

Dated: July 22, 1996.  
 Randall F. Smith,  
*Acting Regional Administrator.*

## PART 52—[AMENDED]

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

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

Authority: 42 U.S.C. 7401–7671q.

### Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(63) to read as follows:

#### § 52.2470 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(63) On September 30, 1994, the Director of WDOE submitted to the Regional Administrator of EPA a revision to the carbon monoxide State Implementation Plan for, among other things, the 1990 and 1995 Emission Inventories for Area, Nonhighway Mobile, and On-Road Mobile Sources.

(i) Incorporation by reference.

(A) September 30, 1994, letter from WDOE to EPA submitting emission inventories for the Puget Sound CO nonattainment area (adopted on September 30, 1994); NonHighway Mobile Sources Emission Inventory for Carbon Monoxide and Precursors of Ozone for King, Pierce and Snohomish Counties Base Year 1990, dated December 1993; Stationary Area Sources Emission Inventory for Carbon Monoxide and Precursors of Ozone for King, Pierce and Snohomish Counties Base Year 1990, dated December 1993; Stationary Area Sources Emission Inventory for Carbon Monoxide and Precursors of Ozone for King, Pierce and Snohomish Counties Projection Year 1995, dated September 1994; Supplement to the SIP, "Puget Sound Carbon Monoxide Nonattainment Area," Replacement Pages, dated September 1994; Non-Road Mobile Sources Emission Inventory for Carbon Monoxide and Precursors of Ozone for King, Pierce and Snohomish Counties, Base Year 1990, dated September 1994; Non-Highway Mobile Sources Projections for 1995 Emission Inventory for Carbon Monoxide and Precursors of Ozone for King, Pierce and Snohomish Counties, dated September 1994; Seattle-Tacoma Urban Carbon Monoxide Nonattainment Area 1990 Base Year On Road Mobile Source Emissions Inventory, dated August 1994; and Seattle-Tacoma Urban Carbon Monoxide Nonattainment Area 1995 Projected

Year On Road Mobile Source Emissions Inventory, dated August 1994.

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## 40 CFR Part 52

[FRL–5533–2]

### Approval and Promulgation of Implementation Plans; Massachusetts; Emissions Banking, Trading, and Averaging Program Approval

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving, in final, a State Implementation Plan (SIP) revision submitted by Massachusetts. This revision establishes a voluntary emissions banking, trading, and averaging program for eligible sources of volatile organic compounds (VOC), nitrogen oxides (NO<sub>x</sub>), or carbon monoxide (CO). The goal of these regulations is to encourage the creation, trading, and averaging of emission reduction credits in order for facilities to comply with new source review offsetting, netting, and reasonably available control technology (RACT) requirements in the most cost-effective manner. The program was adopted as a discretionary Economic Incentive Program, developed pursuant to EPA's guidance. This revision includes provisions which EPA proposed to approve in a document published on February 22, 1995.

**DATES:** This action is effective October 7, 1996, unless notice is received by September 9, 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, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and the Division of Air Quality Control, Massachusetts Department of Environmental Protection, One Winter Street, 8th floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Steven A. Rapp, Environmental Engineer, Air Quality Planning Unit

(CAQ), United States Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203. (617) 565–2773.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On April 7, 1994, EPA published final rules for Economic Incentive Programs (59 FR 16690). The notice 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 EIPs. The notice also served as interim guidance for States to develop discretionary EIPs for any criteria pollutant in all areas. Massachusetts has developed emissions banking and trading, and emissions averaging regulations as a discretionary EIP. The program was developed pursuant to EPA's EIP guidance. These regulations establish a voluntary emissions banking, trading, and averaging program for eligible sources of volatile organic compounds (VOC), nitrogen oxides (NO<sub>x</sub>), or carbon monoxide (CO). The goal of these regulations is to encourage the creation, trading, and averaging of emission reduction credits in order for facilities to comply with new source review offsetting, netting, and reasonably available control technology (RACT) requirements in the most cost-effective manner.

