

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF OCEAN ENERGY MANAGEMENT**

BOEM NTL No. 2009-N11

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**NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL, GAS, AND
SULPHUR LEASES IN THE OUTER CONTINENTAL SHELF**

Air Quality Jurisdiction on the Outer Continental Shelf

The Bureau of Ocean Energy Management (BOEM) is reissuing this Notice to Lessees and Operators (NTL) to update certain provisions and to comply with Executive Order (E.O.) 13891 of October 9, 2019, *Promoting the Rule of Law Through Improved Agency Guidance Documents*, and the Office of Management and Budget (OMB) Memorandum, M-20-02, implementing the E.O. Specifically, the NTL is revised to reflect the expansion of BOEM jurisdiction to regulate emissions associated with operations in the area offshore the North Slope Borough of Alaska.

Introduction

This NTL notifies lessees and operators that BOEM regulates air quality for facilities on the Outer Continental Shelf (OCS) in the area of the Gulf of Mexico west of 87°30'W longitude and in the area offshore of the North Slope Borough of Alaska. This NTL also explains that BOEM evaluates the impacts on air quality for activities it approves, including the exploration and development of oil, gas, and sulphur, under the provisions of the National Environmental Policy Act (NEPA) and its implementing regulations. Finally, this NTL identifies relevant BOEM statutory authority, and air quality-related regulations and forms.

BOEM's Statutory Authority to Evaluate and Regulate Air Emissions

The Outer Continental Shelf Lands Act (OCSLA) is the statutory authority for BOEM's regulation of emissions associated with exploration and development of OCS oil, gas, and sulphur resources; the Clean Air Act (CAA) determines the geographical extent to which the OCSLA regulations apply. OCSLA, § 5(a)(8), authorizes BOEM to promulgate regulations for the purpose of ensuring that plans and activities it authorizes do not affect states' compliance with the national ambient air quality standards of the CAA to the extent that those plans and activities significantly affect the air quality of a state.

The NEPA and implementing regulations require federal agencies, including BOEM, to consider the environmental impacts of their proposed actions, and to consider all reasonable alternatives to those actions.¹ As a part of complying with NEPA for its decision to act on an operator's

¹ 42 U.S.C. § 4332(C); 40 C.F.R. §§ 1501.4, 1508.9.

exploration plan (EP), development operations coordination document (DOCD), or development and production plan (DPP), BOEM evaluates air emissions information in a plan for purposes of identifying the impacts to air quality that may occur as a result of OCS exploration or development.

OCSLA and the CAA – Geographic Division of Jurisdiction Between the United States Environmental Protection Agency (EPA) and BOEM

The CAA directs the EPA to regulate air emissions from OCS sources located offshore of states along the Pacific Coast, Atlantic Coast, and Gulf Coast in areas east of 87°30'W longitude, and off the coast of the State of Alaska except for that portion of the OCS offshore of the North Slope Borough of the State of Alaska.² The EPA has promulgated implementing regulations for OCS sources in areas under its jurisdiction at 40 CFR Part 55. If you are contemplating exploration or development activities on these portions of the OCS, you should confer with EPA concerning potential EPA air emissions permitting requirements. Although EPA regulates air emissions from OCS sources in these areas, BOEM remains responsible for decisions on any proposed EP, DOCD or DPP and requires that you submit certain air quality information to facilitate NEPA review associated with those decisions, as discussed below.

For areas on the OCS in the Gulf of Mexico west of 87°30'W longitude and areas offshore of the North Slope Borough, lessees and operators authorized by BOEM to conduct activities are subject to BOEM's air quality regulations below.³ These areas include all of the Western Gulf of Mexico OCS Planning Area, most of the Central Gulf of Mexico OCS Planning Area, a small portion of the Eastern Gulf of Mexico OCS Planning Area, the Beaufort Sea OCS Planning Area, the Chukchi Sea OCS Planning Area, and a small portion of the Hope Basin OCS Planning Area.

BOEM Regulations

BOEM and its predecessor agencies promulgated regulations concerning the evaluation, prevention, and control of air emissions from the activities authorized by BOEM on the OCS. These regulations are included in 30 CFR Part 550 subparts B and C.

Submitting Air Emissions Information to BOEM upon Application for Approval of an EP, DOCD or DPP

BOEM evaluates and considers air emissions information submitted by a lessee or operator with every proposed EP, DOCD or DPP. The air emissions information you must submit with an EP is set forth in 30 CFR 550.212(f), (l), (m), and (o), 550.218, 550.224(b), 550.225(b), and 550.227.⁴ The air emissions information you must submit with a DOCD or DPP is set forth in 30 CFR 550.242(g), (o), (p), and (s), 550.249, 550.257(b), 550.258(b), and 550.261.⁵ You are required to submit this information regardless of the location of proposed activities on the OCS.

