

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification				
*	*	*	*	*
Subchapter F—Standard Permits				
*	*	*	*	*
Section 116.603	Public Participation in Issuance of Standard Permits.	09/20/06	9/17/08 [Insert FR page number where document begins].	
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[FR Doc. E8–21490 Filed 9–16–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 55****[EPA–R01–OAR–2008–0112; A–1–FRL–8709–4]****Outer Continental Shelf Air Regulations Consistency Update for Massachusetts****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is finalizing the updates of the Outer Continental Shelf (OCS) Air Regulations proposed in the **Federal Register** on February 27, 2008. 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 Amendments of 1990 (the Act). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources in the Commonwealth of Massachusetts. The intended effect of approving the OCS requirements for the Commonwealth of Massachusetts is to regulate emissions from OCS sources in accordance with the requirements onshore.

DATES: *Effective Date:* This rule is effective on October 17, 2008. The incorporation by reference of certain publications listed in this rule is

approved by the Director of the Federal Register as of October 17, 2008.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2008–0112. All documents in the docket are listed on the 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 either electronically through www.regulations.gov or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, 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 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ida E. McDonnell, Air Permits, Toxics and Indoor Air Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023, telephone number (617) 918–1653, fax number (617) 918–0653, e-mail mcdonnell.ida@epa.gov.

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

Organization of this document: The following outline is provided to aid in locating information in this preamble.

- I. Background
- II. Public Comment
- III. EPA Action
- IV. Statutory and Executive Order Reviews

I. Background

Section 328(a) of the Clean Air Act (the Act) requires that 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, EPA must incorporate applicable rules of the corresponding onshore area (COA) into 40 CFR part 55.

On February 27, 2008 (73 FR 10406), EPA proposed to incorporate various Massachusetts air pollution control requirements into 40 CFR part 55. These requirements are being promulgated in response to the submittal of a Notice of Intent (NOI) on December 7, 2007 by Cape Wind Associates, LLC of Boston, Massachusetts. EPA has evaluated the proposed requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

Section 328(a) of the Act and 40 CFR part 55 limit EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevent

EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into 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 Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. Public Comment

EPA received comments on the proposed consistency update from Cape Wind Associates. Summaries of those comments and EPA's responses are as follows.

Comment: Cape Wind Associates (CWA) recognizes EPA's approach to the consistency review is to include all state requirements that could potentially apply to any OCS source. CWA wants EPA to confirm that the ultimate applicability of any specific rule to Cape Wind is to be determined on a case-by-case basis, consistent with the unique attributes of each OCS source, COA and the mandate to attain and maintain ambient air quality.

Response: Section 328 of the Act requires that for 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 corresponding onshore area. EPA's action specifies the OCS requirements that will apply to any OCS source for which Massachusetts is the COA. The intended effect of approving the OCS requirements is to regulate emissions from OCS sources in accordance with the requirements onshore, to the extent those requirements are applicable to OCS sources and as modified by the requirements of section 328 and 40 CFR part 55. In updating 40 CFR part 55, EPA reviewed the Commonwealth's rules to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. By contrast, when permitting a source, EPA determines which requirements apply to that source. Therefore, upon receipt of a permit application for any proposed OCS source (including Cape Wind), EPA will determine which of the regulations

included in part 55 apply to that OCS source.

Comment: CWA would like EPA in the consistency update to devote substantial attention to the nature and environmental policy implications of the type of construction-stage sources presented in the NOI, and the subsequent and resulting benefits of an operating renewable energy project to air quality attainment and maintenance.

Response: As stated above, the purpose of the consistency update is to establish OCS requirements that regulate emissions from OCS sources in accordance with the requirements onshore. Although the proposed consistency update was triggered by Cape Wind's Notice of Intent, a part 55 consistency update applies not just to the OCS source identified in the Notice of Intent, but rather any source located in the OCS for which the identified onshore area (in this case, Massachusetts) is the COA. Consequently, EPA does not consider the characteristics of particular proposed OCS sources in determining which state requirements are applicable on the OCS.

Comment: CWA suggests in its comments that the consistency update may conflict with regulations currently being developed by the Minerals Management Service ("MMS") pursuant to the Energy Policy Act of 2005 (Pub. L. 109-58, codified in relevant part at 43 U.S.C. 1337(p)). CWA expresses general concern with the prospect of inconsistent regulatory actions and comments that the consistency update should be treated as a "significant regulatory action" under Executive Order 12866 (58 FR 51735) and a "significant energy action" under Executive Order 13211 (66 FR 28355).

