

792 Definition of Terms

792.1 Resident

A resident of the United States includes any firm that has a place of business in the United States or is incorporated or otherwise organized in the United States, its territories, or its possessions.

792.2 By or on Behalf

A mailing is made by or on behalf of a person or firm that is a resident of the United States if such a resident seeks or expects to derive economic benefit or advantage from that mailing.

792.3 Place of Business

A place of business in the United States is any location in the United States, its territories, or its possessions where a firm's employees or agents regularly have personal contact with other individuals for conducting the firm's business. For the purposes of this section, a firm whose employees or agents have personal contact with others for conducting the firm's business in different places in the United States for short periods (for example, at hotels in different cities for 1 or 2 days at a time) is considered to have a place of business in the United States if the aggregate amount of time spent in the United States is 180 days or more within 12 consecutive months.

792.4 Agent

The use of a nonexclusive agent in the United States for the sole purpose of accepting orders and remissions for transmission to a firm in another country or for the sole purpose of distributing merchandise manufactured in another country and shipped to the United States in bulk does not by itself establish a place of business in the United States.

793 Advance Payment Required

793.1 Sample Mailpiece

A sender affected by the provisions in 791 must submit a sample mailpiece (envelope and contents) from the proposed mailing; a statement about the number of items to be mailed, the date of mailing, and the place of mailing; and a check, made payable to the U.S. Postal Service, to cover the amount of the applicable U.S. postage. The sample mailpiece, statement, and check must be sent to: Manager, International Pricing, U.S. Postal Service, 475 L'Enfant Plz. SW., Washington, DC 20260-6500.

793.2 Headquarters Notification

Headquarters provides notification of postage acceptance and approval of the mailing to the sender and to the

receiving U.S. exchange office. This notification permits the items in the mailing to go forward to the addressees without delay when the items reach the United States.

794 Advance Payment Not Made

794.1 Return or Disposal of Items

Items may be returned to origin or disposed of in accordance with postal regulations if U.S. postage is not paid.

794.2 Mailings Without Advance Payment

A mailing subject to the provisions in 791 received without advance payment of U.S. domestic postage is held at the receiving U.S. exchange office. The exchange office reports the mailing to the manager of International Pricing, USPS Headquarters. (The exchange office is advised to release the mail when the applicable postage is paid.) The report must contain the following information:

- Title and/or nature of the items.
- Identity of the sender.
- Number of items detained.
- Weight of a single item.
- Foreign postage paid per item.
- Country of mailing.

795 Report of Mailings

The receiving U.S. exchange office must report any mail appearing to be subject to the provisions of this subchapter to the manager of International Pricing, USPS Headquarters.

Stanley F. Mires,
Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 52

[MA44-1-7167a; A-1-FRL-5314-6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Best Available Controls for Consumer and Commercial Products (Including Architectural and Industrial Maintenance Coatings)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires VOC emission standards

for architectural and industrial maintenance coatings and 10 categories of consumer products. The intended effect of this action is to approve a revision to Massachusetts SIP which reduces VOC emissions from architectural and industrial maintenance coatings and 10 categories of consumer products. This action is being taken in accordance with Section 183(e) of the Clean Air Act.

DATES: This action is effective February 20, 1996, unless notice is received by January 18, 1996, 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 Susan Studlien, Acting 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, S.W., (LE-131), Washington, D.C. 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jeanne Cosgrove, (617) 565-3246.

SUPPLEMENTARY INFORMATION: Under the Clean Air Act, EPA is required to (1) study emissions of VOCs from consumer and commercial products; (2) list those categories of products that account for at least 80 percent of the total VOC emissions from consumer and commercial products in areas of the country that fail to meet the national air quality standards set for ground-level ozone; and (3) divide the list into four groups, and regulate one group every two years using best available controls, as defined by the Clean Air Act.

In March 1995, EPA issued a report to Congress, *Study of Volatile Organic Compound Emissions from Consumer and Commercial Products*, which evaluated the contribution of VOC emissions from consumer and commercial products on ground-level ozone levels, and established criteria and a schedule for regulating these products under the Clean Air Act. Architectural coatings and consumer and commercial products (24 categories of household products) are in the first

group of products to be regulated by EPA no later than March 1997. Massachusetts decided to adopt rules for consumer and commercial products in advance of a federal rule, to get credit for reductions from this category in its 15% plan.

Massachusetts was required to submit, by November 15, 1993, a SIP revision for Reasonable Further Progress (RFP) for 15% reduction of VOCs as necessary for moderate areas and above. The entire state of Massachusetts is classified as serious nonattainment area, therefore the 15% plan must cover the entire state.