##### II. State Submittal

Massachusetts submitted an emissions banking and trading, and emissions averaging regulations in two separate SIP submittals. First, on February 9, 1994, the Massachusetts Department of Environmental Protection (MA DEP) submitted Sections 310 CMR 7.00 Appendix B(1), (2), (3), and (5) as a revision to its SIP. These sections of the regulations establish requirements for the certification of emission reduction credits (ERCs), or "banking," as well as for the trading of the ERCs between facilities. On February 22, 1995, EPA proposed approval of this submittal. Subsequently, on April 14, 1995, the EPA received a request from the Massachusetts DEP to revise the SIP for ozone, including amendments to 310 CMR 7.18 and 7.19, regarding emissions averaging at VOC and NO<sub>x</sub> RACT sources, concurrent with the addition of sections 310 CMR 7.00 Appendix B(4) and (6), which deal with emissions averaging and public participation procedures, respectively, in the EIP.

Additionally, on February 8, 1996, MA DEP submitted supplemental information to EPA which provides a quantitative demonstration that the use of ERCs certified under 310 CMR 7.00 Appendix B, including the use of credits created by one-time actions, or unused credits carried over from year to year, i.e., the inter-temporal use of credits, will be consistent with the requirements of the Massachusetts SIP, Reasonable Further Progress (RFP) and Rate of Progress (ROP) plans, and area wide RACT requirements.

The following is a description of the changes being approved in this action:

*A. 310 CMR 7.00 Appendix B(1), (2), (3), and (5)*

Sections (1), (2), (3), and (5) of Appendix B establish a discretionary economic incentive program (EIP) under Section 182 of the Clean Air Act of emission banking and trading. The EIP rule classifies EIPs into three broad categories: emission limiting, market response, and directionally sound. Since this EIP will limit total mass emission, related parameters, or specify levels of emission reductions from eligible sources, it is classified as emission-limiting. Under this EIP, individuals and companies can voluntarily reduce emissions at eligible stationary sources (e.g., factories), mobile sources (e.g., automobiles), or area sources (e.g., residential heating systems) below the level required by State and federal regulations and then "bank" the surplus reductions as credit. This program also establishes the requirements for the transfer credits between eligible entities. Under this program, stationary sources can use credits to comply with new source review offsetting, netting, and reasonably available control technology (RACT) requirements. These sections of the regulations became effective in Massachusetts on September 10, 1993.

*B. 310 CMR 7.00 Appendix B(4)*

The goal of this part of the regulations is to allow sources of NO<sub>x</sub> and VOC to utilize emissions averaging, or "bubbling", in order to comply with RACT requirements. The addition of 310 CMR 7.00 Appendix B(4), in combination to the changes made to 310 CMR 7.18 and 7.19, establishes a system by which facilities owned by the same person(s) can average, or "bubble" emissions. These rule changes became effective in Massachusetts on January 27, 1995. This means that facilities which reduce emissions below the level required by State and federal regulation at some emission sources, can control less at other emission sources, provided

that the net effect to the environment is as if all the emission sources applied the otherwise required controls. This regulation replaces the former 310 CMR 7.00 Appendix B.

*C. 310 CMR 7.00 Appendix B(6)*

Section 310 CMR 7.00 Appendix B(6) was added to establish public participation procedures which apply to applications processed under 310 CMR 7.00 Appendix B. These rule changes became effective in Massachusetts on January 27, 1995. These provisions require that the MA DEP propose publicly whether an application should be approved, approved with conditions, or disapproved. Additionally, these provisions require the MA DEP to make all non-confidential information available to the public, to publish a public notice, to provide a 30 day public comment period, and conduct a public hearing. The inclusion of these requirements, in combination with the other requirements of 310 CMR 7.00 Appendix B, will allow EPA to consider permits issued consistent with Appendix B, for the certification, withdrawal, transfer, or use of ERCs, to be considered federally enforceable without the need for further EPA approval.

*D. 310 CMR 7.18(2)(b)*

The changes adopted to 310 CMR 7.18 consist of providing facility owners with the option to utilize emissions averaging to comply with VOC RACT emission limitations contained in 310 CMR 7.18 (3) through (7), (10) through (12), and (14) through (16). Also, these provisions require any facility utilizing emissions averaging to comply with the requirements of 310 CMR 7.18 to be subject to the emissions averaging requirements of 310 CMR 7.00 Appendix B(4).