Response: EPA has considered the potential for the consistency update to conflict with the actions of MMS and determined that the consistency update does not meet the definition of significant regulatory action under section 3 of Executive Order 12866 because it is not likely to "[c]reate a serious inconsistency or otherwise interfere with an action taken or planned by another agency."

The consistency update simply updates the existing requirements for controlling air pollution from OCS sources to make them consistent with rules in the corresponding onshore areas as specifically required by section 328 of the Act. This action is not discretionary on the part of EPA. The authority of MMS to regulate leases, easements, or rights-of-way on the outer continental shelf that "produce or support [the] production, transportation,

or transmission of energy from sources other than oil or natural gas" under the Energy Policy Act of 2005 does not present a conflict. *See* 43 U.S.C. 1337(p)(1)(C). The Energy Policy Act explicitly states that "[n]othing in this subsection displaces, supersedes, limits, or modifies the jurisdiction, responsibility, or authority of any Federal or State agency under any other Federal law." 43 U.S.C. 1337(p)(9). As EPA is required by the Clean Air Act to issue the consistency update, the consistency update is enacted under an authority not displaced by the authority granted to the MMS and no actual conflict will occur.

Since EPA proposed its consistency update, MMS has issued its proposed regulations. *See* Alternative Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf, 73 FR 39376 (July 9, 2008). EPA has found no possible conflict between this action and MMS's proposed regulations. Indeed, MMS's proposed rule specifically states that proposed OCS sources (other than those in the western Gulf of Mexico, for which MMS itself establishes the air pollution requirements) must comply with the Act and 40 CFR part 55. *See* 73 FR at 39384, 39429, 39431, 39498. Consequently, there is no conflict. Because the consistency update will not conflict with actions taken by MMS pursuant to the Energy Policy Act of 2005, the consistency update is not an "inconsistent, incompatible, or duplicative" regulation and is not rendered a significant regulatory action under Executive Order 12866.

Executive Order 13211 outlines additional procedures to be followed when a regulation is both a significant regulatory action under Executive Order 12866 and is either "likely to have a significant adverse effect on the supply, distribution, or use of energy," or is designated by the Administrator of the Office of Information and Regulatory Affairs. Since the consistency update is not a significant regulatory action under Executive Order 12866, it is not a significant energy action under Executive Order 13211.

Finally, even if the consistency update were a significant regulatory action under Executive Order 12866, EPA has no reason to believe that updating the existing requirements for controlling air pollution from outer continental shelf sources to make them consistent with rules already applied to sources in the corresponding onshore areas would be "likely to have a significant adverse effect on the supply, distribution, or use of energy" within the meaning of section 4(b)(1)(ii) of

Executive Order 13211. Therefore, even if the consistency update were a significant regulatory action under Executive Order 12866, it would not be a significant energy action under Executive Order 13211.

III. EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposed action. EPA is approving the proposed action under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that 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, EPA must incorporate applicable onshore rules into part 55 as they exist onshore.

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 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, nor preempt tribal law.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, 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. Notice of OMB's approval of EPA Information Collection Request ("ICR") No. 1601.06 was published in the **Federal Register** on March 1, 2006 (71 FR 10499-10500). The approval expires January 31, 2009. As EPA previously indicated (70 FR 65897-65898 (November 1, 2005)), the annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 549 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable. In addition, the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations lists the regulatory citations for the information requirements contained in 40 CFR part 55.

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 November 17, 2008. 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, Continental Shelf, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 18, 2008.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

■ For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

PART 55—[AMENDED]

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

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

■ 2. Section 55.14 is amended as follows:

■ a. By adding paragraph (d)(11).

■ b. In paragraph (e) introductory text by adding a new address after the words “regional offices:”.

■ c. By adding paragraph (e)(11).

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

* * * * *

(d) * * *

(11) Massachusetts.

(i) 40 CFR part 52, subpart W.

(ii) [Reserved]

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(e) * * * U.S.EPA, Region 1
(Massachusetts) One Congress Street,
Boston, MA 02114–2023 * * *

* * * * *

(11) Massachusetts.

(i) State requirements.

(A) Commonwealth of Massachusetts
Requirements Applicable to OCS
Sources, December 28, 2007.

(B) [Reserved]

(ii) Local requirements.

(A) [Reserved]

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■ 3. Appendix A to CFR part 55 is amended by adding an entry for Massachusetts in alphabetical order 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) State requirements.

