

MEMORANDUM

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Theresa Newman, Regulatory Specialist, Office of the Secretary,
Dept. of Natural Resources and Environmental Control

RE: **Proposed Regulation Amendments to 7 DE Admin. Code 1150: *Outer Continental Shelf Air Regulations***

DATE: August 28, 2019

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Wednesday, May 22, 2019, at 6:00 p.m. at the Department of Natural Resources and Environmental Control (“DNREC,” “Department”), 89 Kings Highway, Dover, Delaware to receive comment on proposed amendments (“Amendments”) to 7 DE Admin. Code 1150: *Outer Continental Shelf Air Regulations* (“OCS Regulations”). The Department proposes to incorporate the provisions of 40 CFR 55, specifically, the Outer Continental Shelf (“OCS”) technical changes of 81 Fed. Reg. 71613 (October 2016) and 84 Fed. Reg. 13132 (April 4, 2019) into Delaware’s existing OCS Regulations. Subsequent to the federal Outer Continental Shelf Regulations Section 40 CFR 55, promulgated by the United States Environmental Protection Agency (“EPA”), Delaware’s adoption of its OCS Regulations in 2010 mandated newspaper notices as the sole source of a public notification for draft air permit (as well as certain other program actions). The Department is proposing the above Amendment to incorporate updates made to the federal Outer Continental Shelf Regulations at 40 CFR 55 in October 2016 (81 FR 71613) to include the option of e-notices as a source for public notification. For consistency purposes, the Amendment to incorporate 84 Fed. Reg. 13132 (April 4, 2019) shall ensure that the incorporation of the subsequent updates to DAQ regulations are referenced into Appendix A of Part 55 under the EPA. The Amendment to this section allows DAQ to write permits for OCS sources based upon the most recent versions of DAQ’s regulations.

Originally promulgated by the Department in June 2010, 7 DE Admin. Code 1150 authorizes Delaware to regulate air emissions pursuant to the EPA's regulations codified at 40 CFR 55, which were issued under Section 328(a)(1) of the federal Clean Air Act. The EPA's regulations apply to all sources of air emissions from within the OCS. For Delaware, the OCS is the area that is within 25 miles of Delaware's coastal boundaries along the Atlantic Ocean.

Air emissions from within the OCS are regulated by the Department in the same manner as if the source was located on Delaware land. This regulation authorizes the Department to issue Air Quality permits for any source regulated under 40 CFR 55, thereby effectively regulating air pollutants emitted in the OCS, consistent with all state and federal laws and regulations.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1150: *Outer Continental Shelf Air Regulations*, pursuant to 7 Del. C. §6010(a) and (c). The Department published its initial proposed Amendments in the May 1, 2019 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on May 22, 2019. There was no public attendance at the public hearing. Pursuant to Delaware law, the hearing record ("Record") remained open for fifteen (15) additional days subsequent to the date of the public hearing for receipt of public comment. The Record formally closed with regard to public comment at close of business on June 6, 2019, with no comment having been received by the Department during any phase of this regulatory promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The Record consists of the following documents: (1) a verbatim transcript; and (2) ten (10) documents introduced by Department staff at the public hearing held on May 22, 2019, and marked by Hearing Officer Lisa A. Vest at the time of the hearing accordingly as Department Exhibits 1-10. The Department's person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Mark Prettyman, Environmental Scientist with the Division of Air Quality, developed the Record with the relevant documents in the Department's files.

As stated previously, no comment was received by the Department at any time during the course of this regulatory promulgation. Accordingly, the Department's proposed Amendments are attached hereto as Appendix "A" for the Secretary's review.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the Record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed amendments to 7 DE Admin. Code 1150: *Outer Continental Shelf Air Regulations*, specifically, to incorporate the updates made to the federal *Outer Continental Shelf Regulations* at 40 CFR 55, as noted above. Accordingly, I recommend promulgation of the same, in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §6010(a) and (c);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these proposed Amendments as final;

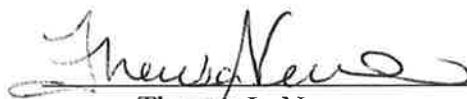
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on May 22, 2019, and during the 15 days subsequent to the hearing (through June 6, 2019), before making any final decision;

4. Promulgation of the proposed Amendments to 7 DE Admin. Code 1150: *Outer Continental Shelf Air Regulations*, will enable the Department to incorporate the updates made to the federal *Outer Continental Shelf Regulations* at 40 CFR 55, as noted above;

5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption “A,” as this regulation does not apply to small business or individuals;

6. The Department’s proposed regulatory Amendments, as initially published in the May 1, 2019 *Delaware Register of Regulations*, and as set forth in Appendix “A” hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

7. The Department shall submit the proposed Amendments as final regulatory amendments to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.



