

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 period from published date].	* 105	* This rule limits a source's potential to emit, therefore avoiding RACT, title V operating permits
*	*	*	*	*	*	*

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**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

determine whether or not the smaller source permit rules are still a valid means of permitting the source and either issue a revised small source operating permit or direct the source in the appropriate permitting procedures. Small source operating permits are not exempt from any other permit requirements such as annual reporting and obtaining necessary construction permits. However, since these permits will not go through a public comment period nor be subjected to USEPA review, they will not be federally enforceable for the purpose of limiting a source's potential to emit. See 54 FR 27281 (June 28, 1989). Consequently, they cannot be used for exemption from the section 112, Title V Operating Permit Program or any other major source requirements of the Act. With an estimated 6,000 sources eligible for this program, much of the expense and administrative burden of the operating permit renewal process would be eliminated. The rationale for USEPA's approval is summarized in this rule. A more detailed analysis is set forth in a technical support document which is available for inspection at the Region 5 Office listed above.

The small source air permit program rules originated before the Illinois Pollution Control Board (IPCB) on April 2, 1993. Two public hearings were held: May 25, 1993 in Chicago and May 26, 1993 in DeKalb. On July 22, 1993, the IPCB adopted the amended proposal pursuant to comments received for first notice. On October 7, 1993, the IPCB adopted and submitted to the Joint Committee on Administrative Rules (JCAR) a second notice proposal. On November 16, 1993, JCAR stated they had no objections to the rules. The rules became effective on December 7, 1993.

The following sections of part 201 have been changed to accommodate the small source operating permit program.

*Subpart D: Section 201.162 Duration*

This section which was incorporated in the Illinois SIP at 40 CFR 52.720 (c)(84) on December 17, 1992 (57 FR 59928) had stated that the duration of an operating permit is defined as being no longer than five years but was changed to exempt sources subject to Subpart E of Part 201, the small source air permit program, from the limited permit life.

*Subpart D: Section 201.163 Joint Construction and Operating Permits*

Section 201.163 which was incorporated in the Illinois SIP at 40 CFR 52.720 (c)(84) on December 17, 1992 (57 FR 59928) had previously stated that in cases where the construction of a source or air pollution

control equipment is sufficiently standard, the Illinois Environmental Protection Agency (IEPA) may issue a joint construction and operating permit valid for no longer than five years but was changed to exempt sources subject to Subpart E of Part 201, the small source air permit program, from the limited permit life.

The following rules have been added to Parts 201 and 211 to define the terms of the small source operating permit program.

*Subpart E: Section 201.180 Applicability*

Sources are eligible for small source operating permits if their total emissions of all regulated air pollutants are less than 25 tons per year and are not subject to the title V operating permits program under Section 39.5 of the Illinois Environmental Protection Act. Cases where sources may appear to be eligible for the small source operating permit program but are subject to title V include sources with the potential to emit 10 tons per year of any one or 25 tons per year of an aggregate of hazardous air pollutants as listed in Section 112(b) of the Clean Air Act of 1990 or 25 tons per year of volatile organic compounds or nitrous oxides in the severe ozone nonattainment areas, specifically McHenry, Lake, Kane, Cook, Du Page, Will Counties and Oswego Township in Kendall County and Aux Sable and Goose Lake Townships in Grundy County of Illinois. If the source's potential to emit is greater than the Act's major source thresholds such as those mentioned above but the source's actual emissions are lower than the thresholds, a federally enforceable limit on potential to emit would be required to avoid title V operating permit requirements. A small source operating permit is not federally enforceable for purposes of limiting potential to emit because a public comment period and USEPA review are not required and, therefore, the small source operating permit can not be used to limit a source's potential to emit.

If the source is eligible for a small source operating permit and its existing operating permit has not expired pursuant to a renewal request from IEPA then, the permit will remain in effect until the permit is superseded by a new or revised permit or it is withdrawn upon the request of the permittee.

Sources obtaining a small source operating permit must still comply with all rules in part 201 including, but not limited to, monitoring, recordkeeping and annual reporting unless otherwise stated. If a source modifies the method of operation or equipment or installs

new emission units a construction permit must be obtained pursuant to Parts 201 and 203 of 35 Illinois Administrative Code.

*Subpart E: Section 201.181 Expiration and Renewal*

A small source operating permit will terminate if a revised permit is issued, if the permittee withdraws the permit or, 180 days after IEPA sends a request for renewal.

A request for renewal of an operating permit may be sent to a source in cases where there has been a change in requirements applicable to the source, verification of application accuracy, or suspicion of noncompliance. Renewal procedures will use the existing rules for air permit processing found in Subpart D and for revocation and revision rules found in Subpart F of 35 Illinois Administrative Code 201.