(1) The following Commonwealth of Massachusetts requirements are applicable to OCS Sources, December 28, 2007, 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 10/19/2007)

Section 4.02: Definitions (Effective 10/19/2007)

Section 4.03: Annual Compliance Assurance Fee (Effective 10/19/2007)

310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts

Section 6.01: Definitions (Effective 12/28/2007)

Section 6.02: Scope (Effective 12/28/2007)

Section 6.03: Reference Conditions (Effective 12/28/2007)

Section 6.04: Standards (Effective 12/28/2007)

310 CMR 7.00: Air Pollution Control

Section 7.00: Statutory Authority; Legend; Preamble; Definitions (Effective 12/28/2007)

Section 7.01: General Regulations to Prevent Air Pollution (Effective 12/28/2007)

Section 7.02: U Plan Approval and Emission Limitations (Effective 12/28/2007)

Section 7.03: U Plan Approval Exemptions: Construction Requirements (Effective 12/28/2007)

Section 7.04: U Fossil Fuel Utilization Facilities (Effective 12/28/2007)

Section 7.05: U Fuels All Districts (Effective 12/28/2007)

Section 7.06: U Visible Emissions (Effective 12/28/2007)

Section 7.07: U Open Burning (Effective 12/28/2007)

Section 7.08: U Incinerators (Effective 12/28/2007)

Section 7.09: U Dust, Odor, Construction and Demolition (Effective 12/28/2007)

Section 7.11: U Transportation Media (Effective 12/28/2007)

Section 7.12: U Source Registration (Effective 12/28/2007)

Section 7.13: U Stack Testing (Effective 12/28/2007)

Section 7.14: U Monitoring Devices and Reports (Effective 12/28/2007)

Section 7.15: U Asbestos (Effective 12/28/2007)

Section 7.18: U Volatile and Halogenated Organic Compounds (Effective 12/28/2007)

Section 7.19: U Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO_x) (Effective 12/28/2007)

Section 7.21: Sulfur Dioxide Emissions Limitations (Effective 12/28/2007)

Section 7.22: Sulfur Dioxide Emissions Reductions for the Purpose of Reducing Acid Rain (Effective 12/28/2007)

Section 7.24: U Organic Material Storage and Distribution (Effective 12/28/2007)

Section 7.25: U Best Available Controls for Consumer and Commercial Products (Effective 12/28/2007)

Section 7.26: Industry Performance Standards (Effective 12/28/2007)

Section 7.27: NO_x Allowance Program (Effective 12/28/2007)

Section 7.28: NO_x Allowance Trading Program (Effective 12/28/2007)

Section 7.29: Emissions Standards for Power Plants (Effective 12/28/2007)

Section 7.60: U Severability (Effective 12/28/2007)

Section 7.00: Appendix A (Effective 12/28/2007)

Section 7.00: Appendix B (Effective 12/28/2007)

Section 7.00: Appendix C (Effective 12/28/2007)

310 CMR 8.00: The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies

Section 8.01: Introduction (Effective 12/28/2007)

Section 8.02: Definitions (Effective 12/28/2007)

Section 8.03: Air Pollution Episode Criteria (Effective 12/28/2007)

Section 8.04: Air Pollution Episode Potential Advisories (Effective 12/28/2007)

Section 8.05: Declaration of Air Pollution Episodes and Incidents (Effective 12/28/2007)

Section 8.06: Termination of Air Pollution Episodes and Incident Emergencies (Effective 12/28/2007)

Section 8.07: Emission Reductions Strategies (Effective 12/28/2007)

Section 8.08: Emission Reduction Plans (Effective 12/28/2007)

Section 8.15: Air Pollution Incident Emergency (Effective 12/28/2007)

Section 8.30: Severability (Effective 12/28/2007)

(2) [Reserved]

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[FR Doc. E8–21486 Filed 9–16–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0791; FRL–8374–1]

Inert Ingredient: Exemption From the Requirement of a Tolerance for amylopectin, acid-hydrolyzed, 1-octenylbutanedioate and for amylopectin, hydrogen 1-octadecenylbutanedioate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes exemptions from the requirement of a tolerance for residues of amylopectin, acid-hydrolyzed, 1-octenylbutanedioate (CAS Reg. No. 113894–85–2) and for amylopectin, hydrogen 1-octadecenylbutanedioate (CAS Reg. No. 125109–81–1) when used in antimicrobial formulations (food-contact surface sanitizing solutions) under 40 CFR 180.940(a), and when used in accordance with good agricultural or manufacturing practice under 40 CFR 180.950. The petitioner, Lewis & Harrison, LLC, on behalf of Alco Chemical, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This