A delay of 10 days could effectively shorten EPA's review time during the public comment period if such period begins on the date of draft permit issuance. This intent has been clarified in the final rule by changing the language to state "at the time of the determination".

IMPACTS ON CLASS I AREAS AND NON-HUMAN SPECIES

6-28 Comment: Impacts on non-human species should be considered and such species should be protected in addition to the protection of onshore ambient air standards. Specifically, numerous commenters (more than 25) stated that the near coastal environment, islands, and plants and animals, must also be protected and consideration to biological damage from deposits of surface contaminants should be addressed.

Response: Congress directed EPA to adopt regulations to "attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I." To the extent that such air quality standards were adopted to protect non-human species, the near coastal environment, islands, plants and animals should benefit by improved air quality. Those OCS facilities that will be subject to the PSD regulations, adopted pursuant to part C of title I, must assess their impacts on ambient air quality, soils, vegetation, and visibility. Impacts on the resources of federal Class I areas (National Parks, Forests and Seashores), including flora, fauna, water, visibility, and cultural artifacts, must also be analyzed. In addition, Section 7 of the Endangered Species Act of 1973 requires all federal agencies to ensure that any action authorized, funded or carried out by the agency are not likely to jeopardize the continued existence of any listed endangered species or result in the destruction or adverse modification of their critical habitat. This includes federal actions such as permits, grants, and licenses. Permits issued under the OCS regulation would qualify as such an action.

6-29 Comment: The DOI's NPS was and is concerned about potential adverse air quality impacts from OCS sources on the more than 70 coastal units of the National Park System, including eight PSD Class I areas as well as 12 coastal FWS Class I areas for which the agency has air quality permit responsibilities under a Memorandum of Understanding.

Response: EPA shares DOI's concern. Protection of Class I areas is afforded through the PSD requirements that are now applicable on the OCS (with the exception of the Gulf of Mexico west of Florida). Under the PSD regulations, the FLM has affirmative responsibility to protect the AQRVs of Class I areas. The FLM is responsible for evaluating a source's projected impacts on the AQRVs and recommending that the review agency approve or disapprove the source's permit application based on anticipated impacts.

6-30 Comment: Paragraph 55.6(b)(6) should be revised to delete the requirement to notify the FLM within 30 days of receipt of a permit application. Notification at least 60 days prior to a public hearing should be adequate. It is often difficult to determine within 30 days of the receipt of the permit if a Class I area is impacted.

Response: EPA does not intend for the permitting agency to determine if an OCS source would impact a Class I area prior to notification of the FLM. Rather, §55.6(b)(6) requires that advanced notification be given to the FLM of any Class I area that may potentially be impacted by an OCS source, such that the FLM may determine if further analysis is required to determine potential impacts on a Class I area. At most this would involve two notifications, regardless of the number of Class I areas potentially impacted: 1) the Air Quality Division of the National Park Service in Denver, and 2) the Forest Service Regional Office.

6-31 Comment: Public notice should be sent to any affected Class I area, not just the adjacent Class I area.

Response: EPA intended "adjacent" to mean, as a practical matter, any potentially affected Class I areas. This has been clarified in §§55.5 and 55.7.

6-32 Comment: The incorporation of PSD review for OCS activities will have a direct and significant effect on Southern California, particularly for Class I air quality regions located in the Los Padres National Forest's wilderness areas. The proposed regulations fail to expressly mandate PSD review in applicable OCS permitting procedures.

Response: Section 55.13 specifically sets forth 40 CFR part 52.21, the PSD requirements, as applicable to all OCS sources.

APPLICABILITY OF NEW SOURCE REVIEW

6-33 Comment: It is our understanding that only a new piece of equipment will be included in new source permitting activities. For example, if a new engine is installed on an existing platform, only the new engine will be considered a new source and not the entire platform. Additionally, we understand that operational changes in throughput or any other changes which occur due to fluctuations in response to reservoir characteristics shall not be considered a new source.

Response: As stated in §II.B of the NPR, the definition of "new source" applicable to an OCS facility is that definition given by the applicable federal, state, or local regulation referenced in §§55.13 and 55.14. In general, the first assumption is correct: only that portion of a facility that is modified is subject to NSR requirements. The second assumption, however, may be incorrect. Any change, physical or operational, that results in a increase in emissions may trigger NSR requirements. Such throughput changes can be accounted for in the permit to allow for operational flexibility. An operational change, such as an increase in throughput that results in an increase in emissions, is usually referred to as a "modification" as opposed to a "new source."

6-34 Comment: A facility should not be subject to preconstruction requirements if retrofitting results in an increase in emissions.

Response: Whether preconstruction requirements will apply depends upon the emissions increase and the de minimus NSR levels given in the applicable OCS requirements referenced in §§55.13 and 55.14. To exempt all retrofits would conflict with the requirement that OCS sources comply with requirements that are the same as corresponding onshore requirements.

SPECIFIC PERMIT REQUIREMENTS

6-35 Comment: Applicants should be required to inform contractors and sub-contractors of any conditions of the permits issued under the regulations which might impact their equipment.

Response: The commenter expresses concern that given the complex leasing, owner, operator relationships on the OCS it would be easy to postulate conditions under which the owner of an OCS source would have no constructive knowledge of the requirements of the permits obtained by an applicant. EPA concurs. Notification of future owners and sub-contractors is often a requirement on federally issued PSD permits. Section 55.6 has been amended to include the above suggestion.

6-36 Comment: A separate permit should be required for each individual emitting unit. This would subject each unit to independently enforceable requirements and discourage attempts to avoid NSR requirements.

Response: In an effort to meet the CAA requirement that OCS permitting requirements be the same as those onshore, EPA incorporated the onshore programs into the OCS rule by reference and tried to exclude conditions in the OCS rule that would interfere with implementation of these established programs.

Agencies may vary in the number of permits that they issue to a source having more than one emissions unit. There are advantages to both single facility permits and individual emission unit permits. What is important is that each emissions unit must be identified clearly in the permit, along with the allowable emission rates and work practice and operational standards for each pollutant emitted.

6-37 Comment: The CAA requires OCS sources to comply with all requirements of the law and not just with the application submitted pursuant to part 55.

Response: EPA concurs. OCS sources must comply with all requirements of the law and not just with the application submitted pursuant to part 55. Section 55.6(a)(4) of the NPR does not limit a source's obligation to comply with all applicable requirements, but is an additional requirement that specifies the source's obligation to construct and operate within the parameters specified in the permit application upon which the permit review and potential impact analysis were based.

6-38 Comment: Paragraph 55.6(a)(4)(ii), Source Obligation, should be modified to refer to state and local law as well as federal law.

Response: EPA does not concur. The OCS is an area of federal jurisdiction. Specific state and local laws not related to air quality may not apply on the OCS.

6-39 Comment: Commenter suggested that the references to §§55.13 and 55.14 be deleted from requirement §55.6(c)(1).

Response: Only those requirements referenced in §§55.13 and 55.14 are applicable on the OCS within 25 miles of states' seaward boundaries under §328 of the CAA. These sections do, however, include all current state and local operating permit programs for the given states and even reference proposed part 70.

6-40 Comment: 55.6(c)(3) does not adequately deal with the situation where the operating permit program is not approvable as part of the SIP, but provides for more stringent regulation than the minimum federal requirements nonetheless. In that instance, the more stringent requirements of the onshore program must be required under the statute.

Response: If an onshore operating permits program has been adopted by the COA, it will be included in the applicable requirements of §55.14 regardless of whether it is approved as part of the SIP. In addition, the federal operating permits program, part 71, will be applicable if it is applicable in COA. This will mirror the onshore requirements.

6-41 Comment: If it is determined that specific onshore BACT, RACT, and BARCT guidelines are technologically infeasible or inappropriate for applications on OCS sources, these provisions should be modified so as to be made appropriate for these facilities.

Response: If a BACT, RACT, or BARCT requirement is technologically infeasible or presents an unreasonable threat to health or safety, an OCS source may be granted an exemption from these requirements in accordance with §55.7 of part 55. Future BACT, RACT, or BARCT guidelines should be developed with the input of OCS sources to reduce the need for such exemptions. In addition, BACT/LAER determinations for new sources are made on a case-by-case basis taking into consideration technical feasibility.

6-42 Comment: All OCS sources off the coast of California should apply BACT.

Response: Only new sources and modifications to existing sources will be subject to BACT requirements. Section 328 of the CAA directs EPA to establish requirements that are the same as those in the COA for sources located within 25 miles of states' seaward boundaries. The applicable federal, state and local requirements have been incorporated into §§55.13 and 55.14. As onshore, new and modified OCS sources subject to NSR requirements must apply BACT or LAER. Existing OCS sources located off the coast of California will have to meet the required control technology requirements, such as RACT or BARCT to the extent that they are technically feasible and do not represent an unreasonable threat to health and safety. In addition, sources will have to mitigate any increased emissions due to an exemption from any control technology requirement, as required by the statute. New sources located greater than 25 miles from state seaward boundaries will be subject to the federal requirements for PSD. The PSD program requires that major new sources and modifications apply BACT (see 40 CFR 52.21).

6-43 Comment: For [illegible]cticability in OCS operation, a single EIS or Finding of No significant Impact should be prepared by MMS at the time of the federal lease sale. A stepwise approach to EIS's on OCS leases can only discourage development of these areas contrary to the purpose of the OCSLA.

Response: Federal, state and local air quality requirements developed under the CAA do not usually require the drafting of an EIS. An EIS may be required under another act such as CEQA and NEPA. EPA will not be directly involved in the preparation of such documents. As stated in §55.6(b)(5), the Administrator will try to use information included in an EIS prepared for another agency to meet the requirements of a permit application required pursuant to §55.6 to the extent such information is adequate.

IMPLEMENTATION ISSUES

6-44 Comment: No provision is made for dividing the PSD increment between onshore and offshore industry.

Response: Increment consumption is dependent upon an individual source's area of impact and thus is handled on a case-by case basis by the agency implementing the PSD program. OCS sources that consume increment in attainment areas will be treated the same as onshore sources.

6-45 Comment: Averaging times used for the calculations of emissions should be conservative, and based upon time periods related to the ambient standards that they are calculated to address.

Response: Averaging times and emission calculations must meet the applicable OCS requirements that were adopted from current onshore federal, state and local air quality regulations.

6-46 Comment: EPA needs to state how the PSD process would be adapted to offshore conditions, where the source is located a considerable distance from potential impact areas. Also, PSD requirements for exploration activities, which are temporary sources that normally take place over a period of no more that 3 months, must be the same as PSD requirements for similar projects onshore.

Response: The PSD requirements for all sources are intended to apply in the same manner in which they apply onshore. As a practical matter, most temporary projects do not trigger PSD review. EPA is aware that there are a considerable number of questions that arise regarding the implementation of established onshore programs on the OCS. Such questions will be handled in accordance with the requirements of part 55 and, to the extent feasible, existing EPA guidance.

The following comments are in support of EPA's proposal and do not require a response.

6-47 We support the process proposed by EPA that would require a new or modified OCS source to "include a description of all the applicable requirements that apply to the source and a description of how the source will comply with the applicable requirements."

6-48 Several comments were submitted in support of the requirement that the permit application include any exemption requests and that the requests be accompanied by suggested alternative controls, an estimate of residual emissions, and preliminary information regarding the acquisition of offsets.

6-49 We agree that potential to emit must be limited by the reduction of emissions resulting from federally enforceable regulations when considering implementation rules.

6-50 Industry endorses the 30-day notification of the FLM of any possibly affected Class I area in order to expedite decisions.

6-51 We agree with the use of a compliance plan as required by paragraph 55.6(b)(7).

6-52 We agree that EPA must retain authority for permitting of sources located beyond 25 miles of a state seaward boundary.

7. Exemptions (§55.7)

DELEGATION

7-1 Comment: Many commenters expressed support for the delegation of exemption authority to agencies that have delegated permitting authority. APCDs have the experience and expertise needed to make the decisions required by the rule.

Response: EPA agrees that an onshore delegated agency has the expertise to capably implement the exemption portion of the OCS rule.

7-2 Comment: EPA can't retain appeal authority over exemptions

Response: EPA's delegation of exemption authority is a conditional delegation. Because of the important safety issues which may be implicated, EPA has provided for an automatic referral of EPA if there is no consensus on an exemption decision between the delegated agency, MMS and the USCG. This referral process is different than the appeal process the under administrative review.

7-3 Comment: The law did not intend that the delegated agency's decision could be referred or appealed to the Administrator. Onshore agencies have established review procedures, typically a hearing board, where exemptions are reviewed. As a last resort, an aggrieved party could always file suit.

Response: EPA believes that the referral and appeal procedures of the rule are allowed under §328, and moreover, conform to EPA's historical policy of partial delegation. The statute permits the Administrator to make less than a full delegation. There are many other programs where the Administrator makes partial delegations or conditional delegations (e.g. PSD). Most decisions made by delegated agencies can be appealed to the Administrator, including permit decisions.

7-4 Comment: The statutory ability to grant exemptions should not be delegated to state or local agencies. Since the exemptions are being promulgated as federal law this raises the question of enforcement of federal law by state officials who are not officers of the United States, a violation of the Appointments Clause of the Constitution.

Response: Exemptions are part of the implementation and enforcement authority that the statute specifies may be delegated to the states. Since the rules provide that EPA will not delegate this authority unless the state meets the criteria required for all delegations there should be no conflict with the Appointments Clause (see discussion in NPR).

7-5 Comment: The delegation of the authority to make decisions on exemption requests should automatically accompany the delegation of permitting authority.

Response: EPA disagrees. An onshore agency must have adequate regulations to implement and enforce the provisions of the OCS rule in order to receive delegation. An agency may have adequate regulations to implement the permitting provisions but not the exemption provisions of the rule. In this situation the Administrator would make a partial delegation of permitting authority, rather than denying all delegation of authority.

The following comment does not require a response.

7-6 Comment: Many commenters supported EPA's proposal to delegate the authority to grant or deny exemption requests.

CONSENSUS

7-7 Comment: The consensus process for making decisions on exemption requests represents an illegal delegation of authority to MMS and USCG. Such a process cannot be authorized under the statute.

Response: EPA disagrees. A requirement for the delegated agency to reach consensus with MMS and the USCG does not constitute a delegation of authority. If consensus is not reached the rule specifies that the decision will be made by EPA. MMS and USCG do not have any authority to make a decision on an exemption request.

7-8 Comment: The requirement to reach a consensus violates the broad delegation of authority to state and local agencies mandated by the statute. Other commenters supported coordination with MMS and USCG, but they objected to the requirement that the delegated agency, MMS and USCG reach a consensus decision on exemption requests.

Response: MMS and USCG continue to have primary responsibility for the safety of operations on the OCS; therefore, EPA believes that it is appropriate to retain the requirement that the delegated agency, MMS, and USCG reach consensus on exemption requests. If the delegated agency fails to reach consensus with MMS and USCG on the request it will be referred to the Administrator for decision. Since a non-consensus decision is likely to be appealed, the referral process should generally result in a net savings of time, a major concern in the already lengthy permitting process.

7-9 Comment: The request for an exemption should be coordinated with MMS and the USCG. This coordination between federal agencies would be best handled by EPA. EPA could consult with the local permitting authorities.

Response: This would add an unnecessary layer of bureaucracy to the exemption process, which would result in delays resolving exemption requests. An OCS operator dissatisfied with an exemption decision, may always appeal the decision to the Administrator.

7-10 Comment: If a required control is also regulated by other federal agencies such as the USCG it should be determined ahead of time if this control will be accepted by the USCG. An example of this would be selective catalytic reduction, which requires injection of anhydrous ammonia. The USCG has authority to regulate the overwater transport of chemicals and currently forbids the transport of anhydrous ammonia. The commenter believes that it would be better to address this issue prior to final rulemaking rather than on a case-by-case basis.

