before designating a Postal Service employee as an expert witness.

(f) *Substitution of Postal Service employees.* Although a demand for testimony may be directed to a named Postal Service employee, the General Counsel, where appropriate, may designate another Postal Service employee to give testimony. Upon request and for good cause shown (for example, when a particular Postal Service employee has direct knowledge of a material fact not known to the substitute employee designated by the Postal Service), the General Counsel may permit testimony by a named Postal Service employee.

(g) *Fees and costs.* (1) The Postal Service may charge fees, not to exceed actual costs, to private litigants seeking testimony or records by request or demand. The fees, which are to be calculated to reimburse fully the Postal Service for processing the demand and providing the witness or records, may include, among others:

(i) Costs of time spent by employees, including attorneys, of the Postal Service to process and respond to the demand;

(ii) Costs of attendance of the employee and agency attorney at any deposition, hearing, or trial;

(iii) Travel costs of the employee and agency attorney;

(iv) Costs of materials and equipment used to search for, process, and make available information.

(2) All costs for employee time shall be calculated on the hourly pay of the employee (including all pay, allowance, and benefits) and shall include the hourly fee for each hour, or portion of each hour, when the employee is in travel, in attendance at a deposition, hearing, or trial, or is processing or responding to a request or demand.

(3) At the discretion of the Postal Service, where appropriate, costs may be estimated and collected before testimony is given.

(h) *Acceptance of service.* This section does not in any way abrogate or modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–8226 Filed 4–4–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–31–01–6845a; A–1–FRL–5177–1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; U Restricted Emission Status

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision approves 310 CMR 7.02(12), entitled ''U Restricted Emission Status,'' into the Massachusetts SIP. The intended effect of this action is to approve a SIP revision by the Commonwealth of Massachusetts to incorporate regulations for the issuance of federally enforceable operating permits which restrict sources' potential to emit criteria pollutants such that sources can avoid reasonably available control technology (RACT), title V operating permit requirements, or otherwise applicable requirements. This also extends federal enforceability of hazardous air pollutants (HAPs). This action is being taken in accordance with the Implementation Plans Section and the State Programs Section of the Clean Air Act.

DATES: This action will become effective June 5, 1995, unless notice is received May 5, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

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 Building, Boston, MA 02203. Copies of the documents relevant to this action 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; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC 20460; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Ida E. Walker, for criteria pollutants (617) 565–9168 or Janet Beloin, for HAPs (617) 565–2734.

SUPPLEMENTARY INFORMATION: On June 6, 1994, the Commonwealth of Massachusetts submitted a formal revision to its State Implementation Plan (SIP) to incorporate regulations for the issuance of federally enforceable operating permits. The revision consists of the addition of 310 CMR 7.02(12), entitled ''U Restricted Emission Status.'' The Commonwealth of Massachusetts adopted these regulations in order to have the authority to issue federally enforceable operating permits under its SIP. In order to extend the federal enforceability of state operating permits to hazardous air pollutants (HAPs), EPA is also approving this regulation pursuant to section 112(l) of the Act.

Summary of SIP Revision

The Commonwealth of Massachusetts' principal purpose for adopting the operating permit regulations of 310 CMR 7.02(12) is to have a federally enforceable means of expeditiously restricting potential emissions such that sources can avoid RACT, title V operating permit requirements, or otherwise applicable requirements, as well as reduce annual compliance fees. The operating permit provisions in title V of the Clean Air Act Amendments of 1990 have created additional interest in mechanisms for limiting sources' potential to emit, thereby allowing the sources to avoid being defined as ''major'' with respect to title V operating permit programs. A key mechanism for such limitations is the use of federally enforceable state operating permits (FESOPs). The EPA issued general guidance on FESOPs in the **Federal Register** on June 28, 1989 [54 FR 27274]. This rulemaking evaluates whether Massachusetts has satisfied the requirements for this type of federally enforceable limitation on potential to emit. Each of the five criteria, as specified in the **Federal Register** of June 28, 1989, for approval of a state's program for the issuance of FESOPs under its SIP and how the state's submittal satisfies those criteria are presented below:

Criterion 1. The state's operating permit program (i.e. the regulations or other administrative framework describing how such permits are issued) must be submitted to and approved by EPA as a SIP revision: On June 6, 1994, the Commonwealth of Massachusetts submitted an administratively and technically complete SIP revision request to EPA consisting of 310 CMR 7.02(12) ''U Restricted Emission Status.''

That SIP revision is the subject of this rulemaking action.

Criterion 2. The SIP revision must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provide that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not ''federally enforceable'' by EPA: 310 CMR 7.02(12)(f) requires sources to obtain permits to operate and authorizes Massachusetts to establish terms and conditions in these permits ''assuring compliance with such limitations and controls.'' Additionally, the ''Restricted emission status issued pursuant to 310 CMR 7.02(12) for the purpose of restricting federal potential emissions must be federally enforceable.''