² 42 U.S.C. § 7627(a), as amended by Consolidated Appropriations Act, 2012 (Pub.L. 112-74, H.R. 2055, 125 Stat. 785, Dec. 21, 2011).

³ See 43 U.S.C. § 1334(a)(8).

⁴ Terms used in these regulations are defined in 30 CFR 550.105, 200, and 302, and acronyms used are set out in 30 CFR 550.200.

⁵ *Id.*

BOEM uses this information to conduct environmental analyses pursuant to NEPA and, where BOEM has air quality jurisdiction, to assure compliance with the national ambient air quality standards of the CAA.⁶

BOEM provides two forms to facilitate submission of air emission information in conjunction with plans, BOEM-0138 (EPs) and BOEM-0139 (DOCDs and DPPs). Additionally, air emissions that may cause impacts to certain environments must be identified on a third form, BOEM-0142, the environmental impact analysis worksheet. You must use these forms for operations proposed in areas of BOEM air quality regulatory jurisdiction but you are also encouraged to do so for operations proposed in other areas of the OCS, in order to meet the requirements of subpart B of part 550, particularly sections 550.218 and 550.249. If these forms are updated, supplemented, or replaced after the date this NTL is reissued, BOEM's guidance portal at www.boem.gov/guidance will be updated to reflect the change.

Requirement to Revise or Supplement an EP, DOCD or DPP

If you are conducting operations in a part of the OCS under BOEM air quality regulatory jurisdiction and propose changes in operations that would increase the emissions of an air pollutant in excess of the amount specified in your previously approved EP, DOCD or DPP, you must submit a revised or supplemental EP, DOCD or DPP reflecting the increase, in accordance with 30 CFR 550.283(a)(4) or (b). If you are conducting operations in a part of the OCS subject to EPA regulation of air emissions under the CAA, you should confer with the EPA or the relevant state agency to determine whether the proposed changes to your operations require action. Submitting the information to BOEM does not relieve you of the independent obligation to obtain a permit under the CAA when proposing activities in areas of the OCS where EPA has jurisdiction.

Guidance Document Statement

BOEM issues NTLs as guidance documents in accordance with 30 CFR 550.103 to clarify and provide more detail about certain BOEM regulatory requirements and to outline the recommended information to be provided in various submittals. Under that authority, this NTL sets forth policy on and interpretation of statutory, regulatory, lease, contractual, or plan approval provisions to provide a clear and consistent approach for complying with those provisions. If you wish to use an alternate method for compliance, you are encouraged to get feedback from BOEM staff on the adequacy of your proposal to comply with the regulation.

Except to the extent that provisions of this NTL derive from requirements established by statute, regulation or by a provision in the lease, they do not have the force and effect of law and are not meant to bind the public in any way. This NTL is intended only to provide clarity to the public regarding existing requirements under the law.

⁶ See 43 U.S.C. § 1334(a)(8).

While this NTL includes recommendations and guidance, the recommendation and guidance provisions may be made mandatory through a lease stipulation or condition of approval from BOEM or the Bureau of Safety and Environmental Enforcement (BSEE). If you are issued a plan, permit or other authorization from BOEM or BSEE with a condition of approval, or a lease with a stipulation, requiring compliance with this NTL or identified portions thereof, you must implement those portions or all aspects of the NTL, if particular aspects are not singled out in the stipulation or condition of approval. Under such circumstances, you must implement and comply with the NTL (or identified portions thereof) regardless of whether the terms within the NTL would otherwise be a recommendation or request (e.g., use of the term “should” in the NTL will be considered “must” if required by the lease stipulation or condition of approval).

Paperwork Reduction Act of 1995 (PRA) Statement

This NTL provides clarification, description, and interpretation of requirements contained in 30 CFR Part 550, Subparts B and C. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number. OMB has approved the information collection requirement in these regulations under OMB control number 1010-0151 and 1010-0057. This NTL does not impose additional information collection requirements subject to the Paperwork Reduction Act of 1995.

Contacts

If you have questions regarding this NTL, please contact Stacie Merritt in the Gulf of Mexico Regional Office by email at stacie.merritt@boem.gov or by telephone at (504) 736-3276; Mark Eckenrode in the Pacific Regional Office by email at mark.eckenrode@boem.gov or by telephone at (805) 384-6388; or Jack Newell in the Alaska Regional Office by email at jack.newell@boem.gov or by telephone at (907) 334-5257.

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