

Reporting and recordkeeping requirements.

Dated: February 9, 1995.

**Chuck Clarke,**

*Regional Administrator.*

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#### 40 CFR Part 52

[WA24-1-6519b; FRL-5143-8]

#### Approval and Promulgation of State Implementation Plans: Washington

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Washington for the Northwest Air Pollution Authority (NWAPA). The SIP revision was submitted by the State to satisfy certain Federal Clean Air Act requirements for the control of air pollution in Island, Skagit, and Whatcom Counties. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

**DATES:** Comments on this proposed rule must be received in writing by March 24, 1995.

**ADDRESSES:** Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT-082), Air Programs Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

Washington State Department of Ecology, P.O. Box 47600, PV-11, Olympia, WA 98504-7600.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Cooper, Air Programs Branch (AT-082), EPA, Region 10, Seattle, Washington 98101, (206) 553-6917.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: January 9, 1995.

**Chuck Clarke,**

*Regional Administrator.*

[FR Doc. 95-3863 Filed 2-21-95; 8:45 am]

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#### 40 CFR Part 52

[MA-29-01-6537; A-1-FRL-5156-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Emission Banking, Trading, and Averaging

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing the approval of a State Implementation Plan (SIP) revision submitted by the State of Massachusetts. This revision establishes a program of emission reduction credit (ERC) banking and trading whereby companies who reduce emissions below the level required by State and federal regulation can "bank" the surplus reductions for use at a later date or for transfer to another party. This program has been adopted as a voluntary economic incentive program pursuant to EPA's interim guidance on Economic Incentive Programs. The intended effect of this action is to facilitate cost-effective compliance with other emission reduction requirements required by the Massachusetts SIP. This action is being taken under the Clean Air Act.

**DATES:** Comments must be received on or before March 24, 1995.

**ADDRESSES:** Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203-2211. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Division of Air Quality Control, Department of

Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Steven A. Rapp, (617) 565-9024.

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 23, 1993, EPA published proposed rules for Economic Incentive Programs (58 FR 11110). The proposal set forth Economic Incentive Program (EIP) rules which could be adopted by certain ozone and carbon monoxide nonattainment areas which were mandated by sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the Clean Air Act (Act) to use or consider as one of three options the use of an economic incentive program to correct attainment plan deficiencies. The notice also served as interim guidance for States to develop discretionary EIPs which is allowed for any criteria pollutant in all areas.

On February 9, 1994, the Massachusetts Department of Environmental Protection (DEP) submitted 310 CMR 7.00 appendix B: Emission Banking, Trading, and Averaging as a revision to its State Implementation Plan (SIP). This regulation was submitted as a discretionary EIP and is described as emission limiting due to the fact that the regulation places limits on total mass emissions, emission related parameters, or specifies levels of emission reductions that participating sources must meet. The regulation is designed to utilize a federally enforceable permit mechanism or single-source SIP revisions to ensure the enforceability of the ERCs. It replaces the former 310 CMR 7.00 appendix B which dealt exclusively with emissions averaging.

The regulation deals separately with ERC banking and trading and with emissions averaging. Section 310 CMR 7.00 appendix B(3) establishes the requirements of the ERC banking and trading portion of the program by which persons and companies who reduce emissions below the level required by State and federal regulation can "bank" the surplus reductions for use at a later date or for transfer to another party. The goal of this part of the program is to encourage the creation and trading of surplus ERCs for the purpose of offsets, netting, and cost-effective compliance without interfering with any applicable requirements concerning attainment, reasonable further progress, or any other applicable air pollution control requirements. As such, 310 CMR 7.00 Appendix B(3) is intended to promote innovative and cost-effective

approaches to emission reduction requirements adopted by Massachusetts.

Section 310 CMR 7.00 appendix B(4) is the portion of the program designated for emissions averaging, or bubbling. However, that portion of the regulation was not part of the February 9, 1994 SIP submittal. Section 310 CMR 7.00 appendix B(4) of the regulation has been reserved and is expected to be submitted in the coming months for inclusion into the Massachusetts SIP.

