



TECHNICAL SUPPORT DOCUMENT

COMAR 26.11.37 Outer Continental Shelf

03-12-13

Statement of Purpose

The Secretary of the Environment proposes to adopt new Regulations .01 - .04 under a new chapter, COMAR 26.11.37 Outer Continental Shelf Air Regulations.

The purpose of this action is to adopt new regulations which will incorporate by reference (IBR) the provisions of the Code of Federal Regulations, 40 CFR 55 "Outer Continental Shelf Air Regulations". The IBR will specifically include:

- (1) 40 CFR §55.1 Statutory authority and scope
- (2) 40 CFR §55.2 Definitions
- (3) 40 CFR §55.3 Applicability
- (4) 40 CFR §55.4 Requirements to submit a notice of intent
- (5) 40 CFR §55.6 Permit requirements
- (6) 40 CFR §55.7 Exemptions
- (7) 40 CFR §55.8 Monitoring, reporting, inspections, and compliance
- (8) 40 CFR §55.9 Enforcement
- (9) 40 CFR §55.10 Fees
- (10) 40 CFR §55.13 Federal requirements that apply to OCS sources
- (11) 40 CFR §55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by State
- (12) 40 CFR §55.15 Specific designation of corresponding onshore areas
- (13) Appendix A to 40 CFR Part 55 Listing of State and Local Requirements Incorporated by Reference into Part 55, by State

This action is required in order to allow the U.S. Environmental Protection Agency (EPA) to delegate to the State of Maryland EPA's authority to control air pollution from sources located on the Outer Continental Shelf (OCS). This delegated authority would allow the Department to issue federal air quality permits to any OCS source, including an offshore wind farm should one decide to locate offshore of Maryland.

Section 328(a)(1) of the Clean Air Act requires EPA to establish requirements to control air pollution from OCS sources located off-shore of states along the Pacific, Atlantic, and Arctic coasts 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. Under 40 CFR Part 55 "Outer Continental Shelf Air Regulations," EPA established air pollution control requirements for "OCS sources" and procedures for implementation and enforcement of the requirements.

Submission to EPA as Revision to Maryland's SIP (or 111(d) Plan, or Title V Program)

The OSC air pollution control program is a federal program, therefore, this action will not be submitted to EPA for approval as part of Maryland's State Implementation Plan.

Background

The outer continental shelf (OCS) is a subject of emerging activity. Development of wind energy is being proposed along the North Eastern Atlantic shoreline. The U.S. Department of Interior's Bureau of Ocean Energy Management, Regulation and Enforcement has designated a Wind Energy Area off the coast of Maryland, an area about 10 miles off the shoreline of Ocean City covering 94 square miles, or roughly 79,000 acres, as of July 2011.

A plan for a potential wind farm off the coast of Ocean City, Maryland is under investigation by both private developers and State officials. The Maryland Department of Natural Resources (DNR) and Maryland Energy Administration (MEA) have partnered to conduct the environmental surveys necessary for the development of an offshore wind energy project. The environmental studies will allow the DNR to expand its coastal and ocean survey work. DNR and MEA are conducting targeted environmental surveys in Maryland's designated Wind Energy Area to identify environmental and economic impacts for such projects.

Any development activity (including construction) occurring in the OCS within 25 miles of a state's seaward boundary is subject to requirements of 40 CFR 55. A state may petition the EPA for the delegation of authority for implementation and enforcement of OCS activities off its shoreline. The EPA will delegate implementation and enforcement authority to a state, if the state has a proposal for an OCS source project and EPA determines that the state's regulations are adequate and meet the minimum requirements of 40 CFR 55.11.

Offshore wind energy production involves a variety of ancillary activities that produce air emissions even though the wind turbines themselves do not emit any air pollutants. An "OCS source" will typically include any vessel, barge, or equipment utilized on a vessel or barge associated within the project's area and performing any activity that supports construction or operation of the project.

The following text has been extracted directly from 40 CFR 55.2: "**OCS source** means any equipment, activity, or facility which:

- (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. Sec. 1331 et seq.); and
- (3) Is located on the OCS or in or on waters above the OCS."

This definition shall include vessels only when they are:

- (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 of section 4(a)(1) of OCSLA (43 U.S.C. Sec. 1331 et seq.); or
- (2) Physically attached to an OCS facility, in which case only the stationary sources aspects of the vessels will be regulated."

Section 328 of the Clean Air Act requires that for such sources located within 25 miles of a state's seaward boundary, the air pollution control requirements shall be the same as would be applicable if the sources were located in the corresponding onshore area (COA), which is typically the onshore attainment or nonattainment area that is closest to the source.

Sources Affected and Location

There are no sources affected at this time. Currently Maryland does not have any active OCS projects, however potential development has been identified off the coast of Ocean City Maryland.

Requirements

Currently the EPA administers the program requirements for the OCS. The purpose of this adoption is to incorporate by reference the federal air regulations located at 40 CFR 55 for the OCS into the Code of Maryland Regulations (COMAR).

The following sections are not incorporated as they are reserved as federal responsibilities: §55.5 COA designation, §55.11 Delegation, and §55.12 Consistency updates.

Following this regulation adoption, the Department will request delegation authority for control of air pollution from OCS sources as the corresponding onshore area (COA). This request will require future amendments by the EPA to add a consistency update to 40 CFR 55.14 and 40 CFR 55 Appendix A. EPA's amendments will incorporate by reference all of the Maryland state regulations that would apply to the OCS. Once a Notice of Intent (NOI) has been received for activity within the 25 miles of seaward boundary of Maryland, EPA would delegate to the Department the authority to implement and enforce the requirements for the OCS.

Expected Emissions Reductions

There are no expected emission reductions as a result of this regulation. OCS sources are required to follow federal regulations as well as state and local regulations from the COA.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent. Follow references to 40 CFR 55.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.