On May 6, 1994, the Massachusetts DEP submitted to EPA for comment, proposed amendments to the SIP to address the RFP requirements including new air pollution control regulations entitled "Control of Volatile Organic Compounds from Consumer and Commercial Products" and "Control of VOCs from Architectural and Industrial Maintenance Coating." Massachusetts held a public hearings on May 6, 10, 11, and 13, 1994 throughout the State for its proposed architectural and industrial maintenance coatings rule. Public hearings were held June 22 and 24 for Massachusetts' proposed consumer and commercial products rule. EPA submitted written comments regarding the proposed regulations on May 19, 1994 and June 22, 1994. Subsequent to the public hearings, Massachusetts decided to consolidate the architectural and industrial maintenance coatings rule and the consumer and commercial products rule into a single rule. The consolidated rule was effective on November 18, 1994, upon publication in the Massachusetts Register.

On January 9, 1995, the Commonwealth Massachusetts submitted a formal revision to its State Implementation Plan (SIP). The SIP revision amends 310 CMR 7.00 by adding Section 310 CMR 7.25, Best Available Controls for Consumer and Commercial Products.

The adopted regulation 310 CMR 7.25, "Best Available Controls for Consumer and Commercial Products," regulates the VOC content of consumer and commercial products. The regulation applies to any person who sells, offers for sale, or manufactures for sale within Massachusetts consumer and commercial products and architectural or industrial maintenance coatings specified in 310 CMR 7.25.

Summary of SIP Revision

"Consumer product" is defined by Massachusetts as: "A chemically formulated product used by household, commercial, and institutional

consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; and automotive specialty products. This definition of "consumer product" excludes architectural coatings."

"Architectural Coating" is defined as: "Any coating which is applied to stationary structures or their appurtenances, mobile homes, pavements, or curbs."

The consumer products portion of the rule, section 7.25(12), contains limits that specify the maximum allowed VOC content (%VOC by weight) for the following categories of commercial and consumer products: air fresheners, cleaners, engine degreasers, floor polishes/waxes, furniture maintenance products, general purpose cleaners, glass cleaners, hair spray, insecticides, laundry prewash, antiperspirants and deodorants. Manufacturers must comply with these limits by October 1, 1995.

The Architectural and Industrial Maintenance portion of the rule, section 7.25(11), requires manufacturers to comply with VOC limits (grams VOC/liter or lbs VOC/gal) by October 1, 1995, for the following categories of Architectural coatings: flat coatings, non-flat coatings, anti-graffiti coating, bituminous pavement sealer, bond breakers, calcimine recoating product, concrete curing compound, concrete/masonry conditioner, dry fog coating, fire retardant coating, form release compound, graphic arts coating (sign paint), high temperature industrial maintenance coating, industrial maintenance coating, lacquer, magnesite cement coating, mastic texture coating, metallic pigmented coating, multicolor coating, pretreatment wash primer, primer/sealer/undercoat, quick dry primer/sealer/undercoat, roof coating, sanding sealer, shellac, stains, opaque, swimming pool coating, tile-like glaze, traffic coating, varnish, waterproofing sealer, wood preservative, and any other architectural coating not otherwise specified.

EPA's evaluation is detailed in a memorandum, entitled "Technical Support Document for Massachusetts Air Pollution Control Regulation, 310 CMR 7.25, Best Available Controls for Consumer and Commercial Products (including Architectural and Industrial Maintenance Coatings)."

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 February 20, 1996 unless adverse or critical comments are received by January 18, 1996.

If the 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 February 20, 1996.

Final Action

EPA is approving Section 310 CMR 7.25, Best Available Controls for Consumer and Commercial Products.

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.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 183(e) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that

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40 CFR Part 61

[FRL-5399-3]

Asbestos NESHAP Clarification Regarding Analysis of Multi-Layered Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of clarification to the final rule.

SUMMARY: This document provides clarification regarding the requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos. It is intended to address common questions regarding situations where one or more layers which may contain asbestos are present, and supplement the January 5, 1994 Federal Register clarification (59 FR 542).

EFFECTIVE DATE: December 19, 1995.

FOR FURTHER INFORMATION CONTACT: For copies, contact Mr. Larry Tessier at 1-800-368-5888 or at (703) 305-5938. For questions about the clarification, please contact Mr. Tom Ripp at (202) 564-7003.