Theresa L. Newman
Public Hearing Officer

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Attachments/Appendix:
Appendix A: Proposed Reg. Amendments

APPENDIX "A"

PROPOSED REGULATIONS

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR QUALITY**

Statutory Authority: 7 Delaware Code, Sections 6010(a) and 6010(c)
(7 Del.C., §§6010(a) and 6010(c))
7 DE Admin. Code 1150

**REGISTER NOTICE
SAN # 2018-11****1150 Outer Continental Shelf Air Regulations****1. TITLE OF THE REGULATIONS:**

Proposed amendments to 7 DE Admin. Code 1150, Outer Continental Shelf Air Regulations.

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Division of Air Quality (DAQ) is proposing to amend 7 DE Admin. Code 1150 to incorporate updates to the federal Outer Continental Shelf (OCS) regulations at 40 CFR 55, which have been made since the regulation was adopted in 2010.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. Ch. 60, Sections 6010(a) and 6010(c).

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed amendments to 7 DE Admin. Code 1150, Outer Continental Shelf Air Regulations will open May 1, 2019. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@delaware.gov or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendments to 7 DE Admin. Code 1150, Outer Continental Shelf Air Regulations will be held on May 22, 2019 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments open May 1 and will be received until close of business Thursday, June 6, 2019.

7. PREPARED BY:

Mark A. Prettyman – mark.prettyman@delaware.gov – 302-739-9402

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

[http://regulations.delaware.gov/register/may2019/proposed/22 DE Reg 928RFA 05-01-19.pdf](http://regulations.delaware.gov/register/may2019/proposed/22%20DE%20Reg%20928RFA%2005-01-19.pdf)

1150 Outer Continental Shelf Air Regulations

06/11/2019XX/XX/2019

1.0 Applicability

Upon delegation of authority by the Administrator of the EPA to the Department, this regulation shall apply to the owner or operator of any OCS source for which Delaware is the corresponding onshore area (COA) as authorized under Section 328 of the federal Clean Air Act Amendments (42 U.S.C.

PROPOSED REGULATIONS

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7627), Outer Continental Shelf technical changes of 84 Fed. Reg. 13132 (April 4, 2019), and 40 CFR Part 55 (July 1, ~~2009~~2018 ed.).

06/11/2019XX/XX/2019

2.0 Requirements

The provisions of Part 40 CFR Part 55 (July 1, ~~2009~~2018 ed.) and the Outer Continental Shelf technical changes of 84 Fed. Reg. 13132 (April 4, 2019) are incorporated herein as 7 DE Admin. Code 1150. OCS sources shall comply with all requirements of 1100 Air Quality Management Section of Title 7 of the Delaware Administrative Code to the extent that they are incorporated by EPA into 40 CFR Part 55.14.

This rule incorporates the following provisions of 40 CFR Part 55:

Outer Continental Shelf Air Regulations

55.1	Statutory authority and scope.
55.2	Definitions.
55.3	Applicability.
55.4	Requirements to submit a notice of intent.
55.6	Permit requirements.
55.7	Exemptions.
55.8	Monitoring, reporting, inspections, and compliance.
55.9	Enforcement.
55.10	Fees.
55.13	Federal requirements that apply to OCS sources.
55.14	Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by State.
55.15	Specific designation of corresponding onshore areas.
Appendix A to 40 CFR Part 55	Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 1902(a), 1501, 1503, 2505 and 2507
(7 Del.C. §§1902(a), 1501, 1503, 2505 & 2507)
7 DE Admin. Code 3700

REGISTER NOTICE SAN #2019-03

3700 Shellfish
3723 Jonah Crab (*Cancer borealis*)
3755 Lobsters

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 3700 Shellfish to include:
3723 Jonah Crab [new]; 3755 Lobsters; 3756 Lobsters - Pot Design; 3757 Lobsters - Pot, Season And Limits For Commercial Lobster Pot License; and, 3758 Possession Of V-notched Lobsters Prohibited

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Atlantic States Marine Fisheries Commission (ASMFC) approved an Interstate Fishery Management Plan (FMP) for Jonah Crab under the authority of the Atlantic Coastal Fisheries Cooperative Management Act