Appeals to the IPCB may only be made within 35 days of a final determination by IEPA. Final determinations include denial of a permit, issuance of a permit with conditions, or an incomplete application determination. A request for renewal notice is not grounds for an appeal.

*Subpart E: Section 201.187 Requirement of a Revised Permit*

The permittee has the obligation to obtain a new or revised permit prior to the operational changes. Changes are considered to be increases in emissions in excess of the permitted emissions, a modification as defined at 35 Illinois Administrative Code 201.102, changes in operations that violate an existing permit condition, or a change in ownership, company name, or address. If a revised permit is not obtained the source remains subject to the existing operating permit and may be in violation of the obligation to apply for a new or revised permit. If the operational changes remove the source from the applicability of the small source air permit program, the permittee shall apply for a revised permit under subpart D of part 201 or under section 39.5 of the Illinois Environmental Protection Act.

*Subpart B: Section 211.5500 Regulated Air Pollutant*

The definition of regulated air pollutant which was incorporated in the Illinois SIP at 40 CFR 52.720(c)(100) on September 9, 1994 (59 FR 46562) has been changed to reflect the definition in 40 CFR part 70. The definition of regulated air pollutant as it pertains to the applicability of a small source eligible for a small source operating

permit has been changed to incorporate any air contaminant that is regulated by the air pollution subtitle.

When summing the source's emissions it is IEPA's intention to focus on the five criteria pollutants; nitrogen oxides, sulfur dioxides, particulate matter, volatile organic compounds, and carbon monoxides. This is to avoid double counting of pollutants which fall under both the hazardous air pollutant category and either the volatile organic compound or particulate matter category in the 25 ton per year applicability cut-off. This method of accounting for emissions does not relieve the source of the obligation of accounting for hazardous air pollutants emissions for title V applicability purposes.

#### Final Rulemaking Action

This permitting program was designed to alleviate the permitting burden on IEPA. Since it is IEPA's intention to permit all sources within the state, this program will allow IEPA more time to spend on the larger sources by greatly reducing the number of smaller source permits that must be renewed every five years. These permits can also be processed much faster without the public comment and USEPA review requirements. The trade-off for the faster processing time is that the small source operating permits can not be used for sources requiring federally enforceable permits for such things as limiting their potential to emit below the major source thresholds. This permitting program does not exempt sources from other permit requirements such as annual reporting and obtaining construction permits thus allowing IEPA to maintain oversight of the smaller sources. IEPA also has the authority to require a source to apply for renewal of its permit if there has been a change in requirements applicable to the source, IEPA wishes to verify application accuracy, or IEPA suspects noncompliance.

For the reasons stated above, USEPA is approving the State's request to incorporate small source permit rules into the Illinois SIP. The specific rules being approved are as follows: Sections 201.162 Duration, 201.163 Joint Construction and Operating Permits, 201.180 Applicability, 201.181 Expiration and Renewal and 211.5500 Regulated Air Pollutant.

The USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the USEPA is proposing to

approve the requested SIP revision should adverse or critical comments be filed. This action will be effective on June 5, 1995 unless adverse or critical comments are received by May 5, 1995.

If the USEPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rule that withdraws this 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 USEPA 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 June 5, 1995.

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. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA 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, USEPA may certify that the rule will not have a significant economic 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.

The SIP approvals under section 110 and subchapter I, part D, of the Act 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 small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the USEPA to

base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976).

Under section 307(b)(1) of the 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 purpose 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, Nitrogen dioxide, Ozone, Particulate matter, Sulfur dioxide, Volatile organic compounds.

Dated: February 24, 1995.

**Valdas V. Adamkus,**  
*Regional Administrator.*

Part 52, 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 O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(105) to read as follows:

#### § 52.720 Identification of plan.

\* \* \* \* \*

(c)\* \* \*

(105) On February 7, 1994, the State submitted revisions intended to create a permit program for small sources. The purpose of these revisions 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 a total of less than 25 tons per year of regulated air pollutants. A permit obtained through these procedures is intended to 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 State will determine whether the small source procedures continue to be appropriate and issue a revised small source permit

or direct the source in following the correct permit procedures. Since small source permits are not subject to a public comment period or review by USEPA, they are not federally enforceable and cannot be used to limit sources' potential to emit and thereby exempt them from the requirements of the title v operating permit program.

(i) Incorporation by reference. Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board.

(A) Subchapter a: Permits and General Provisions, Part 201: Permits and General Provisions.

(1) Subpart D: Permit Applications and Review Process, Section 201.162 Duration and Section 201.163 Joint Construction and Operating Permits. Amended at 17 Ill. Reg., effective December 7, 1993.