Response: At the present time, EPA believes that exemptions are best addressed on a case-by-case basis to allow the advancements in technology to be easily applied offshore. If at some time in the future, the volume of requests for exemption from a specific control requirement becomes overwhelming, EPA may consider exempting all sources from that particular requirement. The substitute requirement could either be generic or determined on a case-by-case basis.

7-11 Comment: One commenter suggested that when the rule requires consultation or consensus between agencies, points of contact in these agencies should be set up in advance.

Response: EPA agrees with this concept but believes that it should be done voluntarily by the involved agencies rather than incorporated into the rule.

GENERAL

7-12 Comment: All references to "the Administrator" should be revised to read "the Administrator or the delegated agency".

Response: The final rule has been modified in response to this suggestion. The changes will facilitate the ability of EPA to delegate authority and the ability of delegated agencies to implement and enforce the rule. Not every reference to the Administrator was changed because specific duties remain the sole responsibility of the Administrator.

7-13 Comment: Section 55.7 should be modified to allow a source to submit an exemption request after submission of construction or operating permit applications. The rule should include some flexibility so that a source can address changing conditions.

Response: EPA believes that the rule already provides adequate flexibility for OCS sources. If a source wishes to submit an exemption request after submission of construction or operating permit application it may do so although a change in the proposed configuration of a source or a change to operating conditions may require a permit change. The rule also allows a source to submit exemption requests in response to a newly adopted rule when no permit change is necessary.

7-14 Comment: The ability of a regulated source to receive an exemption is a weak link in the proposed rule. It is the engineers responsibility to design a safe facility in accordance with all applicable regulations and requirements.

Response: EPA agrees; however, applicable onshore rules are incorporated into the federal OCS rule without consideration of whether or not the rule is safe for OCS sources. In the onshore rule development process, research is done by the regulatory agency and public comment is solicited for the purpose of assuring that a control is feasible and safe. No rule that was technically impossible or blatantly unsafe would be adopted. Congress recognized that by requiring the OCS rule to include all applicable onshore rules, some unsafe or infeasible requirements could be incorporated. Some of the reasons that an onshore rule might not be technically feasible for an OCS facility include: remote location, lack of space (particularly in cases where retrofitting is required), difficulty of rapid evacuation, inability to transfer and store hazardous materials safely, or a hostile environment such as extremely low temperatures or low visibility that could prevent equipment or people from performing in compliance with a control requirement.

In the future, onshore regulatory agencies will know in advance that a rule is likely to be applicable to OCS facilities and will try to resolve and technical and safety problems related to OCS facilities prior to adoption. Additionally, OCS operators are aware that any rule adopted onshore will be potentially applicable to OCS sources and should take an active role in the onshore rule adoption process. Thus, there should be less need for exemptions in the future.

7-15 Comment: Commenters suggested various changes to the language of §55.7 with the aim of making the offset requirements more stringent and enforceable.

Response: The language contained in the rule at §55.7(e)(2) is equivalent or more stringent than the suggestions put forth by commenters.

7-16 Comment: New and existing sources should obtain offsets at a ratio of greater than 1:1 if the COA is a nonattainment area.

Response: As explained in the NPR, the purpose of exemption offsets is different than nonattainment offsets. To summarize, in a nonattainment area all new source offsets must be obtained at a ratio that demonstrates a net air quality benefit. Existing sources that receive an exemption must provide offsets only to prevent degradation of air quality attributable to the grant of an exemption.

7-17 Comment: A source located beyond 25 miles from states' seaward boundaries should not be required to provide offsets when granted an exemption, unless an air quality impact analysis demonstrates that there would be adverse effects on air quality.

Response: The statute requires that residual emissions due to the grant of an exemption be offset. The statute does not differentiate between sources within 25 miles and sources beyond 25 miles from states' seaward boundaries. EPA does not have the discretion to waive this requirement.

7-18 Comment: The NPR failed to establish procedures for public notice and comment on exemption requests, to require the Administrator to make written findings explaining the basis of any exemption issued, and to impose another requirement equal to or as close in stringency as possible to the original requirement.

Response: The rule does include all of these requirements. The commenter should refer to §55.7(f).

7-19 Comment: Materials should be available for public viewing at more than one location in affected areas. This allows the public a better opportunity to comment.

Response: The standard agency procedure is to require public notice in a prominent newspaper and through direct mail to interested parties. We encourage interested parties to sign up on the direct mailing list of permitting agencies or to pursue their own means of information dissemination. EPA must consider the public expense incurred; the agency believes that current procedures strike the best balance between accessibility and cost.

7-20 Comment: Denials of exemptions should also be proposed for public comment.

Response: This is not required by the statute, but if the exemption request is submitted with a permit application the public may comment on the denial during the period provided for comment on the preliminary permit determination.

7-21 Comment: Agency action on an exemption request should occur within 90 days of receipt of the request.

Response: In most cases the Administrator or the delegated agency will take some action within 90 days of receipt of the request. Requests referred to the Administrator and requests submitted as part of a permit application under 40 CFR part 124 will take longer.

7-22 Comment: There is a typographical error in §55.7(e)(3)(ii). The word "not" was left out.

Response: This section has been corrected to read "New OCS sources shall comply with the offset ratio of 1:1 if offsets are <u>not</u> required in the COA;

7-23 Comment: A copy of the notice of the preliminary exemption determination should be sent to every person who requested such notices.

Response: This suggestion has been incorporated into the rule.

7-24 Comment: The number of days allowed to provide copies of the exemption request to MMS and USCG should be reduced from 15 days to 5 days after its receipt.

Response: In the interest of streamlining the administrative procedures of the rule this suggestion has been incorporated.

7-25 Comment: There is a typographical error in §55.7(f)(6). The word "who" should be inserted into the first sentence between "person" and "filed."

Response: This has been corrected in the final rule.

7-26 Comment: A increase of the controlled pollutant is not a basis for exempting a source from a control requirement. An increase in a criteria pollutant or a precursor is not a threat to health or safety. The above issue is better addressed through control technology determinations such as BACT and LAER determinations.

Response: EPA did not intend to give the impression that any increase of any criteria pollutant represented an unacceptable risk to health and safety. However, if the application of a control results in a net increase of the very same pollutant that the control was designed and adopted to decrease, the net result is degradation of ambient air quality.

7-27 Comment: The information required in an exemption request is not extensive enough to allow the permitting agency to adequately evaluate the request, thus depriving the process of substantial worth.

Response: EPA believes that the documentation required from the source under §55.7(b) does provide adequate information to make an exemption determination.

7-28 Comment: Would an exemption be revoked if technology was developed that made a control technology technically feasible or eliminated the threat to health and safety? The regulations fail to provide for such regular review.

Response: Revocation of an exemption is unlikely unless the source proposes to modify and during the course of permitting the modification the exemption is revoked or the source voluntarily complies with the original requirement. There is no corollary onshore process for reviewing technology determinations and the statute does not require such a review. In any case, there is no actual emission reduction because revocation of the exemption would free up the offsets that the source had to provide to receive the exemption, although it is possible that those offsets may no longer be marketable due to interim implementation of more stringent rules.

7-29 Comment: A couple of commenters wanted assurance that any request for exemption shall be accompanied by suggested alternative controls, estimate of residual emissions, and preliminary information regarding the source of offsets for the residual emissions. This information must be required, not requested.

Response: The proposed and final rule both require that this information shall be submitted.

7-30 Comment: Many commenters wanted clarification that sources may be exempted only from "control technology requirements."

Response: The preamble and rule were both reviewed to assure that it was clear that exemptions can only be granted from control technology requirements.

7-31 Comment: The administrative procedures associated with exemptions should be expedited and legal protections for the requester be provided in accordance with the APA.

Response: All of EPA's regulations must be consistent with the APA with the exception of regulations that are required by statute to meet a conflicting requirement. It should also be noted that the APA may not address every situation for which EPA must provide regulations.

The following comment does not require a response.

7-32 Comment: Several commenters fully endorse the need for the exemption process and stated that safety is of primary importance in OCS operations.

8. Monitoring, Reporting, Inspections, and Compliance (§55.8)

8-1 Comment: Please clarify in the Preamble that the COA has the right to collect air toxic information even though this is not required in the OCS rule.

Response: A delegated agency that is the COA for an OCS source can use its state law information request authority to collect information.

8-2 Comment: The statute [should] require that local requirements for monitoring, testing and reporting be included in the permit. EPA's proposed approach is too narrow.

Response: If the monitoring, testing and reporting requirements are included in the OCS regulations, then they will be included in the permit.

8-3 Comment: Please make sure good monitoring and enforcement are carried out and that there are adequate funds to make this possible.

Response: EPA will routinely monitor the performance the delegated agency in carrying out monitoring and enforcement responsibilities. One of the requirements that an agency must meet to receive delegation is to show that adequate funds are available to implement and enforce the requirements of the rule.

8-4 Comment: Monitoring must be required.

Response: If monitoring is required onshore, it will be required offshore. As discussed in the NPR, some EPA programs require monitoring.

8-5 Comment: Information obtained by EPA should be made available to state/local agencies.

Response: Information obtained by EPA will be made available under existing procedures for information exchanges with air agencies or under FOIA.

8-6 Comment: Upon delegation, we [South Coast] intend to require quarterly compliance reports from OCS source operators in order to determine their compliance status. By written agreement or permit condition, the sources will be required to provide access (transportation) to the platform and safety training to District Staff.

Response: A delegated state agency can use its information gathering authority to require reporting by a source to determine its compliance status if allowed by state law. The South Coast District is encouraged to work with the OCS sources to have adequate safety training and acceptable means of transportation to and from the platforms.

9. Enforcement (§55.9)

9-1 Comment: Allowing 24 hour shutdown is "absurd." Only when the source makes a sufficient showing of safety is this necessary.

Response: EPA has determined that 24 hours is an appropriate amount time to shut down a OCS platform due to the unique problems of being on the OCS.

9-2 Comment: EPA claims only federal officials can enforce federal law, but under the CAA any citizen can enforce the statute. Thus, there is clearly no basis for EPA's claim.

Response: The commenter is correct that any citizen can use the citizen suit provision of the CAA. EPA's concern about state officials enforcing federal law had to do with state officials enforcing federal law as agents of the federal government. In a citizen suit provision, the citizen is acting in his or her individual capacity.

9-3 Comment: The definition of 'adequate' [in the enforcement plan of the state] must be very clear and at least as complete as EPA's program.

Response: EPA will carefully evaluate the state's enforcement plan and must be convinced that the state can enforce the OCS program. The term "adequacy" is discussed in more detail in §55.11.

9-4 Comment: While we agree to consult with the MMS and the USCG on enforcement actions, there is no authority to require consensus before enforcement action is taken.

Response: The enforcement provisions of the rule do not require that the enforcing agency reach consensus with MMS and USCG, merely that any shutdowns be coordinated with these agencies for the purpose of assuring safety.

9-5 Comment: EPA should include §304 of the CAA in the enforcement §55.9.

Response: Commenter is correct and EPA has included §304 of the CAA in the enforcement section. EPA also made clear that all of the enforcement authority in the CAA applies to OCS sources.

9-6 Comment: EPA should make clear that a delegated COA can enforce in state court.

Response: To receive delegation, a state will have to show that it has authority under state law to enforce the OCS program. This authority would presumably include the authority to enforce in state court.

9-7 Comment: Conoco repeats its position that enforcement of federal environmental requirements are to remain under sole federal jurisdiction.

(a) We agree that all final requirements resulting from this proposal are enforceable during the time such requirements remain in force.

(b) We agree with this subsection, but remind EPA of the statutory limitations on OCS areas outside the 25-mile buffer zone.

(c) Conoco reiterates its concern for safety in OCS operations.

Response: Conoco's comments are noted. EPA is not aware of what "statutory limitations" Conoco is concerned about since granted jurisdiction over OCS sources outside as well as inside the 25 mile limit to EPA, and left the requirements for OCS sources outside the 25 mile limit to EPA's discretion. For safety concerns, please see discussion of the technical and safety exemption, above.

The following comment does no require a response.

9-8 Comment: We [the state agency] will cooperate with MMS and the USCG.

10. Fees (§55.10)

10-1 Comment: The commenter is concerned about the collection of fees for an activity before regulations are promulgated to control such activity.

Response: This is not an issue since no fees will be assessed until the OCS rule has been promulgated.

10-2 Comment: Fees charged to the applicant should cover not only agency processing expense but ongoing expenses for EPA to monitor, inspect, and certify compliance.

Response: EPA will charge fees to recover all costs allowable under federal regulations.

10-3 Comment: Section 55.10(b) should be deleted from the final rule. This subsection states that EPA shall collect fees from sources located beyond 25 miles from states' seaward boundaries in accordance with the requirements of the federal operating permit program upon its promulgation.

Response: Section 55.10(b) has been modified and is now reserved until the federal operating permit program is promulgated. Upon that rule's promulgation, it will be incorporated at §55.10(b) and EPA will then have the authority to collect fees in accordance with the federal operating permit program .

10-4 Comment: Many commenters stated that the reference in paragraph (c) should read "the EPA or the delegated agency".

Response: There is no paragraph (c) in §55.10.

10-5 Comment: Language should be added to the rule to specifically allow the permitting agency charge a fee to review a compliance plan.

Response: EPA may not charge fees unless specifically allowed by statute. Delegated agencies can charge a fee for review of a compliance plan if such authority exists in the rules of the COA.

11. Delegation (§55.11)

STATE AND LOCAL ISSUES

11-1 Comment: The rule should be revised to facilitate delegation directly to local agencies when appropriate. The legislative history supports delegation to local agencies and to reflect this all references to "the Governor or his designee" should be changed to "the permitting authority for the COA." All references to "State" should be replaced with "onshore area," "State Attorney General" should be replaced by "legal counsel for the onshore area," and "into State law in 55.11(b)(2) and "under State law" in 55.11(b)(3) should be deleted.

Response: EPA is required to delegate the OCS program if a state has adequate regulations. A number of commenters correctly point out that particularly in California, local agencies exercise authority under state law over air pollution matters. EPA will delegate to the local agency if the Governor or his designee request such delegation. In this way, EPA will not have to make a state law determination of which agency is the correct one to receive delegation. See preamble §I.K.

11-2 Comment: WSPA believes the CAA does not allow local enforcement or implementation of OCS Air Regulations.

Response: The statute mandates delegation to a requesting state with adequate regulations. EPA reads this mandate to mean delegation to the state agency that has authority over sources of onshore air pollution. In the case of California, the appropriate state agency is the local air pollution control district.

REVOCATION

11-3 Comment: Delegation should be revoked only on the grounds that the delegated agency fails to adequately implement and enforce the regulations. The rule should be modified to eliminate the terms arbitrary, capricious, and inequitable as grounds for revoking the delegation.

Response: EPA is deleting the reference to "inequitable." The requirement that the agency not take actions that are arbitrary and capricious is based on the APA.

11-4 Comment: Section 55.11 should be revised to read that 'the Administrator may withdraw delegation' instead of 'the Administrator will withdraw delegation.' Revocation of delegation is a discretionary act, not a mandatory one.

Response: Commenter is correct that withdrawal of delegation is not a mandatory act. However, the use of the verb "will" does not indicate that the act is mandatory. The verb "shall" is routinely used with the third person to indicate a mandatory act.

11-5 Comment: There is no provision in the statute for the revocation of delegation.

Response: While the commenter is correct that revocation of delegation is not specifically addressed in the statute, it is fundamental to the delegation process that if the delegatee fails to adequately carry out the delegated program, the delegator can withdraw the delegation.

11-6 Comment: The additional conditions placed on state delegation are unfounded.