#### **EPA Evaluation and Proposed Action**

As submitted, 310 CMR 7.00 appendix B is approvable as a non-generic<sup>1</sup> Economic Incentive Program (EIP). This means that although these regulations provide the general requirements for applying for and implementing an approvable trade under the EIP guidance, the use of all Emission Reduction Credits (ERCs) must be made federally enforceable through a second step, such as the issuance of a federally enforceable permit or as a case-specific SIP revision. Due to a lack of specificity in the emission quantification, compliance assurance, and public participation procedures, these regulations do not qualify as a fully generic EIP for emissions banking and trading. Therefore, this approval does not provide Massachusetts with the authority to issue documents to make ERC generation or use federally enforceable. At a minimum, EPA will still need to review and concur on any documents which are issued by the DEP for ERC use.

In addition to case-specific SIP revisions, there are several available mechanisms for making State documents federally enforceable in the absence of a fully generic EIP. Since documents issued under any of these mechanisms would include public participation procedures, Region I would be able to ensure that replicable and enforceable procedures are incorporated as part of each trade. Other than case-specific SIP revisions, the following three mechanisms could be used for making State documents federally enforceable in the absence of a fully generic EIP. However, as indicated in 310 CMR 7.00 appendix B(3)(g), ERCs generated from the application of mobile source or demand-

side management measures would need to be approved through the source-specific SIP revision process, to the extent the specific emissions quantification, compliance assurance, and public participation procedures have not already been approved by EPA as part of the SIP.

First, in the case where Massachusetts issues a preconstruction permit to the owner/operator of a facility seeking to generate and/or use ERCs as offsets under their SIP-approved New Source Review (NSR) program (310 CMR 7.00 appendix A), these banking and trading regulations would be sufficient for the State to set the necessary federally enforceable conditions. Second, at such time as Massachusetts has an EPA-approved title V operating permit program, the State could also use those permits at subject sources to make the necessary conditions of ERC generation or use federally enforceable. However, since Massachusetts does not yet have an approved title V operating permit program, this is not an option.

Alternatively, in the case where state operating permits are issued pursuant to a program which has been approved into the SIP as meeting EPA's June 28, 1989 guidance, "Requirements for the Preparation, Adoption, and Submittal of Implementation Plans" (54 FR 27274), the State could also use those permits to set the federally enforceable conditions for ERC generation or use. At the time Massachusetts proposed changes to 310 CMR 7.00 appendix B, they also proposed changes to 310 CMR 7.02: Plan Approval and Emission Limitations to allow the State to issue to existing sources permits which would meet the EPA's June 1989 guidance. However, since these changes have not been adopted by the State, this is not a viable option at this time.

One issue with the approval of 310 CMR 7.00 appendix B as an EIP framework concerns the provisions which appear to allow a source to accumulate and potentially use ERCs, during years other than the year in which the credits were generated (i.e., inter-temporal use of credits). Historically, EPA has only considered continuous streams of ERCs to be eligible for banking and use on a fixed tons per year basis. In the event that a portion of the continuous stream of credits was not used in a given year, that unused portion of total yearly credit was not normally allowed to be accumulated for use in later years. Similarly, where emission credits were generated by actions which produced only a limited stream of credits, such discrete ERCs were normally only

considered surplus during the period of their generation.

As submitted, the Massachusetts' banking and trading regulations deal almost exclusively with the creation (i.e., banking) of ERCs. However, appendix B(3)(d)(2)(d) of 310 CMR 7.00 appears to allow ERCs generated from an action of limited duration (e.g., the use of natural gas instead of coal at a powerplant for one summer season), or the unused portion of ERCs generated from ongoing actions (e.g., reductions from the installation of control equipment), to be banked for use in any future year, including years other than the one in which the credit was generated. Appendix B (3)(d)(2)(d) also specifically states that the use of such accrued credits will be limited by the limits defined by 310 CMR 7.00, which include the requirement that reductions be surplus (i.e., not relied upon for any applicable attainment or reasonable further progress (RFP) milestone demonstration). Therefore, the question of whether accumulated reductions in emissions are surplus only arises with the use of such ERCs.

Under 310 CMR 7.00 appendix B, there are essentially two eligible uses of ERCs: to meet New Source Review (NSR) emissions offsetting requirements and to meet Reasonably Available Control Technology (RACT) limits. Currently, Massachusetts' NSR regulations explicitly require that offsetting credits be consistent with RFP. As for using ERCs to average between sources to meet RACT requirements, Massachusetts currently has no generic authority to allow emissions averaging. Therefore, in either case, the use of ERCs will still need to be made federally enforceable through a second step in the process which involves EPA review and concurrence. EPA's approval of any inter-temporal ERC trade will be predicated on the State documenting how such use of ERCs is consistent with the RFP and attainment plans and areawide RACT requirements applicable at that time. Therefore, since 310 CMR 7.00 appendix B deals almost exclusively with the creation (i.e., banking) of ERCs, and since this notice proposes only to approve 310 CMR 7.00 appendix B as a non-generic EIP, the credit accumulation provisions do not pose any contradiction to the requirements of the Clean Air Act.