(2) Subpart E: Special Provisions for Operating Permits for Certain Smaller Sources, Section 201.180 Applicability, Section 201.181 Expiration and Renewal and Section 201.187 Requirement for a Revised Permit Added at 17 Ill. Reg., effective December 7, 1993.

(B) Subchapter C: Emission Standards and Limitations for Stationary Sources, Part 211: Definitions and General Provisions, Subpart B: Definitions, Section 211.5500 Regulated Air Pollutant. Adopted at 17 Ill. Reg., effective December 7, 1993.

[FR Doc. 95-8219 Filed 4-4-95; 8:45 am]

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## 40 CFR Part 52

[AK7-1-6588a; FRL-5171-5]

### Approval and Promulgation of State Implementation Plans; Alaska

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA approves the State Implementation Plan (SIP) revision submitted by the state of Alaska. This revision establishes and requires the implementation of a basic motor vehicle inspection and maintenance (I/M) program in the Municipality of Anchorage (MOA) and the Fairbanks North Star Borough (FNSB). The intended effect of this action is approval of a basic motor vehicle I/M program. This action is being taken under Section 110 of the Clean Air Act.

**DATES:** This final rule is effective on June 5, 1995 unless adverse or critical comments are received by May 5, 1995. If the effective date is delayed, timely

notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments should be addressed to: Montel Livingston, SIP Manager, Air & Radiation Branch (AT-082), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT-082), Seattle, Washington 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801-1795.

**FOR FURTHER INFORMATION CONTACT:** Christi Lee, EPA, Air and Radiation Branch (AT-082), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-1814.

#### SUPPLEMENTARY INFORMATION:

##### I. Clean Air Act Requirements

The Clean Air Act, as amended in 1990 (CAAA or Act), requires states to make changes to improve existing I/M programs or implement new ones. Section 187(a)(4) and section 182(a)(2)(B) requires any carbon monoxide (CO) nonattainment area which has been classified as "moderate" (pursuant to section 181(a) of the Act) or worse with an existing I/M program that was part of a SIP, or any area that was required by the 1977 Amendments to the Act to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in past EPA guidance or to what had been committed to previously in the SIP whichever was more stringent.

In addition, Congress directed the EPA in section 182(a)(2)(B) to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The states were to incorporate this guidance into the SIP for all areas required by the Act to have an I/M program.

On November 5, 1992 (57 FR 52950), the EPA published a final regulation establishing the I/M requirements, pursuant to section 182 and 187 of the Act. The I/M regulation was codified at 40 CFR part 51, Subpart S, and requires states to submit an I/M SIP revision which includes all necessary legal

authority and the items specified in 40 CFR 51.372 (a)(1) through (a)(8) by November 15, 1993. The state of Alaska has met these requirements.

The EPA has designated two areas as CO nonattainment in the state of Alaska. The Anchorage CO nonattainment area, classified as Moderate greater than or equal to 12.7 ppm, is bounded by the Municipality of Anchorage (MOA) urban area. The Fairbanks CO nonattainment area, classified as Moderate less than or equal to 12.7 ppm, is bounded by the Fairbanks North Star Borough (FNSB) urban area. The nonattainment and boundary designations for CO were published in the **Federal Register** (FR) on November 6, 1991, and November 30, 1992, and have been codified in the Code of Federal Regulations (CFR). See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR 81.300-81.437. Based on these nonattainment designations, basic I/M programs are required in both the Anchorage and Fairbanks nonattainment areas.

By this action, the EPA is approving this submittal. The EPA has reviewed the state submittal against the statutory requirements and for consistency with the EPA regulations. EPA summarizes the requirements of the Federal I/M regulations as found in 40 CFR 51.350-51.373 and its analysis of the state submittal below. Parties desiring additional details on the Federal I/M regulation are referred to the November 5, 1992 FR notice (57 FR 52950) or 40 CFR 51.350-51.373.

##### II. Background

On July 11, 1994 the state of Alaska submitted to EPA a SIP revision for a basic I/M program that had an adequate public notice and public hearing process (May 19, 1994) and was adopted on June 9, 1994. The Lieutenant Governor filed revisions to 18 AAC 52 on May 25, 1994, and the Air Quality Control Plan revisions on July 6, 1994, becoming effective on June 24, 1994 and August 5, 1994, respectively.

The July 11, 1994 SIP revision was reviewed by EPA to determine completeness shortly after submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V. The submittals were found to be complete and a letter dated July 15, 1994 was forwarded to the Governor of Alaska indicating the completeness of the submittal.

##### III. State Submittal

Both Anchorage and Fairbanks are classified as moderate CO nonattainment areas. Since the 1980