Response: We simply disagree. The basis for the conditions placed on state delegation are discussed in the NPR and the preamble to the final rule.

GENERAL

11-7 Comment: The statute mandates that EPA delegate implementation and enforcement of the OCS requirements if the onshore agency has 'adequate' requirements. This implies that the onshore agency need not adopt EPA's rules, only regulations that are adequate.

Response: EPA disagrees and is interpreting "adequate" as discussed in the preamble and set forth in the rule. That is, the agency must have:

1. adopted the appropriate portions of the rule into state law;
2. adequate authority under state law to implement and enforce the requirements of the rule;
3. adequate resources to implement and enforce the requirements of the rule; and
4. adequate administrative procedures to implement and enforce the requirements of the rule, including public notice and comment procedures.

11-8 Comment: Amend §55.11(b) to include USCG in the review process of local regulations affecting marine vessels.

Response: EPA will consult with relevant agencies in adopting the local regulations into federal law, such as USCG for rules affecting vessels.

11-9 Comment: The requirement of a state law amendment is excessive.

Response: EPA believes the statute requires states to adopt the federal OCS program into state law.

11-10 Comment: Rewrite of 55.11(c) to add language 'The Administrator shall suspend action on any pending permit applications while a delegation request is under submission, and shall promptly transfer the any pending and complete permit files to the permitting authority when the delegation is approved.

Response: EPA and the agency receiving delegation will work out the details of transferring permit applications on a case-by-case basis.

11-11 Comment: The rule should require strong public participation standards of the state or local agency before the program can be delegated.

Response: The statute states that EPA shall delegate the OCS program if the state or local agency's regulations are adequate. EPA is interpreting this to mean that an agency must have procedures that meet minimum standards of public participation and comment.

11-12 Comment: An area should not need an adjacent source in order to apply for delegation of the OCS program. According to EPA's proposed rule, one unregulated source would have to be built before authority can be delegated.

Response: The statute states that a prerequisite to requesting delegation is the existence of an adjacent OCS source. Thus, if a state does not have a source located on the adjacent OCS, it can not request delegation until an OCS source exists. However, the source will not be uncontrolled, as EPA will permit the source.

11-13 Comment: Modify the rule so that the delegated agency has authority to approve compliance plans submitted by existing OCS sources and charge fees to review and approve the plans.

Response: Compliance plans (see §55.6 of the rule) are in the nature of information requests. However, such compliance plans are not "approvable" (or enforceable) but act as a guide as to how the source will come into compliance. Obviously, if the source does not come into compliance, EPA or the delegated agency will be able to bring an enforcement action against it.

11-14 Comment: Delegated agencies should be allowed to exercise the authority to implement and enforce the rule beyond 25 miles from states' seaward boundaries. In fact, the statute mandates delegation if the onshore regulations are adequate.

Response: EPA has decided that delegation of the OCS program beyond 25 miles from states' seaward boundaries is not appropriate (see §I.K. of the preamble).

11-15 Comment: Modify the rule to clarify that the delegated agency may use all the enforcement authority under the CAA, including the authorities of Sections 113 and 114.

Response: The delegated agency can use all of the enforcement authority that it has under state law. Sections 113 and 114 of the CAA refer to enforcement authority under federal law, which may be exercised by EPA.

11-16 Comment: A non-permitted OCS source could qualify the COA for delegation. For instance, under OCSLA, 42 U.S.C. §1340, geological and geophysical surveys are regulated and therefore, meet the definition of OCS sources.

Response: If the onshore area meets all the criteria for delegation, EPA will delegate authority. It is unclear at this time whether these sources referred to in the above comment qualify as OCS sources.

11-17 Comment: EPA would fail to delegate all of its implementing authority to state and local agencies under the NPR. The delegation process should allow approval of alternative procedures of equal or greater stringency to those set out in these regulations, to allow the delegated agency to use familiar, established procedures rather than a special process utilized only for this category of facilities.

Response: EPA reads the statute to mandate one set of substantive requirements applicable to the OCS under both federal and state law. Therefore, to receive delegation the substantive OCS requirements under state law must be "the same as" federal requirements. The delegated agencies will be able to use their "familiar, established" administrative procedures to implement and enforce the OCS requirements.

11-18 Comment: EPA should delegate authority sparingly and not permit states to extinguish federal authority.

Response: EPA will carefully review the state's program and will always retain the right to enforce the program as a matter of federal law.

11-19 Comment: EPA fails to set out the requirements for approval and disapproval of a delegation to the state.

Response: EPA disagrees. The rule sets forth the criteria that must be met to receive delegation.

11-20 Comment: EPA must delegate all authority, including right to unilaterally change the OCS requirements.

Response: EPA does not believe the term "implement and enforce" includes rulemaking. As a practical matter, if EPA delegated rulemaking authority, the update process would become superfluous. EPA does not believe that this result is consistent with the intent of the statute.

11-21 Comment: Conoco is concerned about the legality of delegation.

Response: The statute specifically requires delegation of authority to requesting states with adequate regulations; however, the comment is noted.

11-22 Comment: Upon delegation, COAs can enforce the requirements of part 55 in state court. This is based on the principles of cooperative federalism. This should be explicitly stated in the preamble.

Response: The commenter is correct that upon delegation the states can enforce the OCS regulations in state court. This is based upon EPA's interpretation of the statute and is stated in the NPR.

11-23 Comment: Variances could be considered as "administrative and procedural rules." Thus, under a delegated program an OCS source would be entitled to obtain a variance as if the source were located onshore, even though the OCS regulations excluded administrative and procedural rules. Additionally, is WSPA correct in its understanding that if a delegated agency refused to allow an OCS source to use a variance procedure that such action would constitute grounds for revoking delegation authority?

Response: The delegation procedure allows a delegated agency to use its administrative and procedural rules to implement and enforce the OCS requirements as a matter of state law. Thus, it could use its variance rules to give OCS sources a variance. Variances granted by onshore agencies are not recognized by EPA and so will not protect a source (onshore or offshore) from federal enforcement action. The decision to withdraw delegation will be made on a case-by-case basis.

11-24 Comment: EPA should impose the most stringent regulations possible and strictly monitor the delegated programs and self-reporting by sources to assure that the program is adequately carried out.

Response: EPA will carry out its statutory duty to promulgate regulations to attain and maintain the federal and state ambient air quality standards. These regulations will be the same as the regulations onshore. EPA will monitor the delegated programs to ensure that the delegated agency is implementing and enforcing the regulations adequately. Some sources will be required to self report pursuant to this section or other sections of the CAA. EPA will monitor these reports to ensure compliance with the regulations.

11-25 Comment: Any information obtained or used by EPA should be made available to state and local agencies upon request without restriction.

Response: EPA will provide all information that it can to the delegated agency.

11-26 Comment: Is partial delegation a possibility?

Response: While partial delegation is not addressed in the statute or the rule, EPA has employed partial delegation (that is, delegating only part of the federal program to a state agency) in other programs and would consider such a request.

11-27 Comment: Section 55.11(a) should be modified to cite the correct part of the statute, §328(c) should be changed to §328(a)(3).

Response: The rule has been revised to cite the proper section of the statute.

11-28 Comment: The rule should be modified so that an onshore area for which a proposed OCS source has submitted an NOI may request delegation.

Response: The statute does not provide for delegation to an onshore area adjacent to a proposed OCS source.

11-29 Comment: Allow delegated agency to charge for copying

Response: A delegated agency will use its state law administrative authority to implement the OCS program. Whether that includes charging for copying is a question of state law.

The following comment does not require a response.

11-30 Comment: API supports EPA's decision not to grant rulemaking authority to the states.

12. Consistency Updates (§55.12)

12-1 Comment: Criteria for consistenc :pdates should be the same as for initial rulemaking. Congress did not intend E A to use different standards. The use of "the same as" vs. "maintain consistency" merely reflects a change in tense (present v. future).

Response: The phrases "the same as" and "maintain consistency" have different literal meanings, and so it appears Congress intended for EPA to treat rules adopted after the date of enactment of the Amendments somewhat differently than those rules that were in place as of the date of enactment. EPA does not interpret this as a broad grant of authority to screen out rules. Rather, EPA believes it is a relatively narrow grant of discretionary authority.

12-2 Comment: If EPA precludes onshore agencies from independently changing onshore rules then EPA must ensure that the rules applied to the OCS are "the same."

Response: EPA will update the rule as required by the statute to maintain consistency. However, EPA cannot guarantee that all requirements will be exactly the same for the following reasons: 1) The Administrator must comply with the general prohibition against arbitrary and capricious rulemaking. (§307(d) of the CAA or §706(2)(a) of the APA). Therefore, if EPA finds that inclusion of a state or

locally adopted rule would be arbitrary or capricious, EPA will not incorporate it into part 55. See additional discussion under response to the following comment. 2) State and local requirements that apply to OCS sources are limited under §328 to those that pertain to the control of pollutants (and their precursors) for which there is a state or federal ambient standard. Therefore, unlike onshore sources, OCS sources will not be subject to state and local non-criteria pollutant requirements and such requirements will not be incorporated into part 55 (see RTC §II.B.16).

12-3 Comment: When utilizing the consistency update process to update part 55, EPA may not consider whether a proposed regulation is arbitrary or capricious. Delete the terms arbitrary and capricious from §55.12. EPA is already prohibited from adopting arbitrary and capricious rules so the use of these terms is confusing and redundant.

Response: The explicit inclusion of the language prohibiting the incorporation of arbitrary and capricious rules was negatively commented on by several parties. However, EPA must consider whether any actions it undertakes are arbitrary or capricious. This requirement is in the APA. §706(2)(a) All federal rulemaking is subject to this standard. Inclusion of this language neither expands nor limits EPA's pre-existing authority and obligation. Although the inclusion of the language regarding arbitrary and capricious rulemaking is redundant, DOE and DOI felt strongly that it should be included to discourage the adoption of state or local rules that are designed expressly to prohibit offshore development.

12-4 Comment: The term "inequitable" is vague and undefined and has no basis in the statute Eliminate or objectively define "inequitable."

Response: The use of the term "inequitable" has been the cause of concern to many commenters. EPA was merely attempting to make clear that it would carry out its duty to screen out arbitrary or capricious rules. Inclusion of the word "inequitable" was meant to clarify arbitrary and capricious, not to introduce a poorly defined concept that could undercut the effectiveness of the rule. Therefore, EPA has deleted all references to this term from the rule.

12-5 Comment: Equity for OCS operators as well as onshore industry is absolutely required.

Response: Equity per se is not a requirement under §328. It is, however, a goal in all rulemakings. EPA has structured the OCS regulations to conform with the statutory requirements of §328 and to create a fair and impartial rule.

12-6 Comment: Congress intended that consistency updates be used solely to maintain consistency with onshore rules without respect to whether the onshore regulations are necessary to attain and maintain federal and state ambient standards and PSD.

Response: Section 328(a)(1) directs EPA to establish requirements to control air pollution from OCS sources to attain and maintain state and federal ambient air quality standards and to comply with the provisions of part C of title 1 (emphasis added). EPA cannot disregard this clear directive (see §III.B of the NPR and §II.B.16 of the RTC)).

12-7 Comment: There is no basis in the statute or legislative history for EPA to screen onshore regulations ... on any basis other than adequacy.

Response: It is not clear what commenters meant by "adequacy" in this context. They may have been referring to the language found under the delegation section. As part of the delegation process, EPA will evaluate the adequacy of a state's regulations to implement and enforce the OCS requirements as directed by the statute. §328(a)(3).

In order for a state or local rule containing substantive requirements to be included in part 55, it must comply with the statutory requirements of §328 and the APA. That is, the rule must be rationally related to the attainment and maintenance of federal or state ambient air quality standards or to the PSD, and it may not be arbitrary or capricious. EPA will not incorporate rules that do not meet these tests.

12-8 Comment: There is no basis for a review of onshore regulations based on "discriminatory implementation or enforcement."

Response: This comment refers to language ("discriminatory") which appeared in the round-table version of the proposal, but was deleted prior to publication of the NPR in the FR. No response required.

12-9 Comment: EPA proposes to evaluate new or changed rules to assure they do not discriminate against OCS sources. EPA should do this for existing rules.

Response: EPA did not (and does not) propose to evaluate rules to assure they do not "discriminate" against OCS sources. In an early, draft version EPA had included such language, but after further consideration, removed it. EPA believes that the prohibition against arbitrary and capricious rulemaking found in federal law is adequate protection for OCS sources.

12-10 Comment: Commenter supports the process to assure consistency and update 40 CFR part 55.

Response: No response required.

12-11 Comment: Onshore rules should automatically apply.

Response: In consultation with the DOJ, EPA has concluded that Congress did not intend that changes in state or local law would automatically change the content of federal OCS law. Therefore, before a state or local rule or regulation may be applied to OCS sources, it must be incorporated into part 55 by formal rulemaking, which includes notice and comment procedures. If Congress had intended onshore rules to automatically apply, surely they would not have required that EPA update the rule.

12-12 Comment: EPA should incorporate by reference all present and future rules similar to the Superfund program and the proposed part 70 program.

Response: The Superfund program does not incorporate by reference "future rules." The current version of the state regulation is incorporated as of a specific date. Subsequent changes to the underlying regulation do not automatically change the incorporated version.

The title V permit program (40 CFR part 70) sets the minimum standards for state permitting programs and it is not analogous to part 55. There is no provision for the automatic incorporation by reference of future rules.

12-13 Comment: Listing specific rules that apply will [cause the OCS rule to] become outdated and ineffective. List exceptions to rules rather than listing the rules that apply.

Response: The approach recommended by this commenter would have the effect of automatic incorporation of state and local onshore requirements, which is not allowable under §328. However, Congress recognized that the onshore regulatory environment is changeable. In order to insure that OCS rules mirror the changes that occur onshore, §328 was crafted to require that EPA update part 55 as necessary to maintain consistency with onshore regulations.

12-14 Comment: OCS and onshore regulations must have the same effective dates.

Response: The statute does not mandate that the OCS regulations and onshore regulations have identical effective dates. EPA is required to update the rule to maintain consistency. For reasons discussed above, EPA must incorporate state and local rules into federal law via federal rulemaking, which will in many instances, cause a lag between when a rule is effective onshore and when it is effective offshore. Because of this, EPA cannot ensure that onshore and offshore regulations

will be effective on the same date. EPA will, however, attempt to minimize this time lag and has written the permitting and consistency update sections such that sources submitting NOIs will be subject to current onshore requirements. Onshore rules adopted with a future effective date can be incorporated into part 55 with that same effective date.

12-15 Comment: The timing of consistency updates needs clarification. The consistency update procedure should provide for onshore agency submittal of OCS rules and EPA action in a timely manner.

Response: In the NPR, EPA solicited comment on the frequency of consistency updates with the intention of formulating a clear time line for consistency updates in the final rulemaking. EPA believes the consistency update procedures in the final rule adequately address this concern.

In areas where there is OCS activity, EPA will review appropriate portions of part 55 at least annually. If the Administrator finds that the requirements of part 55 are inconsistent with those onshore, EPA will update the appropriate portion of part 55. In addition, if a state or local district submits a rule (with proof of adoption) to EPA for inclusion in part 55, EPA will propose action on that rule by no later than the end of the following calendar quarter. This approach enables EPA to process rules in batches, thus reducing the time and expense involved in publishing multiple FR notices. It also enables EPA to postpone unnecessary rulemaking in areas where there is no OCS activity and eliminates the specter of expending resources on activities that will have no effect on air pollution.

Finally, upon submittal of an NOI, EPA will initiate a consistency review. In the case where the NOI is for a source that does not require a COA designation, EPA will propose a consistency update, if necessary, within 60 days of receiving the NOI. In the case where the NOA is designated as the COA by default, (i.e., if an area requests to be the COA but fails to submit a demonstration within the allotted time), EPA will publish a proposed consistency update within 15 days of the default COA determination. If an area other than the NOA petitions to be the COA and submits a demonstration as required, EPA will publish the proposed consistency update if deemed necessary no later than 15 days after the date of the final COA determination.

12-16 Comment: The consistency update process should be performed more frequently/in a timely manner–otherwise higher emissions may be permanently permitted.

Response: The statute mandates that OCS sources be subject to the same requirements that would be applicable if the source were located in the COA. At the same time, the statute does not provide a mechanism by which state law can automatically (and instantaneously) apply on the OCS. EPA must incorporate onshore requirements by federal rulemaking. The statutory requirement that EPA

update the rule introduces inherent and inevitable delay. Delay in the incorporation of rules pertaining to new sources could in fact result in permanently permitted higher emissions. Recognizing this, EPA specifically requires consistency reviews in conjunction with the submittal of NOIs.

A source may not submit its application until a consistency review has been completed, and if appropriate, an update of part 55 has been proposed. Sources are, however, only required to comply with those requirements that are adopted into part 55 as of the date the final permit is issued. EPA intends to finalize the proposed update prior to the final permit issuance. This puts the consistency update process and the permit review process on a parallel time line.

There still remains a possibility that a source could be permitted under requirements that are not the most current onshore requirements. If the onshore area adopts a rule subsequent to the NOI-triggered consistency update and the source submits its application prior to a routine annual update, the source will be required to meet the part 55 requirements, not the state requirements. The state does have the option of submitting rules directly to EPA for inclusion in part 55. EPA will propose action on such rules prior to the end of the following calendar quarter. EPA believes that the approach it has taken toward consistency updates will minimize the possibility of sources being permitted under outdated requirements.

12-17 Comment: Consistency updates should be initiated upon submission of a SIP revision.

Response: There is often a significant delay between the time that a rule is adopted by a state or local agency and when it is submitted to EPA as a SIP revision. Some air pollution control rules are never submitted. The time lag between onshore adoptions and offshore applicability could be lengthened by this approach and some rules might never be submitted, thus creating a permanent inconsistency.

12-18 Comment: In response to EPA's request for comment on the consistency update process the following options were submitted:

OPTION ONE
Commenter suggests three alternatives:

1) **Within 25 miles of state boundaries, all state and local rules apply to OCS sources without any federal review.**
2) **Within 25 miles of state boundaries, all state and local rules apply to OCS sources without federal review, unless EPA takes action within 120 days to disapprove incorporation of a rule into the federal rule.**
3) **The delegated agency submits rule adoptions and revisions to the Administrator. Within 45 days of receipt the Administrator publishes a proposal to approve or deny the incorporation of the rule into the federal OCS rule. The Administrator shall take final action on the rule within 90 days of receipt.**

OPTION TWO

1) **Quarterly review of consistency - update if necessary**
2) **COA submits draft and final copies of rules**
   - **Within 45 days of adoption by COA, EPA publishes NPR to approve or deny**
   - **final action to approve or deny will be taken by EPA within 120 days of receipt**
   - **rule is automatically applicable if administrator fails to act within 120 days**

OPTION THREE

- **Annual updates**
- **Onshore rule changes trigger update - place burden of notification of changes on delegated agency or Administrator, as appropriate**

Response: EPA has incorporated some of these suggestions into the consistency update procedure set forth in the final rule at §55.12. See response to comment 12-15 above. Other suggestions, such as automatic application of onshore rules to the OCS, are not allowable under §328.

12-19 Comment: New sources submitting NOIs should be subject to all onshore rules, regardless of the pace of EPA updates.

Response: OCS sources will be subject to CAA requirements and to the state and local requirements that are included in part 55. Before an updated state or local rule can be applied to OCS sources it must be included in part 55. EPA has a statutory duty to maintain consistency with onshore requirements and will use the consistency update process to ensure that this obligation is fulfilled. Sources are not allowed to submit a complete permit application until EPA has evaluated the need for, and if necessary, proposed a consistency update. The permit application must list all applicable requirements, including those that have been proposed. EPA intends to finalize any proposed requirements prior to the issuance of a final permit. See response to comment 12-16 above.

12-20 Comment: There is no time frame by which EPA must complete the consistency update associated with the NOI process. If the consistency update process involves rulemaking, these reviews could easily exceed the allotted 8-month period allotted for COA designation. The NOI is not the most appropriate link to a consistency review since it could result in unnecessary delays in issuing permits to OCS sources.

Response: EPA is aware of the potential for the consistency update portion of the NOI process to delay the permitting process. In order to minimize this potential delay, EPA has added deadlines to the NOI triggered consistency updates. See response to comments 12-15 and 12-16 above and §55.12(c) of the final rule.

In addition, timelines have been added to the routine consistency update process to assure that EPA performs the updates at least annually and more often under certain circumstances. This should minimize or eliminate the number of inconsistencies that must be corrected at the time of the COA determination and expedite the update.

12-21 Comment: EPA does not need to use the consistency update process for initial rulemakings in areas not addressed by this rulemaking. The same process used for this rulemaking should be followed in those areas.

Response: EPA concurs with this comment and intended to convey that any subsequent rulemakings that address other coastal areas would be handled in the same manner as the rulemakings for the areas EPA has initially addressed. The confusion on this point may have arisen from EPA's statement that rules in place as of the date of enactment could be incorporated at the same time, and in the same FR notice, as rules adopted subsequent to enactment. Coastal areas that have not been addressed in this rulemaking will be treated the same as those that are covered by this rulemaking.

SCREENING

12-22 Comment: Commenter does not agree that states do not have independent authority to adopt, implement and enforce requirements that apply to OCS sources.

Response: Since the OCS is an area of federal jurisdiction, the states do not have authority to regulate OCS sources unless Congress cedes that authority to the states.

12-23 Comment: It is <u>not</u> unconstitutional for state law to automatically dictate the context of federal law.

Response: EPA does not contend that it is necessarily unconstitutional for state law to automatically dictate the context of federal law, but that as discussed in the preamble, the better interpretation of this particular statute is that the state must adopt the federal OCS program into state law and that EPA will update the regulations to maintain consistency.

12-24 Comment: State law may supplement federal regulation on the OCS.

Response: Under EPA's interpretation of the statute the state needs to adopt the federal OCS program.

12-25 Comment: When existing regulations or controls are found not to be needed, are overly stringent, or are inequitable to OCS operators, they must be corrected or rescinded (API vs. EPA, U.S. Fifth Circuit Court of Appeals, 24 ELR 1223 at page 1239.)

Response: The commenter has misinterpreted the case cited. The correct cite to the case is 24 ERC not 24 ELR and does not stand for the proposition the commenter alleges.

12-26 Comment: Use a procedure similar to CAA waiver to update the OCS rule

Response: EPA considered the ARB's request to use a procedure similar to the automobile fuels waiver in title II of the CAA. The agency concluded that it did not have the authority to do so.

13. Applicable Federal Requirements (§55.13)

13-1 Comment: List specific NSPS and NESHAPs subparts that apply.

Response: This is not necessary. The individual standards contain definitions of applicability. See response to comment 14.2 below.

13-2 Comment: EPA should adopt the MMS regulations at 30 CFR 250.33 and 30 CFR 250.34 for sources beyond 25 miles from states' seaward boundaries.

Response: Because the CAA applies on the OCS, EPA believes that it is e appropriate to apply EPA regulations developed pursuant to the CAA.

13-3 Comment: EPA should adopt onshore regulations for sources beyond 25 miles from states' seaward boundaries.

Response: This is not required by the statute and for the reasons explained in the NPR EPA has chosen to apply only federal requirements.

13-4 Comment: EPA has not shown the title V permit program applies, nor should title V apply to sources located beyond 25 miles from states' seaward boundaries.

Response: EPA has discretion to determine what requirements will apply to OCS sources beyond 25 miles from states' seaward boundaries, and has determined that all federal requirements of the CAA will apply.

13-5 Comment: EPA should not require sources' located beyond 25 miles of states' seaward boundaries to comply with any of the requirements proposed. Another commenter suggested that at least these sources should not be required to comply with the proposed requirements if it could be demonstrated that the source's emissions would not have a significant impact on onshore air quality.

Response: EPA simply disagrees and believes that Congress intended that EPA establish control requirements for these sources. Furthermore, the proposed requirements apply due to the general applicability of the CAA.

13-6 Comment: Conoco questions referencing non-existent regulations.

Response: The final rule does not contain any references to rules or regulations that have not yet been promulgated; however, the preamble clearly states EPA's intention to apply certain rules to OCS sources when they are promulgated.

14. Applicable Requirements of the COA (§55.14)

14-1 Comment: Requirements imposed through AQMPs should be referenced and applied.

Response: Any substantive requirements in AQMPs that have been formally adopted will be incorporated into part 55. Of the areas EPA has thus far reviewed, only Alaska's AQMP has been found to contain substantive requirements.

14-2 Comment: Not all referenced rules apply to OCS sources, EPA should suspend all efforts to adopt a final rule until EPA can evaluate the applicability of onshore regulations to OCS sources.

Response: EPA attempted to identify and include all rules that could apply to sources that might locate on the OCS. It is possible that some rules that are listed may not presently be applicable to OCS sources. This is inconsequential because the applicability of an individual rule is ultimately limited by the rule itself. In this way part 55 is analogous to the onshore rule book. For example, an automobile refinishing rule listed in part 55 would not apply to an OCS platform, just as an automobile refinishing rule listed in an onshore rule book would not apply to an onshore oil field.

14-3 Comment: Administrative and procedural requirements should be listed.

Response: State and local agencies will be able to use their administrative and procedural requirements to implement and enforce §328 upon delegation. The statute does not require nor is it necessary for EPA to adopt non-control requirements. See additional discussion under II.A.11.

14-4 Comment: So long as COA delegation means that the onshore area will be allowed to use all of its administrative, permitting, monitoring and enforcement provisions in its rules and regulations and in state law, the District will not request that its variance program, California Health and Safety Code §42350 et seq. be included in §55.14.

Response: Upon delegation, the onshore area will be allowed to use its administrative and procedural rules, to the same extent as onshore.

14-5 Comment: EPA is inconsistent–EPA must treat all local rules the same with respect to incorporation. Either the OCS rule is "the same as" and all rules go in (including variances and "deficient" rules), or only federally approvable rules go in (variances and "deficient" rules would be excluded).

Response: EPA is treating all state and local substantive rules the same with respect to incorporation. When a state or local district requests delegation, it must submit to EPA the administrative and procedural rules it plans to use to implement and enforce the OCS rule, so that EPA can determine if such rules are adequate. Upon delegation, the district or state can use these administrative and procedural requirements. Variances are administrative or procedural in nature and it is not necessary to list them in this rule.

14-6 Comment: EPA should provide variance mechanism for OCS sources.

Response: Under part 55, states will use their own administrative procedures to implement and enforce the OCS regulations. It would be a burden on the state if it were required to use EPA's procedures to enforce and implement the regulations (that is, to completely mirror federal implementation and enforcement procedures). The state would have to adopt entirely new procedures into state law that applied only to the OCS. It is much more efficient if the state can use its own notice and comment, hearing board and other state administrative procedures to implement and enforce the regulations. The same situation that exists onshore will exist on the OCS; state and local governments can use their administrative procedures if they do not conflict with federal requirements, but EPA will disregard any procedures that conflict with federal requirements and can enforce federal law in a delegated program.

Variances are administrative/procedural type rules, not substantive requirements, therefore they will not be incorporated into part 55. Upon delegation, districts may grant variances, as they would onshore. However, state and local variance procedures are not recognized by federal law, because there is no provision in the CAA giving the Administrator such authority. Agencies delegated the OCS program can use administrative tools if they do not result in any violations of federal requirements. Variances do not shield sources from federal enforcement onshore, nor would they shield an OCS source.

In those instances where EPA retains authority over OCS sources, EPA will use its own administrative and procedural requirements, which do not include variances, to implement the substantive requirements. The regulatory environment is necessarily somewhat different from onshore.

14-7 Comment: All rules should be included; EPA must not pick and choose. States must have unfettered discretion to impose all applicable rules.

Response: EPA will incorporate into the OCS rule those state and local onshore rules that comply with the statutory requirements of §328, are not arbitrary or capricious, and are rationally related to the attainment and maintenance of ambient air quality standards and PSD. The screening criteria that EPA will apply are mandated by the language of §328 or the general prohibition against arbitrary or capricious rulemaking with which the Administrator must comply in any rulemaking proceeding, either under §307(d) of the CAA or under the APA.

14-8 Comment: There is no basis in the statute for EPA to screen onshore regulations for inconsistencies or conflicts between federal, state, and local regulations and determine which to incorporate. Why is this necessary if the most stringent requirements apply?

Response: EPA has not proposed to screen onshore regulations for "inconsistencies." EPA did state that if it found conflicts between the various laws, it would analyze them and incorporate the rule that results in the greatest emission reduction. An example of a "conflict" between rules would be where one rule required a certain type of control technology that was prohibited by another rule. Under these circumstances, a source would not be able to comply with both rules. An example of an "inconsistency" between rules would be where one rule specifies a certain emission limit and another rule specifies a lower limit. A source could comply with both rules by meeting the more stringent requirement. EPA differentiated between conflicts and inconsistencies saying that sources must comply with all state, local, and federal requirements, except in the case where it is impossible to do so.

The rationale for this approach is that the OCS regulation represents a unique regulatory environment wherein up to three layers of law (federal, state, and local) are merged into one layer. Conflicts within a single body of law could complicate enforcement, even if "the most stringent" requirement applies. It is possible that in some cases what is the most stringent may be disputable. As stated in the preamble to the NPR, EPA does not know of any instances where overlapping regulations conflict. However, EPA wants the public to be aware of how it will proceed should such a situation arise. EPA anticipates that this will rarely, if ever, occur.

EPA is required by basic rulemaking procedure to promulgate the most clear and unambiguous rule possible. If there are conflicts between federal state and local law that cannot be resolved by having the most stringent apply, EPA must attempt to resolve the issue.

14-19 Comment: Several parties offered comments on specific rules with recommendations that the rules included or excluded.

Response: The analysis of these suggestions is contained in Appendix C of this document. Only a few minor changes were made to the rule list. Typographical errors and mistakes in adoption dates or rule titles were corrected. No rules were added to or deleted from the list, however, any rules that were identified by commenters that should be incorporated into part 55 will be proposed in a consistency update.

14-10 Comment: If a rule is not federally enforceable onshore, i.e., not a part of an approved SIP, that rule may not be incorporated into part 55.

Response: The CAA clearly specifies that EPA must promulgate requirements to control OCS sources of air pollution that are the same as or consistent with onshore requirements. If EPA were to rely solely on the federally approved SIP, it would fail to meet its statutory obligation because, in a number of cases, current state or local requirements that would apply to OCS sources have not been incorporated into the SIP. This could be the case for any number of reasons. There is no basis for EPA to exclude from part 55, rules that are not part of a federally approved SIP.

14-11 Comment: EPA's preamble discussion could be read to inappropriately grandfather new sources to pre-1991 regulatory levels.

Response: This comment is made in reference to the preamble to the NPR, §II.C., wherein "applicability" is discussed. The discussion could conceivably lead one to erroneously conclude that EPA was proposing to include only those requirements that were in effect at the time of enactment, particularly if the rest of the preamble or the rule (or the rest of the paragraph, for that matter) were not read.

To clarify, EPA was trying to explain that rules in place as of the date of enactment were to be considered part of an "initial promulgation." Rules adopted subsequent to enactment are incorporated via consistency updates. EPA stated that because the proposal contained both pre- and post-enactment rules, it was in essence performing a consistency update simultaneously with an initial promulgation.