Criterion 3. The state operating permit program must require that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any applicable limitations and requirements contained in the SIP, or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise ''federally enforceable'' (e.g. standards established under Sections 111 and 112 of the Clean Air Act): 310 CMR 7.02(12)(f)(2) contains regulatory provisions which state ''All emission limitations, controls, and other requirements imposed by such restricted emission status must be at least as stringent as all other applicable limitations and requirements contained in the Massachusetts SIP . . . or *that are* otherwise federally enforceable.'' In addition, these rules contain no provisions authorizing terms and conditions any less stringent than these other applicable requirements, which remain federally enforceable.

Criterion 4. The limitations, controls, and requirements of the state's operating permits must be permanent, quantifiable, and otherwise enforceable as a practical matter: 310 CMR 7.02(12)(f) (1) and (2) contain regulatory provisions which satisfy this criterion. In addition, these subparagraphs require that permit restrictions contain ''per unit emission factors, production and/or operational limitations and controls, and monitoring, recordkeeping, and reporting requirements capable of assuring compliance with such limitations and controls.''

Criterion 5. The state operating permits must be issued subject to public participation. This means that the state agrees, as part of its program, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be ''federally enforceable.'' This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permits: 310 CMR 7.02(12)(g)(2) (a), (b), (c) and (g) contain provisions which satisfy this criterion.

The Commonwealth of Massachusetts has also requested approval of its Restricted Emission Status program under section 112(l) of the Act for the purpose of creating federally enforceable limitations on the potential to emit of HAPs. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to criteria pollutants for which EPA has established national ambient air quality standards under section 109 of the Act. Federally enforceable limits on criteria pollutants or their precursors (i.e., VOC's or PM–10) may have the incidental effect of limiting certain HAPs listed pursuant to section 112(b).[1] As a legal matter, no additional program approval by the EPA is required beyond SIP approval under section 110 in order for these criteria pollutant limits to be recognized as federally enforceable. However, section 112 of the Act provides the underlying authority for controlling *all* HAP emissions, regardless of their relationship to criteria pollutant controls.

The EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** notice, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989 notice does not address HAPs because it was written prior to the 1990 amendments to section 112. The June 28, 1989 criteria are basic principles which are not unique to criteria pollutants. Therefore, the five criteria discussed above are applicable to FESOP approvals under section 112(l) as well as under section 110.

In addition to meeting the criteria in the June 28, 1989 notice, a FESOP program for HAPs must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows the EPA to approve a program only if the program: (1) Contains adequate authority to assure compliance with any section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

The EPA plans to codify the approval criteria for programs limiting potential to emit HAPs, in Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262, November 26, 1993.) The EPA currently anticipates that these regulatory criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989 notice. FESOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will be approved as meeting the criteria in EPA's June, 1989 notice. Therefore, further approval actions for those programs will not be necessary.

The EPA believes it has authority under section 112(l) to approve programs to limit potential to emit HAPs directly under section 112(l) prior to this revision to Subpart E. EPA is therefore proposing approval of Massachusetts' Restricted Emission Status Program now so that Massachusetts may begin to issue federally enforceable synthetic minor permits as soon as possible.

Regarding the statutory criteria of section 112(l)(5) referred to above, the EPA believes Massachusetts' Restricted Emission Status program contains adequate authority to assure compliance with section 112 requirements since the third criterion of the June 28, 1989 notice is met, that is, the program in 310 CMR 7.02(12)(f)(2) states that all requirements in the Restricted Emissions Status program must be at least as stringent as all other applicable federally enforceable requirements. Please note that a source which receives a Restricted Emission Status permit may still need a title V operating permit under 310 CMR 7.00 Appendix (C)(2)(a)(5) if EPA promulgates a MACT standard which requires non-major sources to obtain title V permits.

Regarding the requirement for adequate resources, the EPA believes Massachusetts has demonstrated that it can provide for adequate resources to support the Restricted Emission Status program through an annual compliance assurance fee and a restricted emissions permit fee. EPA believes this mechanism will be sufficient to provide for adequate resources to implement this program. For more information

[1] The EPA issued guidance on January 25, 1995 addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

regarding the fees program, refer to the Technical Support Document.

The EPA also believes that Massachusetts' Restricted Emission Status program provides for an expeditious schedule which assures compliance with section 112 requirements.

This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in Massachusetts's program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate federally enforceable limit by the relevant deadline. Finally, the EPA believes it is consistent with the intent of section 112 and the Act for States to provide a mechanism through which sources may avoid classification as a major source by obtaining a federally enforceable limit on potential to emit. EPA has long recognized federally-enforceable emissions or operational limits as a means to stay below major source thresholds under the Act. This approval merely applies the source principles to another set of pollutants and regulatory requirements under the Act.