*E. 310 CMR 7.19(2)(d), (2)(g), and (14)*

The changes adopted to 310 CMR 7.19 allow any source subject to the NO<sub>x</sub> RACT requirements of 310 CMR 7.19 either to comply with a more stringent limitation, in order to create emission reduction (ERCs) credits or offsets, or to comply with the emission limitations of 310 CMR 7.19 by averaging emissions or by using ERCs. Section 310 CMR 7.19(14) allows emission units subject to the emission standards in 310 CMR 7.19(4), (5), (7), (8), or (12) to comply by emissions averaging. Further, this section provides the conversion factors necessary for averaging emissions between stationary reciprocating internal combustion engines or stationary combustion turbines with boilers. Additionally, this section

requires such averaging emission units to meet the testing, monitoring, record keeping, and reporting requirements of 310 CMR 7.19(13)(b), (c), and (d), which includes the requirements to use NO<sub>x</sub> CEMS on averaging units.

III. Analysis of State Submittal and Supporting Material

EPA has evaluated the Massachusetts emissions banking, trading, and averaging regulations and supporting documentation against applicable EPA guidance, including, the Economic Incentive Program rules (40 CFR § 51.490–494) and the EPA's June 28, 1989 guidance on requirements of State implementation plans (54 FR 27274). EPA has determined that all applicable requirements of these guidance documents have been met. EPA has developed a technical support document (TSD) that contains a detailed description of this analysis. The TSD is part of the docket supporting this action and is available upon request.

IV. Issues

On February 22, 1995, EPA published a notice of proposed rulemaking (NPR) proposing to approve portions of 310 CMR 7.00 Appendix B as a non-generic economic incentive program (60 FR 9810). In response to that notice, EPA received four comments. The commenters raised two major areas of concern. First, three of the commenters argued that EPA should grant "generic" authority to Massachusetts to allow the State to approve emissions trades without further EPA approval. Second, one commenter asserted that this EIP could result in pollution "spikes" if facilities traded emission reduction credits such that they would emit more during the summer ozone season than the underlying control requirements would have allowed absent the EIP.

However, since the publication of that notice, Massachusetts adopted a number of regulatory changes which address the deficiencies outlined in the NPR, including providing for public notice and comment on each trade or credit certification. Also, Massachusetts has submitted a quantitative analysis showing that the use of credits under 310 CMR 7.00 Appendix B(3), including the use of one-time or carry over credits during time periods other than when they were generated (i.e., the inter-temporal use of credits), will be consistent with the requirements of the Massachusetts SIP, RFP and ROP plans, and area wide RACT requirements. EPA also performed an analysis of the potential buffering effect inherent in implementation of the State's current regulations. Based upon the regulatory

changes and additional analyses, EPA believes that the Massachusetts emissions banking, trading program now fully meets the applicable EPA guidance documents. Additionally, EPA has determined that the emissions averaging portion of the program also meets the applicable EPA guidance. Therefore, in lieu of finalizing the proposed final approval of 310 CMR 7.00: Appendix B(1), (2), (3), and (5), and proposing approval of the other provisions as a separate action, EPA is approving all of 310 CMR 7.00 Appendix B, as well as 310 CMR 7.18(2)(b), 310 CMR 7.19(2)(d), 7.19(2)(g), and 7.19(14), as a fully generic EIP. The TSD provides a detailed explanation of how EPA is addressing the comments received on its earlier proposal, and how this current submittal responds to the concerns raised in those comments.

#### V. Final Action

EPA is approving all of 310 CMR 7.00 Appendix B, as submitted to date, as well as 310 CMR 7.18(2)(b), 310 CMR 7.19(2)(d), 7.19(2)(g), and 7.19(14), as a fully generic EIP. Additionally, upon approval of these regulations as part of the SIP, EPA will consider any emission control plans or credit certifications issued according to the requirements of 310 CMR 7.00 Appendix B since January 27, 1995, i.e., the effective date of the modified regulations, as federally enforceable without the need for further EPA approval. 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 October 7, 1996 unless adverse or critical comments are received by September 9, 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 October 7, 1996.

#### VI. Procedural Background

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a 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.

#### VII. Regulatory Process

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 a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. The Office of Management and Budget (OMB) 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.

EPA's action does not create any new requirements, but simply approves 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. USEPA*, 427 US 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

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 assess whether various actions undertaken in association with proposed or final regulations 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.