14-12 Comment: The proposal ignores the fact that all SIPs are presently undergoing revisions to respond to the 1990 amendments.

Response: This was not discussed in any detail in the proposal, but EPA did note that state and local rules will be undergoing many revisions over the next several years in response to the amendments. The consistency update procedures ensure that those changes will be incorporated into part 55.

14-13 Comment: EPA should use a broader approach to incorporation of state and local regulations. At a minimum, the whole SIP should be included. The definition for applicable requirements should include the applicable SIP.

Response: The federally approved ("applicable") SIP is adopted by reference, however, a savings clause restricts the incorporation to substantive requirements.

14-14 Comment: In addition to listing the appropriate part of part 52, state in the regulation that all onshore requirements that have been included in the applicable SIP apply on the OCS.

Response: EPA cannot comply with this request because there are requirements in some ASIPs that are not applicable under §328–for instance rules that do not pertain to the control of criteria pollutants. That is why EPA has included a savings clause that restricts the applicability of the federally approved SIP to those substantive requirements that meet all of the criteria outlined above. See comment 12-2.

14-15 Comment: The proposed rule does not include regulations for many of the nearshore coastal areas under EPA jurisdiction.

Response: Because of limited time and resources, EPA was unable to include all coastal areas in the initial promulgation of requirements. EPA did include all areas that presently, or may in the near future, have offshore activity. This approach addresses all areas where onshore regulations could be applied, and provides for timely incorporation of onshore requirements in other coastal areas.

14-16 Comment: If EPA retains the proposed approach, the term "adopted" should be changed to "amended" or "revised" in 55.14(f).

Response: EPA has attempted, where possible, to reference the date a rule or a revision to a rule was adopted by a state or local board. In the context of part 55, the word "adopted" refers to the adoption of new rules as well as the adoption of revisions to existing rules.

LISTING IS LIMITED TO RULES THAT CONTROL OCS SOURCES

14-17 Comment: EPA completely fails to incorporate procedural requirements applicable in California which elaborate on the basic NSR process. These include permitting and analysis requirements under the California Coastal Act and CEQA, both of which are key onshore procedures that address air pollution issues.

Response: EPA is interpreting the statute to require the incorporation of the "substantive" requirements of federal, state, and local law intended to attain and maintain the ambient air quality standards and to comply with PSD. State regulations such as CEQA and the California Coastal Act are considered to be procedural requirements and will not be incorporated into federal law. However, a

state may use any state or local procedures that it possesses onshore, if a rational relationship can be shown to the implementation and enforcement of the OCS regulations.

14-18 Comment: Ozone violations will occur until all state regulations are adopted

Response: Comment is noted. See above.

14-19 Comment: There is no basis in the statute for EPA to screen onshore regulations for inconsistencies or conflicts between federal, state, and local regulations and determine which to incorporate. Why is this necessary if the most stringent requirements apply?

Response: EPA is required by basic rulemaking procedure to promulgate the most clear and unambiguous rule possible. If there are inconsistencies in federal, state and local law that can not be resolved by the simple directive that the most stringent requirement will apply, EPA must attempt to resolve the issue.

B. Additional Topics Discussed in Proposal

15. Relationship Between Part 55 and SIPs

EMISSION INVENTORIES

15-1 Comment: The proposal does not adequately integrate the new program into the SIP process. EPA needs to ensure that OCS sources are included in emission inventories and are tracked through the SIP process that only surplus OCS emissions reductions are utilized in offset transactions.

Response: EPA concurs with the proposition that OCS emissions must be included in inventories. All offsets must be surplus to emission reductions required by the SIP. OCS emissions will be included in revised emission inventory guidance. Note: all existing sources under EPA jurisdiction are included in coastal agencies inventories.

DEFICIENT RULES

15-2 Comment: Commenter supports differentiation between the SIP process and the OCS consistency update process. Regulations are not subject to the same form of review for the two processes and the COA can submit OCS regulations directly to EPA, rather than through the state as in the SIP process.

Response: No response necessary.

15-3 Comment: EPA is apparently attempting to weaken these rules by insisting they are less stringent than SIP requirements. Since the CAA very plainly states that the onshore provisions shall apply offshore there can be no less stringent requirements when it comes to SIPs.

Response: The point of EPA's discussion regarding SIP deficiencies was to explain that for the purposes of incorporation into part 55, it could not use SIP approvability criteria or EPA guidance for SIP rules as a screening mechanism. This in no way weakens the OCS rule. Often rules that contain "deficiencies" may be more stringent than the federally approved version of the same rule. By incorporating all versions of applicable rules, EPA ensures that the most stringent onshore requirements will apply.

MISCELLANEOUS

15-4 Comment: In order to progress towards attainment of state and federal ambient standards, EPA must go beyond adopting inadequate COA rules and act aggressively through SIP/FIP process to direct or impose adoption of adequate OCS rules, in addition to onshore rules.

Response: To the extent that they are not linked to onshore changes, such actions would be beyond the scope of authority granted by §328.

15-5 Comment: Allow state and local agencies with SIP planning responsibilities to make OCS sources subject to control technology retrofit programs, even if no similar sources are found onshore.

Response: The regulations promulgated pursuant to §328 do not prevent a state or local agency from adopting rules that apply to OCS sources. As long as the rules are consistent with the area's general approach to onshore regulation and otherwise meet the criteria outlined above, EPA will incorporate such rules into part 55.

16. Non-criteria Pollutants

INCORPORATION OF STATE AND LOCAL REQUIREMENTS

16-1 Comment: There is no basis for limiting OCS requirements to those that are rationally related to attaining and maintaining federal and state ambient air quality standards and PSD.

Response: This restriction is contained in the first sentence of §328(a)(1), which states that EPA shall establish requirements to control air pollution from OCS sources to attain and maintain federal and state ambient air quality standards and comply with part C of title I of the CAA (see NPR).

16-2 Comment: All the requirements of a COA should apply, not just requirements related to pollutants for which an ambient standard exists. Limiting the OCS rule to the protection of ambient standards is contrary to the Congressional intent. Congress intended OCS requirements to be the same as onshore requirements.
Response: The statute states that the regulations are to attain and maintain the federal and state ambient standards and to comply with PSD. Although this will create some differences between onshore and offshore requirements, this is what the statute says. See discussion above and the NPR.

16-3 Comment: Many commenters stated that the statute was intended to provide equity between onshore and offshore sources. Any aspect of the rule that results in OCS sources being regulated differently than onshore sources presents a concern.

Response: Although Congress' stated intent was to create equity between onshore and offshore sources, it is simply not possible to adopt identical regulations for onshore and offshore sources. The nature of the sources and even the statute itself made it impossible to promulgate a rule that regulated OCS sources in exactly the same manner as onshore sources (see response above and NPR).

16-4 Comment: It is imperative that toxic substances be regulated in these regulations. As an example, significant quantities of hydrogen sulfide exist [are emitted] in the Santa Barbara Channel.

Response: California has an ambient air quality standard for hydrogen sulfide so this pollutant will be regulated under the OCS rule.

16-5 Comment: Only criteria pollutants and their pre-cursors should be regulated beyond 25 miles from states' seaward boundaries.

Response: It is EPA's position that the CAA applies to the OCS, as discussed in the NPR. Therefore, all air pollutants regulated under the CAA will regulated on the OCS.

16-6 Comment: The term 'rationally related' is not defined.

Response: Rationally related is a standard legal term.

GENERAL APPLICABILITY OF THE CAA

16-7 Comment: EPA has authority to apply the CAA and the regulations thereunder offshore.

Response: EPA agrees. While EPA interprets its regulatory authority under §328 to be restricted to federal and state criteria pollutants, precursors to those pollutants, and pollutants regulated pursuant to PSD, and has accordingly limited its rule to these pollutants, there is nothing barring EPA's general authority to apply the CAA to the OCS..

The OCS, by definition, consists of all submerged lands belonging to the United States (see 43 U.S.C. §1331) and, as mentioned in the NPR, the CAA applies to "the Nation's air resources," §101(b), which would therefore include the OCS. The OCSLA itself provides that all federal laws shall apply on the OCS "to the same extent as if the OCS were an area of exclusive federal jurisdiction located within a state," 43 U.S.C. §1333(a)(1), which would also make the CAA applicable to the OCS. Finally, although the Ninth Circuit in State of California v. Kleppe, 604 F.2d 1187 (1979), held that DOI, not EPA, had authority over OCS air quality control, the court based its holding on §5(a)(8) of OCSLA, 43 U.S.C. §1334(a)(8). Section 5(a)(8) was specifically superseded by §328(a)(1), at least with respect to all areas of the OCS that are the subject of this rulemaking. For these reasons, EPA believes the CAA applies(e.g., provisions relating to toxics). Whether or not states could receive delegation in these circumstances depends upon the specific provisions involved, since the provisions of §328 would not apply.

16-8 Comment: The ruling by the Ninth Circuit in the case of the State of California v. Kleppe did not hold that MMS had sole jurisdiction to regulate OCS air emissions. It simply held that EPA did not have such jurisdiction. §328 superseded the provisions of the OCSLA that granted DOI authority to regulate air emissions on from OCS sources and rendered the Kleppe decision moot.

Response: The commenter is correct. The CAA applies on the OCS.

16-9 Comment: The rule should recognize that the conformity criteria of §176(c) of the CAA will apply to OCS activities regulated under part 55.

Response: The applicability of §176(c) will be dependent on the language of the conformity regulations promulgated. EPA's initial opinion is that conformity will apply on the OCS to the extent that there is an ASIP that applies to the OCS.

16-10 Comment: Commenter does not understand how EPA assumes authority to impose NSPS and NESHAPS upon areas outside the 25-mile buffer zone.

Response: EPA has discretionary authority under §328 to determine the OCS requirements beyond 25 miles from states' seaward boundaries. Furthermore, it is EPA's position that the CAA applies on the OCS, as explained above and in the NPR.

16-11 Comment: There are very serious unanswered Constitutional questions regarding the proposed authority designations by EPA (e.g. enforcement) that must be legally researched by EPA before finalizing the proposed regulations. EPA has misconstrued its overall assignment in the matter, particularly in regard to emission controls for OCS leases outside the 25-mile buffer zone and determination of COA's. Conoco respectfully contends that all proposed regulations must be delayed until all Constitutional issues are revisited and properly solved. EPA should review its position in regard to its assignment for leases beyond the 25-mile buffer zone and for selection of COA's.

Response: EPA believes that it has resolved the constitutional issues raised by the statute, as discussed in the NPR.

The following comments do not require a response.

16-12 Comment: California v. Kleppe did not address the air quality provisions of the CZMA.

16-13 Comment: Congress did not intend §328 as a restriction on EP. uthority.

16-14 Comment: Conoco agrees that EPA must limit the regulation.

C Administrative Requirements

17. Regulatory Impact Analysis

17-1 Comment: The RIA Screening fails to acknowledge that the effect of the OCS Air Regulations is to transfer some of the responsibility for air pollution control costs from onshore sources to offshore sources. As it will cost less to reduce emissions from offshore sources, as they are relatively uncontrolled, the net effect of the regulation will be an actual decrease in the costs of air pollution control. As a result, the regulation is not a "major" rule pursuant to Executive Order (E.O.) 12291.

Response: The possibility of the net effect of this regulation being a decrease in the costs of air pollution control in affected localities is noted in EPA's RIA. It should be pointed out that the decrease is an average for sources subject to the same set of requirements and overall costs in the area.

17-2 Comment: As the baseline developed in the RIA Screening did not fully account for requirements or regulations currently in place, the Screening tends to overestimate the incremental cost of control resulting from the regulation.

Response: The specific example mentioned in the comments was that the current offshore offset ratio of 1:1 for new sources locating in the Santa Barbara Channel as a result of the coastal consistency process. In response to this comment, a sensitivity analysis has been incorporated into the RIA, prepared for promulgation, reflecting the implications of a 1.2:1 versus a 0.2:1 offset ratio. However, as the offset ratio resulting from the coastal consistency process is dependent on the membership of the Coastal Commission, it is subject to change. Thus, a 1.2:1 offset ratio is still assumed as the incremental offset ratio for new sources locating offshore of ozone nonattainment areas in Southern California, as this is the offset ratio incorporated into Santa Barbara's onshore regulations. EPA chose a conservative assumption based on the requirements now in existence.

17-3 Comment: EPA eschewed the most direct measure of assessing equity by not comparing the relative cost effectiveness of onshore regulations to offshore regulations. EPA states: 'In carrying out the non-discretionary provisions of §328, the inherent cost-effectiveness number ($/per ton pollutant reduced) do not necessarily, in the Agency's opinion, establish a precedent for cost-effectiveness benchmarks.' There is no basis for this statement as cost-effectiveness benchmarks are routinely applied in the SIP development process. To correct this omission, an explicit cost effectiveness threshold should be referenced and applied in the rule, corresponding to the highest cost effectiveness value applied in the COA for each pollutant from OCS sources.

Response: Section 328 of the CAA states that sources located within 25 miles of the seaward boundary of affected states shall be subject to the same requirements as if the sources were located in the COA. Therefore, EPA was precluded from using cost-effectiveness benchmarks in these regulations. Section 328 does not give the Administrator authority to limit requirements based on cost effectiveness.

17-4 Comment: Section 328 does not require an economic screening analysis for all incorporated onshore agency rules that apply to OCS sources. Inclusion of an economic screening analysis in the OCS Air Regulations would be in violation of §328. A related comment stated that E.O. 12291 is not applicable to the OCS Air Regulations according to section 8 of that Order. Particularly, section 8 states that it shall not apply where its terms would be in conflict with deadlines imposed by statute.

Response: Although the RIA is in response to E.O. 12291, its results are inputs into a regulation's assessment under the Paperwork Reduction Act and the Regulatory Flexibility Act. The analysis is not incorporated into the rule itself and preparation of the RIA did not delay the promulgation of the rule.

17-5 Comment: The cost data used in the analysis is incorrect and could be understated by one to two orders of magnitude.

Response: The cost data has been revised relative to comments and access to more accurate information. As a result, the estimated cost to regulated sources was revised upward.

17-6 Comment: EPA is requested to either state in its regulations that (1) the 16 existing platforms with onshore agreements are exempt from equipment retrofits or (2) final cost figures are revised to include costs of all 27 platforms subject to local air district regulations.

Response: Final cost figures in the revised economic analysis have been revised to incorporate all "existing" platforms, including those with onshore agreements.

17-7 Comment: The OCS Regulation is likely to result in compliance costs substantially greater than the estimate of $2.2 million per year stated in the RIA Screening.

Response: As a result of public comments and better cost data, cost estimates have been revised and are higher than those given in the NPR.

17-8 Comment: Regulatory costs are only estimated for new OCS activities in the time period between 1992 to 1997, a period in which the rate of OCS development is expected to be relatively slow conomic impacts should be considered over a longer time frame, and should consi the effects of a significantly larger increase in demand for oil and gas resou s.

Response: To enhance the reliability of the cost estimates, the RIA uses data inputs provided by the DOI's MMS. These data incorporate activity on existing oil and gas leases, as well as projected activity on future leases. Costs resulting from activity projected to occur during 1993-1997 have been analyzed in the RIA. For activity projected to occur during 1998-2010, associated costs have been included in Addendum I of the RIA.

COMMENTS ON A COST/BENEFIT ANALYSIS

17-9 Comment: As the regulation will achieve the same benefits (onshore air quality protection) at the same or less cost, a cost/benefit analysis is inappropriate. The statute does not provide EPA with the flexibility to alter the regulatory requirements based on the results of a cost/benefit analysis.

