



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA-R01-OAR-2018-0011; FRL-9983-52-Region 1]

Outer Continental Shelf Air Regulations; Consistency Update for 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 section 328(a)(1) of 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. The Commonwealth of Massachusetts' requirements discussed in this document will be incorporated by reference into 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 certain publications 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-2018-0011. 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, Office of Ecosystem Protection, Air Quality Planning Unit, 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.

FOR FURTHER INFORMATION CONTACT: Eric Wortman, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square (Mail Code OEP05-2), Boston, MA 02109, (617) 918-1624, wortman.eric@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. Response to Comments
- III. Final Action
- IV. Incorporation by Reference
- V. 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 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) requires that the EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

On February 12, 2018 (83 FR 5971), the EPA published a Notice of Proposed Rulemaking (NPRM) proposing to incorporate various Massachusetts air pollution control requirements into 40 CFR part 55. Pursuant to 40 CFR 55.12, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4; or (3) when a state or local agency submits a rule to the EPA to be considered for incorporation by reference in 40 CFR part 55. This action is being taken in response to the submittal of a NOI on December 11, 2017 by Vineyard Wind, LLC.

The EPA reviewed the rules for inclusion in 40 CFR part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. *See* 40 CFR 55.1. The EPA has also evaluated the rules to ensure they are not arbitrary

¹ The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

or capricious. *See* 40 CFR 55.12(e). In addition, the EPA has excluded administrative or procedural rules,² and requirements that regulate toxics which are not related to the attainment and maintenance of federal and state ambient air quality standards.

Section 328(a) of the CAA requires that the EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits the EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents the EPA from making substantive changes to the requirements it incorporates. As a result, the EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of the EPA's state implementation plan (SIP) guidance or certain requirements of the CAA.

Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by the EPA for inclusion in the SIP.

On March 9, 2018, the Commonwealth of Massachusetts amended certain regulatory provisions that pertained to the EPA's February 12, 2018 proposed rulemaking. On May 9, 2018, the EPA reopened the comment period for 30 days and provided notice that the EPA modified the proposed regulatory text for incorporation by reference in this action. *See* 83 FR 21254 (May 9, 2018). The EPA also added the March 9, 2018 amended regulations at 310 CMR 7.00 to the docket as part of reopening the comment period to give all interested persons the

² Each COA which has been delegated the authority to implement and enforce part 55 will use its administrative and procedural rules as onshore. However, in those instances where the EPA has not delegated authority to implement and enforce part 55, the EPA will use its own administrative and procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).

opportunity to comment on the incorporation by reference of the amended regulations at 310 CMR 7.00.³

Other specific requirements of the consistency update and the rationale for EPA's proposed action are explained in the February 12, 2018 NPRM and the May 9, 2018 reopening of comment period document and will not be restated here.

II. Response to Comments

In response to the February 12, 2018 NPRM and the May 9, 2018 reopening of the comment period, we received a number of anonymous comments that address subjects outside the scope of our final action, do not explain (or provide a legal basis for) how the final action should differ in any way, and make no specific mention of the final action, i.e. incorporation by reference of the relevant Commonwealth of Massachusetts regulations into 40 CFR part 55. This action is required by the CAA and EPA's regulations, based on Vineyard Wind, LLC's NOI. Consequently, the comments referenced above are not germane to this rulemaking and require no further response.

The EPA received one relevant comment from the Commonwealth of Massachusetts that referred specifically to the proposed rulemaking on the consistency update for Massachusetts to the outer continental shelf regulations.

Comment: The commenter indicated that the Massachusetts regulations at 310 Code of Massachusetts Regulations (CMR) 7.21: Sulfur Dioxide Emissions Limitations and 310 CMR 7.22: Sulfur Dioxide Emissions Reductions for the Purpose of Reducing Acid Rain should be

³ The EPA is required to submit a true copy of the regulations, attested by the Commonwealth of Massachusetts, to the Office of the Federal Register for incorporation by reference in the final rule. The EPA obtained a true copy of the amended regulations in effect as of March 9, 2018. The Commonwealth of Massachusetts State Bookstore bundles 310 CMR 6.00, 310 CMR 7.00, and 310 CMR 8.00 into a single package for the purpose of attesting a true copy. Although the regulations at 310 CMR 6.00 and 310 CMR 8.00 were not part of the March 9, 2018 amendments, the EPA updated the effective date for 310 CMR 6.00 – 8.00 in the regulatory text for incorporation by reference for consistency with the updated true copy of the regulations. The true copy of the regulations for 310 CMR 6.00 – 8.00 obtained by the EPA is included in the docket for this action.

removed from the Part 55 Consistency Update because those sections were rescinded in the Commonwealth's March 9, 2018 amendments to 310 CMR 7.00.

