



40 CFR Part 55

[EPA-R01-OAR-2024-0367; FRL-12222-02-R1]

Outer Continental Shelf Air Regulations; Amendment to State Requirements

Incorporated by Reference; Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is updating a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Massachusetts is the designated COA. This final rule removes two Commonwealth of Massachusetts provisions from the compilation of requirements incorporated by reference in the Code of Federal Regulations and listed in the appendix to the Federal OCS air regulations.

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

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2024-0367. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not

publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Patrick Collins, Air and Radiation Division, U.S. Environmental Protection Agency, EPA Region 1, U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA 02109, (617) 918-1196, collins.patrick@epa.gov

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Table of Contents

- I. Background and Purpose
- II. Final Action
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

I. Background and Purpose

On September 4, 1992, the EPA promulgated 40 CFR part 55.1 which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Clean Air Act (CAA). The regulations at 40 CFR part 55 apply to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of

the CAA requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) of the CAA requires that the EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

On September 17, 2008 (73 FR 53718), the EPA finalized a consistency update of the OCS air regulations pertaining to the requirements of OCS sources in the Commonwealth of Massachusetts. The update was the result of a Notice of Intent (NOI) being submitted on December 7, 2007 by Cape Wind Associates, LLC. The rules incorporated by reference into Appendix A of 40 CFR part 55 were applicable provisions of 310 Code of Massachusetts Regulations (CMR) 4.00: Timely Action Schedule and Fee Provisions; 310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts; 310 CMR 7.00: Air Pollution Control; and 310 CMR 8.00: The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies.

On August 24, 2010 (75 FR 51968), the EPA finalized a consistency update of the OCS regulations pertaining to the requirements of OCS sources in the Commonwealth of Massachusetts. This update was the result of EPA's annual review of the Commonwealth of Massachusetts regulations. The rules incorporated by reference into Appendix A of 40 CFR part 55 were updates and new requirements of 310 CMR 4.00: Timely Action Schedule and Fee Provisions; 310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts; 310 CMR 7.00: Air Pollution Control; and 310 CMR 8.00: The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies.

A similar action occurred on November 13, 2018 (83 FR 56259) after the submittal of an NOI on December 11, 2017 by Vineyard Wind, LLC, leading to further updates to Appendix A of 40 CFR part 55. The rules incorporated through this action were applicable provisions of 310 CMR 4.00: Timely Action Schedule and Fee Provisions; 310 CMR 6.00: Ambient Air Quality

Standards for the Commonwealth of Massachusetts; 310 CMR 7.00: Air Pollution Control; and 310 CMR 8.00: The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies, as amended through March 9, 2018.

Lastly, on November 15, 2022 (87 FR 68364) the EPA finalized action to incorporate updates to 40 CFR part 55 after receipt of an NOI on September 9, 2021 by Sunrise Wind, LLC. This final rule incorporated applicable provisions of 310 CMR 4.00: Timely Action Schedule and Fee Provisions; 310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts; and 310 CMR 7.00: Air Pollution Control, as amended through March 5, 2021.

EPA has received subsequent NOIs for projects and conducted periodic reviews of Massachusetts regulations to ensure all applicable requirements for OCS sources as they relate to attainment and maintenance of federal or state ambient air quality standards and the requirements of part C of title I of the CAA are incorporated by reference into the Massachusetts section of Appendix A in 40 CFR part 55. These evaluations have not led to additional requirements incorporated by reference into Appendix A, because either a Massachusetts regulation did not change or because any changes to a previously incorporated regulation were not applicable to the attainment and maintenance of federal or state ambient air quality standards for OCS sources.

However, through EPA's implementation of the OCS air permitting program, we have become aware that 310 CMR 4.03: Annual Compliance Assurance Fee and 310 CMR 7.12: U Source Registration are unnecessarily incorporated into Appendix A of 40 CFR part 55. These two regulations are either 1) implemented by existing EPA programs and thus duplicative or 2) not rationally related to the attainment or maintenance of federal or state ambient air quality standards or to the requirements of part C of title I of the CAA. EPA is removing these previously approved regulations incorporated into Appendix A of 40 CFR part 55 since our last amendment on November 15, 2022. See 87 FR 68364.

The specific requirements of the consistency update and the rationale for EPA's action are explained in the September 11, 2024, NPRM (89 FR 73617). One comment was received but is

not germane to the EPA's action; the comment is available at www.regulations.gov under the Docket for this action (Docket ID No. EPA-R01-OAR-2024-0367).

II. Final Action

The EPA is taking final action to remove two regulations currently incorporated by reference in Appendix A of Part 55 for OCS sources where the Commonwealth of Massachusetts is the COA. The regulations that the EPA is removing are specific provisions within: (1) 310 CMR 4.00: Timely Action Schedule and Fee Provisions; and (2) 310 CMR 7.00: Air Pollution Control. Based on a review of Part 55 1) 310 CMR 4.03: Annual Compliance Assurance Fee is duplicative of existing federal rules and 2) 310 CMR 7.12: U Source Registration is no longer determined to be rationally related to the attainment and maintenance of Federal or State ambient air quality standards or to the requirements of part C of title I of the Act. Further, these changes are being made to ensure consistency of the OCS permitting program in accordance with Part 55 requirements.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of "Commonwealth of Massachusetts Requirements Applicable to OCS Sources," dated September 11, 2024, which provides the text of the MassDEP air rules in effect as of September 11, 2024, that would apply to OCS source. The EPA has made, and will continue to make, these materials available through www.regulations.gov and at the EPA Region 1 Regional Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory

mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. *See* 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, the EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy direction by the EPA. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

This action does not impose any new information collection burden under the Paperwork Reduction Act. *See* 44 U.S.C 3501. The Office of Management and Budget (OMB) has previously approved the information collection activities contained in the existing regulation at 40 CFR part 55 and, by extension, this update to part 55, and has assigned OMB control number

2060-0249.¹ This action does not impose a new information burden under the Paperwork Reduction Act because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, Appendix A.