The EPA's review of this SIP revision indicates the criteria for approval as provided in the June 28, 1989 **Federal Register** notice [54 FR 27282] and in section 112(l)(5) of the Act have been satisfied.

During the development of this rule, EPA and Massachusetts have been asked whether permits the Commonwealth has issued pursuant to these regulations prior to today's action approving this program into the SIP are nevertheless federally enforceable. In the preamble to the regulations that EPA promulgated on June 28, 1989 (54 FR 27274), which set forth the five criteria outlined above for a federally enforceable operating permit program, EPA indicated that it would ''consult with States on methods by which existing operating permits could be made federally enforceable under a subsequently approved State operating permits program.'' 54 FR at 27284. The preamble went on to discuss options for securing EPA approval of previously issued permits. As EPA concluded in its approval of the Illinois FESOP program (57 FR 59931 (Dec. 17, 1992)), these options were not intended to be a complete list of alternatives. To avoid burdensome requirements to reprocess each previously issued permit, EPA will use the same approach announced in that Illinois approval for determining whether such permits are federally enforceable and for ratifying their status as enforceable under the approved SIP.

EPA today finds the existing Massachusetts regulations to be consistent with federal requirements. If the Commonwealth followed its own procedures, each permit issued under this regulation was subject to public notice and comment, with notice to EPA. Moreover, the regulation requires each permit to be enforceable as a practical matter. Therefore, EPA will consider all previously issued operating permits which were processed in a manner consistent with the State regulations federally enforceable with the promulgation of this rule, provided that any permits the State wishes to make federally enforceable are submitted to EPA and are accompanied by documentation that the procedures approved today were followed in issuing the permit.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective June 5, 1995 unless adverse or critical comments are received by May 5, 1995.

If EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on June 5, 1995.

Final Action

EPA is approving 310 CMR 7.02(12), ''U Restricted Emission Status,'' effective in the Commonwealth of Massachusetts on February 25, 1994 under sections 110 and 112(l) of the CAA.

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, section 112(l), 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).

This action has been classified as a Table 3 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 notice will inform the general public of these tables.

The OMB has exempted this action from review under Executive Order 12866.

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.

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 June 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations,

Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Hazardous air pollutants.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 3, 1995.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(105) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(105) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on June 6, 1994.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated June 6, 1994 submitting a revision to the Massachusetts State Implementation Plan.

(B) 310 CMR 7.02(12) ''U Restricted Emission Status'' effective in the Commonwealth of Massachusetts on February 25, 1994.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. In § 52.1167, Table 52.1167 is amended by adding new state citations for 310 CMR 7.02(12) to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

TABLE 52.1167—EPA-APPROVED MASSACHUSETTS REGULATIONS

State citation	Title/subject	Date submitted by State	Dated approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310CMR 7.02(12) .	U Restricted Emission Status.	6/6/94	April 5, 1995	[Insert *FR* citation from published date].	105	This rule limits a source's potential to emit, therefore avoiding RACT, title V operating permits
*	*	*	*	*	*	*

[FR Doc. 95–8216 Filed 4–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL92–1–6336a; FRL–5165–8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) approves Illinois' February 7, 1994, request to incorporate smaller source permit rule amendments into the Illinois State Implementation Plan (SIP). The purpose of these smaller source amendments is to lessen the permitting burden on small sources and on the permitting authority by reducing the frequency and/or the requirement for operating permit renewal for sources emitting less than twenty-five tons per year total of regulated air pollutants. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this action, USEPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

DATES: This final rule will be effective June 5, 1995 unless an adverse comment is received by May 5, 1995. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the Illinois submittal are available for public review during normal business hours, between 8 a.m. and 4:30 p.m., at the above address. A copy of this SIP revision is also available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), room 1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Genevieve Nearmyer, Permits and Grants Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone: (312) 353–4761.

SUPPLEMENTARY INFORMATION:

The USEPA is approving the smaller source amendments to Title 35: Environmental Protection of the Illinois Administrative Code (35 IAC), Subtitle B: Air Pollution, Chapter I: Pollution Control Board Parts 201 and 211 as received on February 10, 1994, as a requested SIP revision. The purpose of the smaller source amendments is to lessen the permitting burden on small sources and the permitting authority by reducing the frequency and/or the requirement of operating permit renewal for sources emitting less than 25 tons per year total of regulated air pollutants. A permit obtained through the smaller source operating permit rules would not necessarily expire within a five year period as in other operating permit programs. The permit will continue as a legally binding State document until the source modifies its operations, withdraws its permit or becomes subject to a new applicable requirement. At that time, the Illinois Environmental Protection Agency (IEPA) will