EPA has determined, as discussed earlier, that the finding that is the subject of this final action does not impose any federal intergovernment mandate, as defined in § 101 of the Unfunded Mandates Act. This action consists of factual determinations based upon the State's adoption of a voluntary program. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector result from this action. This action also will not impose a mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

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.

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

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

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

Dated: June 18, 1996.

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)(112) to read as follows:

**§ 52.1120 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(112) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on February 9, 1994, and April 14, 1995, concerning emissions banking, trading, and averaging.

(i) Incorporation by reference.

(A) Letters from the Massachusetts Department of Environmental Protection

dated February 9, 1994, and March 29, 1995, submitting revisions to the Massachusetts State Implementation Plan.

(B) Regulations 310 CMR 7.00 Appendix B(1); 310 CMR 7.00 Appendix B(2); 310 CMR 7.00 Appendix B(3), except 310 CMR 7.00 Appendix B(3)(e)5.h; and, 310 CMR 7.00 Appendix B(5); effective on January 1, 1994. Also, regulations 310 CMR 7.00 Appendix B(4); 310 CMR 7.00 Appendix B(6); 310 CMR 7.18(2)(b); 310 CMR 7.19(2)(d); 310 CMR 7.19(2)(g); and, 310 CMR 7.19(14); effective on January 27, 1995.

(ii) Additional materials.

(A) Letter and attachments from the Massachusetts Department of Environmental Protection dated

February 8, 1996, submitting supplemental information concerning the demonstration of balance between credit creation and credit use.

3. In § 52.1167, table 52.1167 is amended by removing the existing entry for “310 CMR 7.00 Appendix B” and replacing it with the new entry “310 CMR 7.00 Appendix B, except for 310 CMR 7.00 Appendix B(3)(e)5.h”; and by adding new entries in numerical order to existing state citations “310 CMR 7.18” and “310 CMR 7.19” 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	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
* 310 CMR 7.00 Appendix B (except 310 CMR 7.00 Appendix B(3)(e)5.h).	* Emissions Banking, Trading, and Averaging.	* 2/9/94 and ... 3/29/95 .....	* Aug. 8, 1996 ....	* [FR citation from published date].	* 112	* Replaces earlier emissions averaging rules with emissions banking, trading, and averaging.
* 310 CMR 7.18 (2)(b) .....	* Generic VOC bubble for surface coaters.	* 3/29/95 .....	* Aug. 8, 1996 ....	* [FR citation from published date].	* 112	* Replaces earlier emissions averaging rules for surface coaters.
* 310 CMR 7.19 (2)(d) .....	* Generic NO <sub>x</sub> bubbling and trading for RACT sources.	* 3/29/95 .....	* Aug. 8, 1996 ....	* [FR citation from published date].	* 112	* Adds credit creation option for NO <sub>x</sub> RACT sources.
* 310 CMR 7.19 (2)(g) .....	* Generic NO <sub>x</sub> bubbling and trading for RACT sources.	* 3/29/95 .....	* Aug. 8, 1996 ....	* [FR citation from published date].	* 112	* Adds credit use option for NO <sub>x</sub> RACT sources.
* 310 CMR 7.19 (14) .....	* Generic NO <sub>x</sub> bubbling for RACT sources.	* 3/29/95 .....	* Aug. 8, 1996 ....	* [FR citation from published date].	* 112	* Adds quantification, testing, monitoring, record keeping, reporting, and emission control plan requirements for averaging NO <sub>x</sub> RACT sources.
* .....	* .....	* .....	* .....	* .....	* .....	* .....

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**40 CFR Part 52**

[IL122-1a; FRL-5530-5]

**Approval and Promulgation of Implementation Plans; Illinois**

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Direct final rule.

**SUMMARY:** On November 30, 1994, the Illinois Environmental Protection Agency (IEPA) submitted an adopted rule and supporting information for the control of volatile organic liquid (VOL) storage operations for the Chicago and East St. Louis ozone nonattainment areas as a requested State Implementation Plan (SIP) revision. This rule is part of the State’s control

measures for volatile organic compound (VOC) emissions, for the Chicago and East St. Louis ozone nonattainment areas, and is intended to satisfy part of the requirements of section 182(b)(2) of the Clean Air Act (Act), as amended in 1990. VOCs are air pollutants which combine on hot summer days to form ground-level ozone, commonly known as smog. Ozone pollution is of particular concern because of its harmful effects upon lung tissue and breathing