Similarly, for the State to receive full approval of an emissions banking and trading EIP, including the generic authority to issue federally enforceable trading documents with inter-temporal banking and trading, they would need to meet an additional requirement to those

<sup>1</sup> EPA's Emission Trading Policy Statement (ETPS) promulgated on December 4, 1986, defines "generic rule" as a rule that assures that emissions trades otherwise requiring case-by-case SIP revisions under sections 110(j) and 110(a)(3) of the Clean Air Act will be evaluated under State procedures that are sufficiently replicable in operation to guarantee that emission limits produced under the rule will not interfere with the timely attainment and maintenance or jeopardize PSD increments or visibility (51 FR 43850).

deficiencies listed above (i.e., specification of emission quantification, compliance assurance, and public participation procedures). Namely, the State would need to demonstrate that any potential one-time or carry-over ERCs are or will be consistent with the applicable attainment plan or demonstration, reasonable further progress (RFP) plan or milestone demonstration, and surplus to any applicable areawide RACT emission reduction requirements.

Essentially, this means that the State would need to submit documentation showing that the SIP requires, or will require, reductions equivalent to all potential one-time or carry-over ERCs beyond those reductions required from any applicable RACT, RFP, and/or attainment plan regulations, during the year(s) in which such ERCs are allowed to be used. Alternatively, the State could show that their adopted RACT, RFP, and/or attainment control strategies provide for equivalent reductions below the appropriate RFP or attainment target levels, and any applicable areawide RACT requirements. For example, if a State wanted to allow the use of 10 tons per typical summer day from a previous year, the State would need to show that its adopted control strategies provide for reductions that would create a 10 ton per day excess below the appropriate RFP or attainment target level and RACT requirements.

Additionally, appendix B(3)(g)(5) of the rule generally allows the bank to retain credits without confiscation from the State. However, the regulations also provide the State with the authority to make adjustments, including confiscation, to banked credits if needed for Rate-of-Progress (ROP), Reasonable Further Progress (RFP), or attainment requirements, as stated in appendix B(3)(l). According to appendix B(3)(l), the State would need to revise the SIP to take such action. EPA approves these provisions.

Finally, as mentioned above, although subsection (4) of the regulation has been reserved for the emissions averaging (bubbling) provisions, it was not submitted as part of the February 10, 1994 submittal. Therefore, until such time as a separate SIP revision allowing emissions averaging is approved, no generic emissions averaging would be allowed by approval of these rules.

Based on the issues discussed above, EPA is proposing to approve this revision to the Massachusetts SIP. EPA is soliciting public comments on the issues discussed in this proposal 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 Regional office listed in the ADDRESSES section of this action.

#### Proposed Action

EPA is proposing approval as a non-generic economic incentive program of 310 CMR 7.00 appendix B, as submitted to the EPA on February 9, 1994, as part of the Massachusetts SIP.

#### Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic,

and environmental factors and in relation to relevant statutory and regulatory requirements.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 110(a)(2) (A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401-7671q.

**Dated:** January 31, 1995.

**John P. DeVillars,**

*Regional Administrator, Region I.*

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#### 40 CFR Part 63

[AD-FRL-5160-3]

#### National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutant Emissions From Wood Furniture Manufacturing Operations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Extension of comment period.

**SUMMARY:** The EPA is extending the period for public comment regarding the Agency's proposed standards for hazardous air pollutant emissions from wood furniture manufacturing operations.

**DATES:** Written comments on the proposed rule must be received on or before March 23, 1995. Written comments pertaining only to the proposed test Method 311 must be received on or before April 24, 1995. Comments should be submitted in duplicate, and on computer disk, if possible.

**ADDRESSES:** Send comments to: Air and Radiation Docket and Information Center (6102), Attention, Docket No. A-93-10, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

*Docket.* Docket No. A-93-10, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 5:00 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall,