

foundation models, and the physical and cybersecurity measures taken to protect those model weights;

(iii) The results of any developed dual-use foundation model's performance in relevant AI red-team testing, including a description of any associated measures the company has taken to meet safety objectives, such as mitigations to improve performance on these red-team tests and strengthen overall model security; and

(iv) Other information pertaining to the safety and reliability of dual-use foundation models, or activities or risks that present concerns to U.S. national security.

(c) *Definitions.* For purposes of the reports required by paragraph (a) of this section, apply the following definitions.

AI red-teaming means a structured testing effort to find flaws and vulnerabilities in an AI system, often in a controlled environment and in collaboration with developers of AI. In the context of AI, red-teaming is most often performed by dedicated "red teams" that adopt adversarial methods to identify flaws and vulnerabilities, such as harmful or discriminatory outputs from an AI system, unforeseen or undesirable system behaviors, limitations, or potential risks associated with the misuse of the system.

AI model means a component of an information system that implements AI technology and uses computational, statistical, or machine-learning techniques to produce outputs from a given set of inputs.

AI system means any data system, software, hardware, application, tool, or utility that operates in whole or in part using AI.

Artificial intelligence or *AI* has the meaning set forth in 15 U.S.C. 9401(3).

Company means a corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof. This definition is not limited to commercial or for-profit organizations. For example, the term "any other organized group of persons" may encompass academic institutions, research centers, or any group of persons who are organized in some manner. The term "corporation" is not limited to publicly traded corporations or corporations that exist for the purpose of making a profit.

Covered U.S. person means any individual U.S. citizen, lawful permanent resident of the United States as defined by the Immigration and Nationality Act, entity—including organizations, companies, and corporations—organized under the laws of the United States or any jurisdiction within the United States (including

foreign branches), or any person (individual) located in the United States.

Dual-use foundation model means an AI model that is:

- (i)(A) Trained on broad data;
- (B) Generally uses self-supervision;
- (C) Contains at least tens of billions of parameters;
- (D) Is applicable across a wide range of contexts; and
- (E) Exhibits, or could be easily modified to exhibit, high levels of performance at tasks that pose a serious risk to security, national economic security, national public health or safety, or any combination of those matters, such as by:

(1) Substantially lowering the barrier of entry for non-experts to design, synthesize, acquire, or use chemical, biological, radiological, or nuclear (CBRN) weapons;

(2) Enabling powerful offensive cyber operations through automated vulnerability discovery and exploitation against a wide range of potential targets of cyberattacks; or

(3) Permitting the evasion of human control or oversight through means of deception or obfuscation.

(ii) Models meet this definition even if they are provided to end users with technical safeguards that attempt to prevent users from taking advantage of the relevant unsafe capabilities.

Knowledge has the meaning set out in 15 CFR 772.1.

Large-scale computing cluster means a cluster of computing hardware that meets the technical thresholds provided by the Department in paragraph (a)(1) of this section.

Model weights means the numerical parameters used in the layers of a neural network.

Training or *training run* refers to any process by which an AI model learns from data using computing power. Training includes but is not limited to techniques employed during pre-training like unsupervised learning and employed during fine tuning like reinforcement learning from human feedback.

United States (U.S.) includes the 50 states, the District of Columbia, Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Northern Mariana Islands.

Thea D. Rozman Kendler,
Assistant Secretary for Export Administration.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA-R01-OAR-2024-0367; FRL-12222-01-R1]

Outer Continental Shelf Air Regulations; Amendment to State Requirements Incorporated; Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendment to state requirements.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update 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). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Commonwealth of Massachusetts is the designated COA. The intended effect of this proposed rule is to amend existing regulations incorporated by reference into the Massachusetts section of EPA's OCS air regulations.

DATES: Written comments must be received on or before October 11, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2024-0367 at <https://www.regulations.gov>, or via email to collins.patrick@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. 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 & 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 New England Regional Office, 5 Post Office Square (Mail Code 05-MI), 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.

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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 proposing to remove 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. Additional rationale for this proposed action is provided below.

II. EPA's Evaluation of Appendix A of Part 55 for Massachusetts

310 CMR 4.03: Annual Compliance Assurance Fee outlines the procedure for issuance and collection of a source's annual compliance assurance fees imposed in the COA. Per 40 CFR 55.10, for sources in the inner or outer OCS where the EPA is the permitting authority, the EPA will collect permit fees consistent with fee requirements outlined in 40 CFR part 71. Per the provisions of 40 CFR 55.12(e), no rule or regulation that EPA finds to be arbitrary or capricious will be incorporated into this part. EPA's review finds that 310 CMR 4.03: Annual Compliance Assurance Fee should be removed from part 55 as EPA is the permitting authority for sources located within the inner OCS for which Massachusetts is the designated COA. As such, EPA is required to calculate and collect operating permit fees from

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.

OCS sources for which Massachusetts is the COA in accordance with 40 CFR part 71. By removing this provision from the incorporated requirements of Massachusetts regulations into appendix A of 40 CFR part 55, EPA remains consistent with other sections of part 55 and creates regulatory certainty on what fee requirements operating permit sources must adhere to.

310 CMR 7.12: U Source Registration is used to determine source registration requirements for OCS sources. This section is also used to direct how information regarding emission inventories is collected, assisting regular recordkeeping processes. As part of the registration, the given source is required to report emissions on an annual reporting schedule to the Massachusetts Department of Environmental Protection. However, for OCS sources with permits issued by EPA, it is impractical for sources to report to Massachusetts for activities occurring in federal waters many miles from the state's jurisdictional boundary. This information should instead be reported directly to the EPA. As such, our review did not find these regulations 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 and will be removed in accordance with 40 CFR 55.12(d)(2).

EPA is proposing to remove 310 CMR 4.03: Annual Compliance Assurance Fee and 310 CMR 7.12: U Source Registration before the majority of recently permitted OCS sources where Massachusetts is the COA become subject to these requirements in an effort to create regulatory clarity in the obligations these sources are subject to.

The EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Region Office listed in the **ADDRESSES** section of this **Federal Register**.

III. Proposed Action

The EPA is proposing 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 proposing to remove are applicable subsections provisions of: 310 CMR 4.00: Timely Action Schedule and Fee Provisions; and 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 proposed to ensure consistency of the OCS permitting program in accordance with part 55 requirements.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in sections II and III of this preamble, the EPA is proposing to remove 310 CMR 4.03 and 310 CMR 7.12 from the incorporation by reference of the Commonwealth of Massachusetts Requirements Applicable to OCS Sources, dated March 5, 2021, as listed in appendix A to 40 CFR part 55. 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).

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);

- 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 the 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.

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 2060-0249.² 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.

² OMB's approval of the ICR can be viewed at www.reginfo.gov.

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: September 3, 2024.

David Cash,

Regional Administrator, EPA Region 1.

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