Response: As set out in the statute, EPA did not use a cost benefit analysis to alter the regulatory requirements. However, a cost benefit analysis can provide valuable information to the regulatory agencies and the general public. The appropriateness of a cost/benefit analysis is determined by the applicability of E.O. 12291.

17-10 Comment: The analysis needs to explain more fully when administrative costs apply to sources and when they apply to implementing agencies.

Response: Distinctions between when administrative costs apply to sources and when they apply to implementing agencies is fully explained in the Information Collection Requests prepared for proposal and promulgation, and in the revised economic analysis.

17-11 Comment: A listing of "existing" platforms with onshore agency agreements needs to be incorporated.

Response: The RIA has been revised to incorporate this suggestion.

17-12 Comment: Discussion of emission sources - pages 4, 5 of analysis - should include SO_2 emissions from flaring.

Response: A determination was made that sulfur was not a major component of the gas being flared. In addition to the gas being filtered to remove hydrogen sulfur prior to being flared, the sulfur content of the recovered gas was determined to be minimal.

17-13 Comment: The fact that cranes on OCS platforms are electrified needs to be mentioned. Otherwise, it appears that this large potential source of emissions was overlooked.

Response: It was not assumed in the analysis that the cranes used were electrified; rather, cranes with diesel engines were assumed for safety reasons. Nevertheless, emissions from these cranes are not large as they run infrequently and for only short periods of time.

17-14 Comment: In the discussion of control technology requirements, it should be noted that the same technology being applied offshore Southern California would be used offshore North Carolina and Florida, due to the control being LAER as well as BACT.

Response: For analytical purposes, the same technologies are being applied to offshore platforms in the RIA regardless of location. However, for the "model" Southern California platform (new source), costs for more frequent inspection and maintenance are assumed, as well as offsets for residual emissions. The basis for this difference in assumptions between Southern California on the one hand, and Florida and North Carolina on the other, is the attainment status of the likely COA.

17-15 Comment: A clarification needs to be made on page 13 that the costs described are incremental, not total, control costs.

Response: In the RIA, incremental costs have been defined as such.

17-16 Comment: Suggested rephrasing on page 17: "a platform operator/owner will purchase a preconstruction permit" to "a platform operator/owner will apply for and obtain a preconstruction permit."

Response: Language similar to the above has been incorporated into various support documents where applicable.

17-17 Comment: Reviewing existing agreements for offshore sources is likely to reveal a need for additional control and administrative requirements to be applied to some of the sources. These additional requirements, however, are not anticipated to be as significant as the requirements for sources that do not have agreements and should not have a dramatic effect on the results of the analysis.

Response: The "existing" platforms with onshore agreements have been analyzed; costs assessed for retrofitting these platforms have been incorporated into the RIA.

17-18 Comment: The assumption that existing facilities with onshore agreements would not incur additional permit requirements after implementation is not necessarily a valid assumption.

Response: Permit requirements have been assessed for "existing" facilities with onshore agreements; costs resulting from these permit requirements have been incorporated into the RIA.

17-19 Comment: OCS platforms should not have been assumed to receive technical and safety exemptions for emergency equipment. SBCAPCD applies control requirements to emergency generators and firewater pumps on platforms within its jurisdiction.

Response: EPA's review of the emergency equipment in question revealed that the engines which power these pieces of equipment are not subject to onshore control technology due to the infrequency of their operation. Hence, neither technical and safety exemptions nor offsets for residual emissions are required. Thus, costs associated with emergency equipment controls have not been assessed in the RIA.

17-20 Comment: The discussion on new sources (pages 10-17) fails to recognize that coastal districts presently require OCS sources to meet a number of onshore rules pursuant to the coastal consistency process. These requirements should be included with the "standard industry practices" as part of the baseline, prior to determining incremental cost impacts.

Response: As discussed in a previous response, the one issue regarding baseline that was specifically discussed in comments provided was that of an existing offset ratio of 1:1 for new sources locating in the Santa Barbara Channel. A sensitivity analysis has been incorporated into the RIA in response to this comment.

17-21 Comment: The discussion on page 14 refers to market-based incentive programs. It is assumed that this is in reference to such programs adopted by state and local agencies that are submitted to EPA for incorporation into the rule. There is no provision in the statute that would allow EPA to adopt such programs for areas in which they do not already exist.

Response: EPA disagrees. There are mechanisms in the CAA (such as FIPs) that could allow EPA to adopt market-based incentive programs.

17-22 Comment: As a result of the revised Federal and California Clean Air Acts, the EPA and local districts are authorized to require permitted sources to cover the expense of implementing the regulations under these Acts. Therefore, the administrative costs referred to on pages 18 and 19 will be mainly borne by the regulated community.

Response: The commenter is basically correct. However, there may be a lag between activities conducted by the agencies and reimbursement via fee collections from the sources. Furthermore, market forces may allow the cost for fees to be reflected in the market prices of products provided by the sources. Therefore, it may be the customer and not necessarily the source who bears the ultimate cost for the agencies to administer the regulations. Regardless, the ICR focuses on the initial, not the ultimate, incidence of administrative requirements.

17-23 Comment: Administrative costs have been understated for state/local burden and overstated for EPA burden.

Response: EPA's burden is higher in part due to the resources needed for initial rulemakings and consistency updates. The burden is also higher due to an increase in projected sources assumed to be under EPA's authority.

17-24 Comment: EPA's estimate of $2.2 million/yr as the cost to industry in implementing this Proposed Regulation is incorrect. As a result of the OCS Air Regulation, existing platforms in California would be subject to $87 million in equipment retrofit and incremental operating costs over the next five years, or an average of $17.4 million per year. Based on this, the EPA needs to revisit the RIA Screening analysis and delay promulgation of a final rule until such an analysis is completed.

Response: The cost estimate in the screening analysis has been revised upwards in the RIA. Insufficient documentation has been provided to fully analyze how the $87 million and $17.4 million figures were derived. But, it appears that total investment costs have been accounted for as opposed to incremental investment costs, and that investment costs have not been amortized over the life of the retrofit equipment. In determining costs to existing platforms, equivalent annual cash expenditures for existing platforms over the 1993-1997 time frame have been analyzed.

17-25 Comment: Although the regulation may not be defined as a major rule according to E.O. 12291, the estimated impact of less than $3 million per year was questioned.

Response: Although this rule does not meet the criteria of E.O. 12291 to be classified as a major rule, a RIA has been completed nonetheless due to the importance of OCS resources in the National Energy Strategy. As a result of this analysis, the estimated incremental annualized cost of this regulation in 1997 was determined to be $5 million, with incremental costs expected to grow to $29 million in 2010.

17-26 Comment: EPA's estimate of the number of projected OCS activities outside of California is not realistic and contributes to EPA's low cost estimate.

Response: EPA's estimate of projected activities outside of California has risen dramatically as a result of data inputs from MMS.

17-27 Comment: EPA fails to anticipate the administrative costs associated with the Title V permit program. These cost impacts should be more fully explored prior to promulgation of a final rule.

Response: EPA disagrees. The SBCAPCD's regulations were used as a guide in determining administrative costs in Southern California. SBCAPCD's regulations are more stringent than what is anticipated as a result of the Title V permit program. Moreover, for sources outside of California, the best available information regarding the Title V permit program was employed.

The following comments do not require a response.

17-28 Comment: Emission estimates for OCS platforms in exhibits 2 and 4 are under-predicted by factors ranging from 2 to 10 or more.

17-29 Comment: Although "Lean Premixed Combustion Control" technology has not yet been used in an industrial setting, the SBCAPCD is working with Chevron and Solar Turbines to make this technology possible for offshore operators.

17-30 Comment: Pages 5 to 7: The discussion of pollutants did not adequately address the role of VOC, NOx, and SO2 as PM10 precursors. SBCAPCD disagreed with the statement on page 7 that PM10 and its precursors have 'relative insignificance to overall basinwide air quality levels."

Response: The main pollutants of concern in the RIA and various supporting documents, such as the A.T. Kearney Report, have been NOx and VOC emissions due to their contribution to the formation of ozone. Although Santa Barbara County, Ventura County, and the South Coast are nonattainment for ozone, only the South Coast is in nonattainment for PM10. The role of VOC and NOx in serving as PM10 precursors has been discussed more thoroughly in chapter 7 of the RIA.

17-31 Comment: The emissions of SO2 from OCS sources and its impacts have been underestimated.

Response: The emissions of SO2 could be too high or too low depending on two factors (1) the assumption regarding the amount of sulfur in the oil and gas produced and (2) the amount of processing required on-site to remove the hydrogen sulfide gas, which in turn produces the SO2. In the A. T. Kearney analysis, some processing was assumed in order to alter the recovered oil or gas into pipeline-grade material. The assumed sulfur content of the oil and gas was based on an average of the sulfur content of oil and gas produced at existing platforms.

17-32 Comment: SBCAPCD does not agree that the platforms that have been defined as existing are all 'existing' as defined in §328 of the CAA.

Response: What constitutes an existing platform will be made by reference to the final OCS rule. For analytical purposes, a platform under construction or in operation was considered existing.

17-33 Comment: Exhibit 12: Without having full information regarding the method used to calculate NOx emissions from support vessels, the emissions for some platforms may be overestimated.

Response: NOx emissions from support vessels were calculated on a per mile per year basis. This is explained on page 21 of the A.T. Kearney analysis.

17-34 Comment: Pages 12 and 13: The list of assumptions for the baseline should include (1) a 1:1 offset ratio requirement for all new sources according to the coastal consistency process for sources located in the Santa Barbara Channel and (2) a requirement for marine vessels servicing new OCS sources to comply with an emission limit of no more than 9 grams per horsepower-hour. D-21,7

Response: A sensitivity analysis in the RIA has incorporated the 1:1 offset ratio for new sources locating in the Santa Barbara Channel. The baseline for new sources has not been revised to incorporate the 9 grams per horsepower-hour requirement for marine vessels servicing new OCS sources as this cannot be required by the SBCAPCD.

17-35 Comment: Suggested clarification of following statement on page 17: 'The 16 facilities covered by onshore agreements have met requirements which are in excess of the requirements which will be met by the other 11 facilities as a result of their compliance with the OCS regulations.' SBCAPCD commented that this statement is correct for many, but not all, of the current agreements. It was suggested that the following statement be added for clarification:

This is because many of the sources subject to agreements with onshore agencies were required, pursuant to the coastal consistency process, to meet many of the onshore requirements for new sources, whereas the sources that are not subject to agreements with onshore agencies will be required to meet onshore requirements for existing sources. In addition, other agreements with onshore agencies are voluntary agreements for the purpose of providing offsets.

Response: The RIA and supporting documents have been revised to incorporate an assessment of permit and control technology requirements, and subsequent costs, for all "existing" platforms.

17-36 Comment: Helicopters may be used more extensively than indicated on page 22 to transport personnel to OCS activities. As stated in the report, however, these 'emissions are small relative to the emissions from other vessel sources.'

Response: EPA disagrees that helicopters will be used extensively. The majority of helicopter use is constrained to emergency situations or when crew/supplies need to be moved expeditiously. Moreover, the use of helicopters is primarily constrained to periods of good weather for safety reasons.

17-37 Comment: The capital costs (Exhibit 8a) for sulfur recovery units and vapor balance lines seem significantly overestimated.

Response: These estimates were provided from MMS and manufacturers.

17-38 Comment: Exhibit 9: The Emission Agreement column should contain three responses: yes, no (not currently used), and partial.

Response: This exhibit has been revised in the new supporting document to provide greater clarity.

17-39 Comment: Page 7: The discussion of VOC's did not mention incomplete combustion as a source of VOC emissions.

Response: Incomplete combustion is assumed in the term fugitive emissions.

EMISSION OFFSETS

17-40 Comment: SBCAPCD does not anticipate offsets to be maintained between the completion of an OCS exploration and the initiation of platform construction.

Response: Based on various comments received, offsets were assumed in the RIA to be maintained and therefore transferred between exploration, construction, and development and production activities in the RIA.

17-41 Comment: Page 14 of RIA Screening: "Although 'the transfer and resale of surplus offsets is consistent with EPA policy', it may not be consistent with the regulations of the onshore area."

Response: As a result of comments received, the RIA retains the assumption that emission offsets are transferred from a successful exploration activity to the later stages of an OCS project; however, the resale of surplus offsets is not assumed. This change in assumption regarding the resale of surplus offsets may impart an upward bias to the cost estimates. As noted, these assumptions may not be consistent with COA regulations.

17-42 Comment: Page 15 of RIA Screening: Although some emission sources have acquired their offsets through leases rather than purchases, this is not the typical mechanism. The price at which leased offsets are obtained seem significantly higher than the market price for reasons the SBCAPCD did not want to guess.

Response: EPA has revised its projected offset prices due to comments received. In reviewing additional data and analyses, two NOx offset price scenarios have been examined in the RIA. The result has been higher projected real costs for offsets, as well as the potential for the annual purchase, or lease, of offsets.

17-43 Comment: Although EPA has assumed in the RIA Screening analysis that offset costs are one-time purchases, they are usually leased on an annual basis due to their scarcity both onshore and offshore. Future offsets for OCS, and onshore, facilities in California will be leased since many generators of offset credits may be unwilling to permanently give up long-term offset potential in an increasingly tight offset market. Moreover, we expect the cost of offsets to increase due to inflation.

Response: The potential for the annual purchase, or lease, of offsets has been incorporated into the RIA. In regard to inflation, the costs presented in the RIA Screening are presented in constant dollars, not nominal dollars, and are therefore not affected by the general rise in prices.

17-44 Comment: EPA assumed no escalation of offset costs in the RIA Screening. This is contrary to what has occurred in the past and what would be expected to occur in the future as emission offsets become increasingly scarce due to the CAAA.

Response: The escalation of offset costs has been incorporated into the RIA.

17-45 Comment: The SBCAPCD, as well as other California coastal districts, are required to adopt "no net increase" NSR regulations under the revised California Clean Air Act. These regulations will provide for emissions banking and a "community bank", which SBCAPCD believes should significantly increase the availability of offsets and theoretically reduce their price.

Response: The possibility of future offset prices declining due to their increased availability is possible, although such a scenario has not been incorporated into the RIA.

17-46 Comment: Offset ratios have been overestimated. All new sources, including several "existing" OCS sources included in the analysis, are presently required to provide offsets for their residual emissions on a 1:1 basis. Therefore, the only incremental offsets for new sources in the analysis would be any applicable offset ratio requirements to the extent they exceed 1:1.

Response: An incremental offset ratio of 0.2:1 has been analyzed in a sensitivity analysis in the RIA.

The following comments do not require responses.

17-47 Comment: The effect of this rule is to spread the responsibility (and costs) of protecting onshore air quality more equitably between onshore and offshore sources.

17-48 Comment: The RIA Screening is a well-performed study of the control costs associated with the rule.

18. Regulatory Flexibility Act

The following comments do not require responses:

18-1 Comment: The rule will shift the regulatory burden from smaller onshore sources onto larger offshore sources. This supports EPA's conclusion that the rule is not subject to the requirement to perform a Regulatory Flexibility Analysis under the Regulatory Flexibility Act.

18-2 Comment: Small businesses in service/supply operations may be indirectly affected.

19. Paperwork Reduction Act

19-1 Comment: A commenter was unable to evaluate the time estimated to be required by the ICR prepared in support of this rule.

Response: The ICR, prepared for promulgation, has been revised to more clearly identify time requirements of this rule.

19-2 Comment: The costs of retrofitting existing facilities are underestimated since expenses associated with source testing, technical report preparation, and various administrative procedures were not included.

Response: EPA Disagrees. The costs mentioned above associated with existing platforms have been described in the ICR and have been incorporated into the overall cost of this rule.

D. General and Miscellaneous Comments

D-1 Comment: Non-mining activities occur on the OCS and should also be regulated under this rule. An example is a fish processing operation on a barge located outside state waters.