Response: The EPA agrees with the commenter and has removed Sections 7.21 and 7.22 from the regulatory text that includes incorporation by reference. Sections 7.21 and 7.22 were inadvertently included in the May 9, 2018 reopening of comment period document in error and have been removed from the regulatory text that includes incorporation by reference in this final action.

III. Final Action

The EPA is taking final action to incorporate the rules potentially applicable to OCS sources for which the Commonwealth of Massachusetts will be the COA. The rules that the EPA is taking final action to incorporate are applicable provisions of (1) 310 CMR 4.00: Timely Action Schedule and Fee Provisions; (2) 310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts; (3) 310 CMR 7.00: Air Pollution Control; and (4) 310 CMR 8.00: The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies, as amended through March 9, 2018. The rules that EPA is taking final action to incorporate will replace the rules previously incorporated into 40 CFR part 55 for Massachusetts. *See* 75 FR 51950; August 24, 2010.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Code of Massachusetts Regulations described in the amendments to 40 CFR part 55 set forth below. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact

the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air 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);
- This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- 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 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.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060-0249. OMB approved the EPA Information Collection Request (ICR) No. 1601.08 on September 18, 2017.⁴ The current approval expires September 30, 2020. The annual public reporting and recordkeeping burden for collection of

⁴ OMB's approval of the ICR can be viewed at www.reginfo.gov.

information under 40 CFR part 55 is estimated to average 643 hours per response, using the definition of burden provided in 44 U.S.C. 3502(2).

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. The 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).)

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: November 1, 2018.

Alexandra Dunn,
Regional Administrator,
EPA Region 1.

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, March 9, 2018.

* * * * *

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, March 9, 2018, 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 3/24/2017)

Section 4.02: Definitions (Effective 3/24/2017)

Section 4.03: Annual Compliance Assurance Fee (Effective 3/24/2017)

Section 4.04: Permit Application Schedules and Fee (Effective 3/24/2017)

Section 4.10: Appendix: Schedules for Timely Action and Permit Application Fees (Effective 3/24/2017)

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

Section 6.01: Definitions (Effective 3/9/2018)

Section 6.02: Scope (Effective 3/9/2018)

Section 6.03: Reference Conditions (Effective 3/9/2018)

Section 6.04: Standards (Effective 3/9/2018)

310 CMR 7.00: AIR POLLUTION CONTROL

Section 7.00: Statutory Authority; Legend; Preamble; Definitions (Effective 3/9/2018)

Section 7.01: General Regulations to Prevent Air Pollution (Effective 3/9/2018)

Section 7.02: U Plan Approval and Emission Limitations (Effective 3/9/2018)

Section 7.03: U Plan Approval Exemptions: Construction Requirements (Effective 3/9/2018)

Section 7.04: U Fossil Fuel Utilization Facilities (Effective 3/9/2018)

Section 7.05: U Fuels All Districts (Effective 3/9/2018)

Section 7.06: U Visible Emissions (Effective 3/9/2018)

Section 7.07: U Open Burning (Effective 3/9/2018)

Section 7.08: U Incinerators (Effective 3/9/2018)

Section 7.09: U Dust, Odor, Construction and Demolition (Effective 3/9/2018)

Section 7.11: U Transportation Media (Effective 3/9/2018)

Section 7.12: U Source Registration (Effective 3/9/2018)

Section 7.13: U Stack Testing (Effective 3/9/2018)

Section 7.14: U Monitoring Devices and Reports (Effective 3/9/2018)

Section 7.18: U Volatile and Halogenated Organic Compounds (Effective 3/9/2018)

Section 7.19: U Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NOX) (Effective 3/9/2018)

Section 7.24: U Organic Material Storage and Distribution (Effective 3/9/2018)

Section 7.25: U Best Available Controls for Consumer and Commercial Products (Effective 3/9/2018)

Section 7.26: Industry Performance Standards (Effective 3/9/2018)

Section 7.60: U Severability (Effective 3/9/2018)

Section 7.00: Appendix A (Effective 3/9/2018)

Section 7.00: Appendix B (Effective 3/9/2018)

Section 7.00: Appendix C (Effective 3/9/2018)

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. 2018-24648 Filed: 11/9/2018 8:45 am; Publication Date: 11/13/2018]