SUPPLEMENTARY INFORMATION: On November 20, 1990, the Federal Register published the Environmental Protection Agency's (the Agency's) revision of the National Emission Standards for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61, subpart M, 55 FR 48406. The asbestos NESHAP applies to any facility as defined in 40 CFR 61.141. The Agency has learned that some of the regulated community have further questions concerning the analysis of samples which may contain multiple layers, any or all of which may be asbestos containing materials (ACM) under the asbestos NESHAP. Because these questions are frequently asked, EPA is making this clarification.

I. Clarification of Multi-Layered ACM System

At the time the original asbestos NESHAP was promulgated (April 6, 1973), a standardized reference method had not been developed to determine quantitatively the content of asbestos in a material. The definition for "friable asbestos material" was added in the October 14, 1975 asbestos NESHAP, but still did not specify an analytical method. EPA's unwritten policy based on the definition of "friable asbestos material" was that each layer in a multi-layered system was to be analyzed as a

separate material (no averaging or dilution by combining layers of asbestos-containing material with nonasbestos-containing material was allowed). The November 20, 1990 revision of the asbestos NESHAP finally specified that Appendix A, Subpart F, 40 CFR Part 763, Section 1, Polarized Light Microscopy (PLM method) be used to determine whether or not a material contains greater than one percent asbestos. Section 1.7.2.1 of the PLM method states that "* * * When discrete strata are identified, each is treated as a separate material so that fibers are first quantified in that layer only, and then the results for each layer are combined to yield an estimate of asbestos content for the whole sample." This language has led to considerable confusion as to how to analyze multi-layered samples for NESHAP purposes. EPA published a clarification regarding the analysis of multi-layered systems in the January 5, 1994 Federal Register. This clarification basically stated that all multi-layered systems except for wall systems where joint compound was used only at the joints and nail holes must be analyzed as separate materials, and results were not allowed to be combined to determine average asbestos content (continuing the policy that dilution of an asbestos-containing material is not allowed).

The Environmental Protection Agency has received many questions about analyzing multi-layered systems for asbestos content to determine the applicability of the asbestos NESHAP since its January 5, 1994 clarification (59 FR 542). This clarification reiterates EPA's position for analysis of multi-layered samples for applicability of the asbestos NESHAP.

This clarification applies to all multi-layered systems (other than wallboard systems where asbestos-containing joint compound is used only at the joints and nail holes) under both the NESHAP and the Asbestos Hazard Emergency Response Act (AHERA) (40 CFR Part 763) programs.

Any source sending multi-layered bulk samples to a lab may request that certain sample(s) or portions of sample(s) be composited for analysis first (to potentially reduce time and cost of sampling).

(Note: A composite sample does not mean that multiple samples may be composited into one sample. It means that multiple layers of one core sample may be composited for analysis.)

If this alternative method is chosen, then the following requirements must be followed. To analyze the composite sample, the procedures in EPA/600-93/

116 "Method for the Determination of Asbestos in Bulk Building Materials" ("the Method"), specifically Section 2.3 "Gravimetry," must be used.

Additionally, for the composite sample, the recommendations in Appendix D of the method must be followed. This procedure is consistent with the procedures outlined in 40 CFR Part 763, Appendix E to Subpart E (formerly Appendix A to Subpart F), which is referenced in the asbestos NESHAP (40 CFR 61.141 and 61.146), but the procedures in the new method are more clear. EPA finds that this method is an acceptable alternative method of compliance under section 61.13(h)(1)(ii). EPA intends to amend the asbestos NESHAP in the near future to refer specifically to these procedures. When using the gravimetric procedures, the result may be recorded as percent asbestos by weight.

If the result of the composite analysis shows that the average content for the multi-layered system (across the layers) is greater than one percent, then the multi-layered system must be treated as asbestos-containing and analysis by layers is not necessary. If the result of the composite sample analysis indicates that the multi-layered system as a whole contains asbestos in the amount of one percent or less, but greater than none detected, then analysis by layers is required to ensure that no layer in the system contains greater than one percent asbestos. If any layer contains greater than one percent asbestos, that layer must be treated as asbestos-containing. This will have the effect of requiring all layers in a multi-layered system to be treated as asbestos-containing if the layers can not be separated without disturbing the asbestos-containing layer. Once any one layer is shown to have greater than one percent asbestos, further analysis of the other layers is not necessary if all the layers will be treated as asbestos-containing. If several of the layers will be removed without removing the entire system, then all layers that will be disturbed must be analyzed. This includes the material being removed; however, the material being removed may be analyzed using the composite analysis procedures. Please note that the same requirements to perform point counting as stated in our May 8, 1991 clarification (see enclosed memorandum) still apply for any layers being analyzed individually.