Response: All activities that meet the definition of OCS source as set forth in §328 will be regulated under this rule. Under §328 a source must be regulated or authorized under the OCSLA to meet the definition of OCS source. Since the OCSLA is concerned mainly with mining activities few non-mining activities will be regulated under this rule.

D-2 Comment: Industry, regulatory agencies, environmental groups, and the public at large stated that the purpose of the statute was to achieve more equitable regulation of onshore versus offshore sources, and they hoped that the final rule would realize this goal. However, one commenter stated that the proposed regulations fail to meet the letter and intent of the statute, which was to provide equity in the regulation of onshore and offshore sources.

Response: EPA believes that the rule does a creditable job of providing equity between onshore and offshore sources, given the limitations of the statute. The only way to truly implement the same requirements onshore and offshore is for the federal government to cede the OCS lands to the adjacent states. In addition, many inequities were written into the statute, such as the COA designation process (which has no corollary onshore), and the requirement that rules that EPA will not make federally enforceable onshore due to SIP related deficiencies are made federally enforceable on the OCS. Of course there are also requirements that onshore sources must meet that cannot be made applicable to OCS sources. The end result is a rule that is equitable although not precisely the same for onshore and offshore sources.

D-3 Comment: One commenter appreciates the time constraints that EPA is working under but believes that the rule has been prepared too hastily and does not adequately evaluate the impacts of applying onshore air pollution requirements to offshore facilities. Many other commenters expressed dismay that EPA missed the statutory deadline for promulgation of the rule.

Response: The rule was prepared quickly but not hastily. EPA was required by the statute to promulgate a final rule by November 15, 1991. EPA decided that in the interest of formulating a better rule, promulgation would be delayed to allow consultation with interested and affected parties. Since the statute very clearly stated that EPA was to apply onshore requirements to offshore facilities it would seem that any additional time spent evaluating the effects of such an action would be an inexcusable delay.

D-4 Comment: Many commenters believed that the participatory process that EPA used resulted in the resolution of many disagreements between local governments, environmental groups, and the regulated industries.

Response: EPA agrees and believes that the rule is a better rule due to the involvement of all the parties listed above.

D-5 Comment: Commenter agrees to EPA's voluntary determination that this rule is subject to the requirements of §307(d) of the CAA.

Response: Voluntarily subj[illegible] this rule to the requirements of §307(d) of the CAA has allowed a great de[illegible]ore material to be placed in the public docket for comment and review. EP[illegible]lieves that this is consistent with the open, consultative approach take[illegible]o the rulemaking. Since several versions of the rule are docketed, including the version submitted to OMB for review, the public can track changes in the rule and the point in the rulemaking process where those changes occurred.

D-6 Comment: EPA should address the long-standing controversy surrounding the calculation of fugitive hydrocarbon emissions from OCS facilities. Various studies have come up with emission factors that are different by factors of 10 to 20. Since the overall attainment plan, offsets required, emission reductions credited for implementation of inspection and maintenance programs, and fees charged all depend on the estimated emissions of a facility, this issue is extremely important and should be addressed by EPA in the rule.

Response: Emission factors are not normally addressed in EPA rulemakings and §328 does not require EPA to address emission factors. EPA is committed to developing fugitive emissions factors for OCS sources for inclusion in the EPA emission factor document known as AP-42. The rule cannot be delayed until the issue is resolved.

D-7 Comment: The public comment period on the NPR should be extended due to the large number of rules being incorporated and allow more time to analyze the EPA's cost calculations.

Response: The comment period actually extended from December 5, 1991, to February 20, 1992. The comment period was longer than 30 days to provide the public 30 days to submit comments following a public hearing. Due to the statutory deadline any extension of the comment period was impossible. In fact, EPA was sued for failure to promulgate the OCS rule by November 15, 1991.

D-8 Comment: The rule should provide more opportunity for public notice and comment. Many commenters suggested that nearly all public comment periods be extended. It was also suggested that EPA should solicit public comment on exemption denials and prior to issuing preliminary COA designations.

Response: EPA did not extend public comment periods due to the already lengthy procedures in contained in the rule. EPA believes that the rule provides adequate opportunity for public comment and meets the statutory requirements of §328.

D-9 Comment: The section named "Implementation Principles" contained in the Preamble of the August 22, 1991 draft are not applied onshore and are not supported by the law or legislative history for application offshore.

Response: The section was removed before the NPR.

D-10 Comment: EPA should require EPA approved models.

Response: EPA policy is that EPA approved models will be required unless the applicant can demonstrate that another model is appropriate.

D-11 Comment: In all cases where the rule stated that the Administrator may, will, or must perform an action, the wording should be changed to state that the Administrator <u>shall</u> perform such action.

Response: Some actions that can be taken by the Administrator under the rule are voluntary either to make the rule function procedurally or because discretion is necessary in some instances. However, the statute was reviewed with the above comment in mind and where appropriate may, will, or must was replaced with shall.

D-12 Comment: Several suggestions were offered in response to EPA's request for methods of incorporating required review under this rule with other reviews that sources may be subject to, including permit requirements other than those required for air quality.

1. Use the Florida Power Plant siting Statute and Rule as an example.

2. One commenter does not believe that §328 authorizes EPA or the delegated agency to engage in a consolidated cross-media permit review of OCS sources. Commenter does not support the inclusion of any provision for cross-media review in the OCS Air Regulations.

3. EPA should incorporate the California Environmental Protection Act (CEQA). The purpose of this Act is to perform cross-media previews and analyze the project alternatives to determine the least environmentally harmful alternative.

Response: At this time EPA is unable to incorporate into the OCS rule an appropriate mechanism for national coordination of cross-media reviews.

The following comments do not require a response.

D-13 Comment: The commenter fully agrees that equitable treatment must be afforded for onshore as well as offshore facilities.

D-14 Comment: The clear letter and intent of the statute was to provide equity ir the regulation of onshore and offshore sources. We believe that the proposed regulations significantly reduce prior inequities.

D-15 Comment: The commenter strongly supports EPA's efforts to ensure that OCS sources of air pollution meet the same requirements as onshore sources. This rule is a significant step forward in the control of OCS emissions.

D-16 Comment: The fact that Congress exempted Texas, Louisiana, Mississippi, and Alabama for political reasons is deplorable. In fact, this area in the Gulf of Mexico is the national sacrifice area of offshore drilling and in dire need of air quality improvement.

D-17 Comment: The applicability of this rule should be limited to areas outside the western and central Gulf of Mexico.

D-18 Comment: While the commenter does not deny that some emissions from OCS facilities may reach shore, they have serious doubts that the significant impacts discussed in the preamble can be documented or that OCS emissions have triggered episodes of high ambient concentrations.

D-19 Comment: The California coast is a unique environment and must be protected. Adequate regulations are essential and OCS emissions represent a significant quantity of emissions relative to onshore emissions.

D-20 Comment: The description of the construction phase of OCS activities contained in the preamble could be misleading. Most of the time is spent fabricating the platform components on land. The time that is actually spent at the OCS location installing the platform components is normally broken up into several relatively short periods.

D-21 Comment: Congress did not intend for vessels to be directly regulated under §328.

D-22 Comment: In general, the proposed rule adequately sets forth the policies and procedures to be followed in permitting and controlling air pollution emissions from OCS sources.

Appendix A

Acronyms

APA	Administrative Procedures Act
API	American Petroleum Institute
AQMP	Air Quality Management Plan
AQRV	Air Quality Related Value
ARB	Air Resources Board (California)
ASIP	Applicable State Implementation Plan
BACT	Best Available Control Technology
BARCT	Best Available Retrofit Control Technology
CAA	Clean Air Act ("the Act")
CAAA	Clean Air Act Amendments of 1990
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
COA	Corresponding Onshore Area
CZMA	Coastal Zone Management Act
DOE	Department of Energy
DOI	Department of the Interior
DOJ	Department of Justice
DPP	Development and Production Plan
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ETPS	Emissions Trading Policy Statement
FIP	Federal Implementation Plan
FLM	Federal Land Manager
FOIA	Freedom of Information Act
FR	Federal Register
FS	Forest Service
FWS	Fish and Wildlife Service
ICR	Information Collection Request
LAER	Lowest Achievable Emission Rate
MMS	Minerals Management Service, DOI
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Protection Act

Appendix A

Acronyms

NESHAPS	National Emissions Standards for Hazardous Air Pollutants
NOA	Nearest Onshore Area
NOI	Notice of Intent
NO_x	Nitrogen Oxides
NPR	Notice of Proposed Rulemaking
NPS	National Park Service
NSPS	New Source Performance Standards
NSR	New Source Review
OCS	Outer Continental Shelf
OCSLA	Outer Continental Shelf Lands Act
OMB	Office of Management and Budget
PSD	Prevention of Significant Deterioration
RACT	Reasonably Available Control Technology
RIA	Regulatory Impact Analysis
RTC	Response to Comment Document
SBCAPCD	Santa Barbara Air Pollution Control District
SIP	State Implementation Plan
SO_x	Sulfur Oxides
TPA	Transitional Permit Application
U.S.C.	United States Code
USCG	United States Coast Guard
WSPA	Western States Petroleum Association

Appendix B

List of Parties that Submitted Written Comments and/or Provided Testimony at a Public Hearing

IV-D-06	Billie O'Connor	01/28/92
IV-D-07	Mary O'Connor	01/28/92
IV-D-08	Steve Quist	01/26/92
IV-D-09	Marian Lockwood	01/26/92
IV-D-10	U.S. Coast Guard, Captain T.E. Thompson	01/23/92
IV-D-11	Cindy Gettman	01/27/92
IV-D-12	Linda Johnson	01/27/92
IV-D-13	Betty Koch	01/26/92
IV-D-14	Stephanie Reader	01/29/92
IV-D-15	Patricia Moon	01/28/92
IV-D-16	George Wortiska	01/27/92
IV-D-17	Carol North	01/27/92
IV-D-8	Florida Department of Environmental Regulation, Claire Fancy	01/29/92
IV-D-19	Norton Bell	01/31/92
IV-D-20	Santa Barbara APCD, James Ryerson, APCO, re: NPR	01/30/92
IV-D-21	Santa Barbara APCD, James Ryerson, APCO, re: Regulatory Impact Analysis Statement	01/30/92
IV-D-22	Santa Barbara APCD, James Ryerson, APCO, re: extension of comment period	01/30/92
IV-D-23	Natural Resources Defense Council and Central Coast Regional Studies Program, Johanna Wald	01/31/92
IV-D-24	South Coast AQMD, James Lents, APCO	01/31/92
IV-D-25	McDermott International, W.L. Higgins	01/31/92
IV-D-26	Western States Petroleum Association, Michael Wang	01/31/92
IV-D-27	Bay Area AQMD, Milton Feldstein, APCO	01/30/92
IV-D-28	Mobil Exploration and Producing U.S. Inc., J.C. Martin	01/28/92
IV-D-29	League of Women Voters of Santa Barbara, Connie Hannah	01/28/92
IV-D-30	Friends of the Sea Otter, Brad Woodyard	02/03/92
IV-D-31	Santa Barbara County Counsel, William Dillon, re: applicability of E.O. 12291	01/29/92
IV-D-32	Ventura County APCD, Richard Baldwin, APCO, re: applicability of marine vessel regulation	01/27/92
IV-D-33	Rod Holmgren	01/28/92
IV-D-34	California Coastal Commission, Peter Douglas	02/03/92
IV-D-35	American Petroleum Institute, C.T. Sawyer	02/03/92
IV-D-36	Unocal, Richard G. Keller	02/03/92

IV-D-37	Chevron USA Production Company, R.E. Galvin	01/31/92
IV-D-38	Steve Weiss	02/04/92
IV-D-39	Sierra Club—Lone Star Chapter, Brandt Mannchen	02/04/92
IV-D-40	Lucille Adelman	02/04/92
IV-D-41	Santa Barbara County Counsel, William Dillon	01/31/92
IV-D-42	International Association of Drilling Contractors, Alan Spackman	01/29/92
IV-D-43	John Chaplick	02/04/92
IV-D-44	Pacific Operators Offshore, Inc., Richard Carone	01/31/92
IV-D-45	Offshore Marine Service Association, Robert Alario	01/31/92
IV-D-46	Monterey Bay Unified APCD, Abra Bennett, APCO	01/30/92
IV-D-47	Ventura Board of Supervisors, John T. Flynn, Chair	01/28/92
IV-D-48	Chester Brown	01/27/92
IV-D-49	California Air Resources Board, James Boyd	02/04/92
IV-D-50	San Diego APCD, Richard Smith	02/03/92
IV-D-51	San Luis Obispo APCD, Robert Carr, APCO	02/04/92
IV-D-52	Environmental Defense Center, Marc Chytilo	01/31/92
IV-D-53	North Carolina Department of Administration, Mac Currin	01/16/92
IV-D-54	Sierra Club National Coastal Committee, Vivian Newman	01/28/92
IV-D-55	Conoco Inc., R.M. Robinson	01/30/92
IV-D-56	Andrew Rea	01/30/92
IV-D-57	Bill Wood	01/28/92
IV-D-58	Tom and Norene Chase	01/23/92
IV-D-59	Sierra Club, Los Padres Chapter, Robert Sollen	01/27/92
IV-D-60	International Association of Drilling Contractors, Robert E. Lowe	01/29/92
IV-D-61	Western Geophysical, Robert E. Lowe	01/30/92
IV-D-62	Judith E. Weiss, Ph.D.	01/28/92
IV-D-63	Mary Sheppard	01/28/92
IV-D-64	National Sierra Club, Outer Continental Shelf Subcommittee, Shirley Taylor, Ph.D.	01/28/92
IV-D-65	National Ocean Industries Association, Robert B. Stewart	02/03/92
IV-D-66	Hilda Quy	01/31/92
IV-D-67	Department of the Interior, Jonathan P. Deason	02/11/92
IV-D-68	American Petroleum Institute, S.P. Chamberlain, re: request for comment period extension.	01/13/92
IV-D-70	The American Waterways Operators, Joseph Farrell	02/10/92
IV-D-71	Vincent Bellis	02/13/92
IV-D-72	Chevron U.S.A. Inc., D.A. Yunker	03/04/92
IV-D-73	Shell Western E&P Inc., J.A. Ruhl	03/09/92

IV-F-01	The following people provided testimony at the public hearing held in San Francisco: •Alan Waltner, Central Coast Regional Studies Program •Michael Kenny, California Environmental Protection Agency	01/06/92
IV-F-05	The following people provided testimony at the public hearing held in Los Angeles: •Mayor Robert F. Gentry, Southern California Association of Governments •Pompom Ganguli, South Coast Air Quality Management District •John Reid, Western States Petroleum Association •Freeman Allen, Sierra Club •Cindy Dahl, California Coastal Operators Group •Lisa Weil, American Oceans Campaign	01/07/92
IV-F-11	The following people provided testimony at the public hearing held in Washington, D.C.: •Vivian Newman, National Coastal Committee of the Sierra Club	01/13/92
IV-F-14	The following people provided testimony at the public hearing held in Anchorage, AK: •Len Verrelli, Alaska Department of Environmental Conservation •Pamela Miller, Greenpeace	01/21/92
IV-G-01	International Association of Drilling Contractors, Alan Spackman	02/18/92
IV-G-02	North Carolina Department of Administration, Mac Currin	02/20/92
IV-G-03	Department of Energy, Linda G. Stuntz	02/18/92
IV-G-04	BP Exploration, C.W. Kerlin	02/17/92
IV-G-05	Offshore Operators Committee, James F. Branch	02/19/92
IV-G-06	Unocal North America, Oil and Gas Division	03/09/92
IV-G-07	Texaco Eploration and Production Inc., C.H. Kosub	03/09/92
IV-G-08	Pacific Operators Offshore, Richard L. Carone	03/16/92
IV-G-09	Unocal North American Oil and Gas Division, Richard C. Keller	03/18/92

Appendix C - Action on rules

EPA received numerous comments on the state and local rules proposed for incorporation by reference into 40 CFR part 55. In this appendix, EPA has listed each individual rule that was commented upon, indicated the nature of the comment(s), and has indicated the action EPA will take in response to the comments.