List of Subjects in 40 CFR Part 55

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

Dated: December 19, 2024.

David Cash,
Regional Administrator,
EPA Region 1.

¹ OMB's approval of the ICR can be viewed at www.reginfo.gov.

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

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101-549.

2. Section 55.14 is amended by revising paragraph (e)(11)(i)(A) to read as follows:

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

* * * * *

(e) * * *

(11) * * *

(i) * * *

(A) Commonwealth of Massachusetts Requirements Applicable to OCS Sources, September 11, 2024.

* * * * *

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

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

* * * * *

MASSACHUSETTS

(a) * * *

(1) The following Commonwealth of Massachusetts requirements are applicable to OCS Sources, September 11, 2024, Commonwealth of Massachusetts – Department of Environmental Protection.

The following sections of 310 CMR 4.00, 310 CMR 6.00, 310 CMR 7.00 and 310 CMR 8.00:

310 CMR 4.00: TIMELY ACTION SCHEDULE AND FEE PROVISIONS

Section 4.01: Purpose, Authority and General Provisions (Effective 5/1/2020)

Section 4.02: Definitions (Effective 5/1/2020)

Section 4.04: Permit Application Schedules and Fee (Effective 5/1/2020)

Section 4.10: Appendix: Schedules for Timely Action and Permit Application Fees (Effective 5/1/2020)

310 CMR 6.00: AMBIENT AIR QUALITY STANDARDS FOR THE COMMONWEALTH OF MASSACHUSETTS

Section 6.01: Definitions (Effective 6/14/2019)

Section 6.02: Scope (Effective 6/14/2019)

Section 6.03: Reference Conditions (Effective 6/14/2019)

Section 6.04: Standards (Effective 6/14/2019)

310 CMR 7.00: AIR POLLUTION CONTROL

Section 7.00: Statutory Authority; Legend; Preamble; Definitions (Effective 3/5/2021)

Section 7.01: General Regulations to Prevent Air Pollution (Effective 3/5/2021)

Section 7.02: U Plan Approval and Emission Limitations (Effective 3/5/2021)

Section 7.03: U Plan Approval Exemptions: Construction Requirements (Effective 3/5/2021)

Section 7.04: U Fossil Fuel Utilization Facilities (Effective 3/5/2021)

Section 7.05: U Fuels All Districts (Effective 3/5/2021)

Section 7.06: U Visible Emissions (Effective 3/5/2021)

Section 7.07: U Open Burning (Effective 3/5/2021)

Section 7.08: U Incinerators (Effective 3/5/2021)

Section 7.09: U Dust, Odor, Construction and Demolition (Effective 3/5/2021)

Section 7.11: U Transportation Media (Effective 3/5/2021)

Section 7.13: U Stack Testing (Effective 3/5/2021)

Section 7.14: U Monitoring Devices and Reports (Effective 3/5/2021)

Section 7.18: U Volatile and Halogenated Organic Compounds (Effective 3/5/2021)

Section 7.19: U Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NOX) (Effective 3/5/2021)

Section 7.24: U Organic Material Storage and Distribution (Effective 3/5/2021)

Section 7.25: U Best Available Controls for Consumer and Commercial Products (Effective 3/5/2021)

Section 7.26: Industry Performance Standards (Effective 3/5/2021)

Section 7.60: U Severability (Effective 3/5/2021)

7.70: Massachusetts CO Budget Trading Program (Effective 3/5/2021)

7.71: Reporting of Greenhouse Gas Emissions (Effective 3/5/2021)

7.72: Reducing Sulfur Hexafluoride Emissions from Gas-insulated Switchgear (Effective 3/5/2021)

Section 7.00: Appendix A (Effective 3/5/2021)

Section 7.00: Appendix B (Effective 3/5/2021)

Section 7.00: Appendix C (Effective 3/5/2021)

310 CMR 8.00: THE PREVENTION AND/OR ABATEMENT OF AIR POLLUTION EPISODE AND AIR POLLUTION INCIDENT EMERGENCIES

Section 8.01: Introduction (Effective 3/9/2018)

Section 8.02: Definitions (Effective 3/9/2018)

Section 8.03: Air Pollution Episode Criteria (Effective 3/9/2018)

Section 8.04: Air Pollution Episode Potential Advisories (Effective 3/9/2018)

Section 8.05: Declaration of Air Pollution Episodes and Incidents (Effective 3/9/2018)

Section 8.06: Termination of Air Pollution Episodes and Incident Emergencies (Effective 3/9/2018)

Section 8.07: Emission Reductions Strategies (Effective 3/9/2018)

Section 8.08: Emission Reduction Plans (Effective 3/9/2018)

Section 8.15: Air Pollution Incident Emergency (Effective 3/9/2018)

Section 8.30: Severability (Effective 3/9/2018)

* * * * *

[FR Doc. 2024-30800 Filed: 12/26/2024 8:45 am; Publication Date: 12/27/2024]