How to use this appendix

In order to simplify this portion of the Response to Comments, EPA has grouped the rule-specific comments it received into seven general categories, as listed below. Each numbered category is also associated with an EPA response. In the following pages, each rule that was commented upon is listed by rule number, title, and adoption date. The final column in the rule listing contains a number that corresponds to one of the comment categories listed immediately below. By referring back to the categorized comments list, the reader will be able to tell what the comment on any given rule was, and what action EPA will take.

Categories of Comments

1. **Request that a more recently adopted version of the listed rule be incorporated into part 55**

EPA action–propose to include rule in upcoming consistency update

EPA is not incorporating into the final rule the more recent versions of rules listed in the NPR, because this would not provide for notice and comment rule making. EPA is, however, initiating a consistency review and will publish it with all appropriate updates in the near future. Therefore, these rules will not be deleted and replaced in this rule making.

2. **Request for addition of a substantive rule (rule deemed not applicable by EPA)**

EPA action–none

The statute directs EPA to establish requirements under §328 to attain and maintain federal and state ambient air quality standards and comply with the provisions of part C of title 1 (PSD). As a result, rules that are not rationally related to the attainment and maintenance of ambient air quality standards or PSD will not be incorporated into part 55. Also, EPA is attempting to streamline these regulations by incorporating only those rules that are applicable to OCS sources. Generally speaking, rules that contain control requirements for equipment that is not used by OCS sources will not be incorporated.

3. **Request for addition of a substantive rule (rule deemed applicable by EPA)**

EPA action–propose to include rule in upcoming consistency update

If EPA overlooked a substantive rule that applies to OCS sources and is rationally related to the attainment and maintenance of federal or state ambient air quality standards or PSD, EPA will propose to include it in part 55 in an upcoming consistency update.

4. **Request for addition of an administrative or procedural rule**

EPA action–none

State and local agencies will be able to use their administrative and procedural requirements to implement and enforce §328 upon delegation.

The statute does not require nor is it necessary for EPA to adopt non-control requirements

5. **Request for deletion of a rule because the rule might not apply to OCS sources**

EPA action–none

EPA will err on the side of being over inclusive, rather than under inclusive As a practical matter, the listing of a rule that might not apply to OCS sources has no effect on OCS sources.

6. **Request for deletion of a rule because the rule was adopted after 11/15/90 (date of enactment)**

EPA action–none

There is no restriction on the incorporation of rules adopted subsequent to the date of enactment of the 1990 CAAA. In fact, the statute directs EPA to maintain consistency with onshore requirements.

7. **Request for deletion of a rule because the rule the rule is too stringent or requires technology that may be too difficult or expensive for compliance on the OCS**

EPA action–none

The statute requires that EPA establish requirements to attain and maintain federal and state ambient air quality standards and comply with the provisions of part C of title 1. There is no provision for excluding expensive or technically infeasible rules. However, Congress did provide a mechanism for sources to be granted exemptions from control technology requirements that are technically infeasible or would cause an unreasonable threat to health and safety.

Listing of rules

SAN LUIS OBISPO

103	Conflicts Between District, State, and Federal Rules	08/06/76	5
104	Action in Areas of High Concentration	07/05/77	5
107	Breakdown or Upset Conditions and Emergency Variances	11/13/84	4
113	Continuous Emission Monitoring–except F.	07/05/77	7, 4
204	Requirements	11/05/91	6
207	Action on Applications	11/05/91	4
208	Appeals	11/05/91	4
209	Provision for Sampling and Testing Facilities	11/05/91	7
211	Emission Banking	11/05/91	4
211(c)*	Equipment Not Requiring a Permit **San Luis Obispo APCD revised and renumbered its permit rules. These provisions have been incorporated in part 55 under rule 201. When EPA proposes a consistency update, the more recent versions will be included*	11/05/91	1
212	Community Bank	11/05/91	4
213	Calcultions (213. F.)	11/05/91	4
214*	Emission Banking **San Luis Obispo APCD revised and renumbered its permit rules. These provisions are now under rule 211.*	?	4
303*	Schedule of Fees **San Luis Obispo APCD revised and renumbered its permit rules. These provisions have been incorporated in part 55 under rule 302.*	07/01/91	6
404	Sulfur Compound Emission Standards	12/06/76	7
405	Nitrogen Oxide Emission Standards	11/13/84	5
407	Organic Material Emission Standards, Limitations and Prohibitions	01/10/89	7
411	Surface Coatings of Metal Parts and Products	01/10/89	7
701	NESHAPS	09/04/90	3

SANTA BARBARA

102	Definitions	07/30/91	7
201	Permits Required	07/02/79	7
202	Exemptions to Rule 201	12/10/91	1, 7

205	Standards for Granting Applications	07/30/91	7
208	Action on Applications - Time Limits	?	4
209	Appeals	?	4
210	Fees	05/07/91	7
302	Visible Emissions	10/23/78	7
303	Nuisance	10/23/78	2
308	Incinerator Burning	10/23/78	5
311	Sulfur Content of Fuels	12/23/78	7
312	Open Fires	10/02/90	5
317	Organic Solvents	10/23/78	7
321	Control of Degreasing Operations	07/10/90	5
322	Metal Surface Coating Thinner and Reducer	10/23/78	7
323	Architectural Coatings	2/20/90	7
325	Storage of Petroleum and Petroleum Products	12/10/91	1
326	Effluent Oil Water Separators	10/23/78	7
327	Organic Liquid Cargo Tank Vessel Loading	12/16/85	7
328	Continuous Emissions Monitoring	10/23/78	7
331	Fugitive Emissions Inspection and Maintenance	12/10/91	1
332	Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds	06/11/79	5
333	Control of Emissions from Reciprocating Internal Combustion Engines	12/10/91	1
501	General	?	4
502	Filing Petitions	?	4
503	Contents of Petitions	?	4
504	Petitions for Variance: Contents	?	4
506	Emergency Variances for Breakdowns	?	4

SOUTH COAST

106	Increments of Progress	01/09/76	4
110	Rule Adoption Procedures to Assure Protection and Enhancement of the Environment	09/11/87	4
205	Cancellation of Applications (Expiration of Permit to Construct)	01/05/90	7
214	Denial of Permit **EPA has incorporated a more recent version of this rule.*	01/09/76	*
215	Permits Deemed Denied	01/01/76?	4
216	Appeals	01/09/76	4
302	Fees for Publications	01/06/78	4
303	Hearing Board Fees	09/02/77	4
307	Fees for Air Toxics Emissions Inventory	06/03/88	4

402	Nusiance	05/07/76	2
430	Breakdown Provisions (ALL)	05/05/78	4
464	Wastewater Separators	05/07/76	3
466	Pumps and Compressors	05/07/76	3
466.1	Valves and Flanges	11/03/78	3
467	Pressure Relief Devices	05/07/76	3
703	Episode Criteria	05/06/77	4
704	Episode Declaration	07/09/82	7
705	Termination of Episodes	05/06/77	4
715	Burning of Fossil Fuel on Episode Days	08/24/77	7
801	General (Orders for Abatement)	02/04/77	4
802	Order for Abatement	08/01/75	4
803	Filing Petitions	08/01/75	4
804	Content of Petition	08/01/75	4
805	Scope of Order	08/01/75	4
806	Findings	08/01/75	4
807	Pleadings	08/01/75	4
808	Evidence	08/01/75	4
809	Failure to Comply with Rules	08/01/75	4
810	Dismissal of Petition	08/01/75	4
811	Place of Hearing	08/01/75	4
812	Notice of Hearing	08/01/75	4
813	Preliminary Matters	08/01/75	4
814	Official Notice	08/01/75	4
815	Continuance	08/01/75	4
816	Order and Decision	08/01/75	4
817	Effective Date of Decision	08/01/75	4
1109	Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries	08/05/88	5
1110.2	Emissions from Gaseous- and Liquid-Fueled Internal Combustion Engines	09/07/90	7
1122	Solvent Cleaners (Degreasers)	04/05/91	1
1123	Refinery Process Turnarounds	12/07/90	5
1134	Emissions of Oxides of Nitrogen from Stationary Gas Turbines	08/04/89	7
1140	Abrasive Blasting	08/02/85	7
1146	Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters	01/06/89	7
1146.1	Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters	10/05/90	7
1148	Thermally Enhanced Oil Recovery Wells	11/05/82	7
1201	Discretion to Hold Hearing	04/07/78	4
1202	Notice	04/07/78	4
1203	Petitions	04/07/78	4

1204	Answers to Petitions	04/07/78	4
1205	Function of the Board	04/07/78	4
1206	Appearances	02/02/79	4
1207	Service and Filing	06/03/83	4
1208	Rejection of Documents	02/02/79	4
1209	Form and Size	04/07/78	4
1210	Copies	04/07/78	4
1211	Subpoenas	04/07/78	4
1212	Continuances	02/02/79	4
1213	Request for Continuances or Time Extensions	02/02/79	4
1214	Transcripts and Record	04/07/78	4
1215	Conduct of Hearing	02/02/79	4
1216	Presiding Officer	02/02/79	4
1217	Disqualification of Hearing Officer or Board Member	04/07/78	4
1218	Ex Parte Communications	02/02/79	4
1219	Evidence	02/02/79	4
1220	Prepared Testimony	04/07/78	4
1221	Official Notice	04/07/78	4
1222	Order of Proceedings	02/02/79	4
1223	Prehearing Conference	04/07/78	4
1224	Opening Statements	04/07/78	4
1225	Conduct of Cross-Examination	02/02/79	4
1226	Oral Argument	02/02/79	4
1227	Briefs	02/02/79	4
1228	Motions	02/02/79	4
1229	Decisions	02/02/79	4
1230	Proposed Decision and Exceptions	02/02/79	4
1309	Emission Reduction Credits	09/10/82	4
1309.1	Community Bank and Priority Reserve	06/28/90	4
1310	Analysis and Reporting	10/05/79	4
1401	New Source Review of Carcinogenic Air Contaminants	06/01/90	2
1403	Asbestos Emissions from Demolition/Renovation Activities **This rule was listed in the proposal and has been retained in the final.*	10/06/89	*
1404	Hexavalent Chromium Emissions from Cooling Towers	07/07/89	2
1410	Hydrogen Fluoride Storage and Use	04/05/91	2
1414	Asbestos Containing Serpenting Material in Surfacing Operations* **Rule title listed incorrectly in comment letter as "Asbestos Emissions from Demolition/Renovation Activities," with adoption date of 10/06/89.*	05/03/91	2

1415	Reduction of Chlorofluorocarbon Emissions from Stationary Refrigeration and Air Conditioning Systems* **Rule title listed incorrectly in comment letter as "Asbestos Emissions from Demolition/Renovation Activities," with adoption date of 10/06/89.*	06/07/91	2*

VENTURA

8	Access to Facilities	05/23/72	4
9	Arrest Authority	11/21/78	4
17	Disclosure of Air Toxics Information	04/17/90	4
22	Appeals	04/17/90	4
23	Exemptions from Permit	01/08/91	6
25	Action on Applications	01/10/84	4
26	New Source Review - General	10/22/91	1
26	New Source Review	02/26/85	1
26.1	New Source Review - Definitions	10/22/91	1
26.1	All New or Modified Stationary Sources	11/19/85	1
26.2	New Source Review - Requirements	10/22/91	1
26.2	New or Modified Non-Major Sources	11/19/85	1
26.3	New Source Review - Exemptions	10/22/91	1
26.3	New or Modified Stationary Sources - PSD	11/19/85	1
26.4	New Source Review - Emission Banking	10/22/91	4
26.5	Community Bank	10/22/91	4
26.6	New Source Review - Calcualtions	10/22/91	1
26.6	Air Quality Impacts Analysis and Notification	01/10/84	1
26.7	New Source Review - Notification	10/22/91	1
26.8	New Source Review - Permit to Operate	10/22/91	1
26.9	New Source Review - Power Plants	10/22/91	1
26.10	New Source Review - PSD	10/22/91	1
27	Suspension of Permits	03/09/76	4
29	Conditions on Permits	10/22/91	1
29	Conditions on Permits	05/30/89	1
31	Public Disclosure of Data	11/22/77	4
32	Breakdown Conditions; Emergency Variances **Sections excluded by EPA are administrative or procedural in nature*	02/20/79	4*
41	Hearing Board Fees	06/27/89	4
44	Exemption Evaluation Fee	01/08/91	6
45.2	Asbestos Removal Fees	06/19/90	4
45.3	Cooling Tower Fees	06/19/90	4
51	Nuisance	10/22/68	2
56	Open Fires	05/24/88	5
62.1	Hazardous Materials	06/27/89	3

62.3	Hexavalent Chromium - Cooling Towers	06/19/90	3
70	Storage and Transfer of Gasoline	11/29/88	2
74.1	Abrasive Blasting	11/12/91	1
74.1	Abrasive Blasting	09/05/89	1
74.6.2	Batch Loaded Vapor Degreasing Operations	09/12/89	5
74.7	Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants	01/10/89	5
74.8	Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds	07/05/83	5
74.10	Components at Crude Oil Production Facilities and Natural Gas Processing Facilities	05/28/91	1
74.10	Components at Crude Oil Production Facilities and Natural Gas Processing Facilities	09/22/87	1
74.16	Oil Field Drilling Operations	01/08/91	6
103	Stack Monitoring	06/04/91	6
150	General	09/17/91	4
151	Episode Criteria	09/17/91	4
152	Episode Notification Procedures	09/17/91	4
153	Health Advisory Episode Actions	09/17/91	4
154	Stage 1 Episode Actions	09/17/91	4
155	Stage 2 Episode Actions	09/17/91	1
155	Plans	11/20/79	1
156	Stage 3 Episode Actions	09/17/91	1
157	Air Pollution Disaster	09/17/91	1
157	First Stage Episode Actions	11/20/79	1
158	Source Abatement Plans	09/17/91	1
158	Second Stage Episode Actions	11/20/79	1
159	Traffic Abatement Procedures	09/17/91	1
159	Third Stage Episode Actions	11/20/79	1
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17-2.220	Public Notice and Comment	10/20/86	4
17-2.400	Procedures for Designation and Redesignation of Areas	05/30/88	4
17-2.410	Designation for Areas not Meeting Ambient Air Quality Standards (Nonattainment Areas)	07/09/89	4
17-2.420	Designation for Areas Meeting Ambient Air Quality Standards (Attainment Areas)	07/09/89	4
17-2.430	Designation of Areas Which Cannot Be Classified as Attainment or Nonattainment Areas	07/09/89	4

17-2.440	Designation of Class I, Class II, and Class III Areas	01/12/82	4
17-2.450	Designation of Prevention of Significant Deterioration (PSD) Areas	07/13/90	4
17-2.460	Designation of Air Qulaity Maintenance Areas	07/09/89	4
17-2.500	Prevention of Significant Deterioration	07/13/90	1*
	**The 07/13/90 version of this rule was included in the Technical Support Document. The date listed in the Federal Register was incorrect. The final rule listing has been changed to reflect the correct date*		
17-4.001	Scope of Part I	08/31/88	4
17-4.060	Consultation	08/31/88	4
17-4.090	Renewals	03/19/90	4
17-4.100	Suspension and Revocation	08/31/88	4
17-4.200	Scope of Part II	08/31/88	4