

to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective January 17, 2001.

#### H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

#### I. Petitions for Judicial Review

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 February 16, 2001. 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, Nitrogen Oxides, Ozone, Volatile Organic Compounds.

Dated: December 5, 2000.

Francis X. Lyons,  
Regional Administrator, Region 5.

For the reasons stated in the preamble, 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 *et seq.*

#### Subpart O—Illinois

2. Section 52.726 is amended by adding paragraphs (w), (x) and (y) to read as follows:

#### § 52.726 Control Strategy: Ozone.

\* \* \* \* \*

(w) *Approval*—On December 18, 1997, December 17, 1999, January 14, 2000, and January 21, 2000, Illinois submitted a post-1996 Rate Of Progress Plan for the Chicago ozone nonattainment area as a requested revision to the Illinois State Implementation Plan. This plan reduces ozone precursor emissions by 9 percent from 1990 baseline emissions by November 15, 1999. This plan also supports a mobile source emissions budget of 279.3 tons/day of volatile organic compounds for transportation conformity purposes.

(x) *Approval*—On December 18, 1997, Illinois submitted a contingency measure plan as part of the Chicago Area post-1996 Rate of Progress Plan. This plan reduces volatile organic compound emissions in the Chicago ozone nonattainment area by 3 percent from 1990 baseline emissions by November 15, 1999.

(y) *Approval*—On December 18, 1997, Illinois submitted Transportation Control Measures (TCMs) as part of the post-1996 Rate Of Progress Plan for the Chicago ozone nonattainment area. The TCMs being approved are listed in the following documents published by the Chicago Area Transportation Study: "Transportation Control Measures Contribution to the Post-1996 Rate-Of-Progress State Implementation Plan," March 22, 1996; "Transportation Control Measures Contribution to the 9

Implementation Plan," June 11, 1998; and "1999 Transportation Control Measures Contribution to the 9 percent Rate of Progress Control Strategy State Implementation Plan," December 9, 1999.

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[MA078-01-7211b; A-1-FRL-6914-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revisions to Stage II Vapor Recovery Program

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This submittal contains a revised Stage II vapor recovery regulation. The intended effect of this action is to approve Massachusetts' revised Stage II rule. This action is being taken in accordance with the Clean Air Act (CAA).

**EFFECTIVE DATE:** This rule will become effective on January 17, 2001.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M-1500, 401 M Street, (Mail Code 6102), SW., Washington, DC; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Anne E. Arnold, (617) 918-1047.

**SUPPLEMENTARY INFORMATION:** This section is organized as follows:

- What action is EPA taking?
- What revisions did Massachusetts make to its Stage II rule?
- Why is EPA approving Massachusetts' revised Stage II rule?
- What comments did EPA receive on its proposed approval of this rule and what is EPA's response to these comments?

#### What Action Is EPA Taking?

EPA is approving Massachusetts' revised 310 CMR 7.24(6) "Dispensing of

Vehicle Fuel” and incorporating this rule into the Massachusetts SIP. The Massachusetts Department of Environmental Protection (DEP) submitted the revised rule to EPA for parallel processing on August 9, 2000 and submitted the final version of the rule on September 11, 2000. EPA published a notice of proposed rulemaking (NPR) for Massachusetts’ revised Stage II rule on August 21, 2000 (65 FR 50669).

#### **What Revisions Did Massachusetts Make to its Stage II Rule?**

In order to justify the level of emission reductions claimed in its SIP, Massachusetts added the following new provisions to its Stage II rule: (1) A provision explicitly requiring the installation of CARB (California Air Resources Board) approved Stage II systems; (2) a provision requiring annual Stage II system compliance testing and certification; and (3) a provision explicitly requiring weekly visual inspections of the Stage II system components. In addition, a provision addressing the direct refueling of a motor vehicle from a tank truck is included in Massachusetts’ revised Stage II rule. This provision was adopted by DEP and submitted to EPA as a SIP revision in 1995 but has not yet been approved into the Massachusetts SIP. Each of the four new provisions are discussed in more detail in EPA’s NPR.

#### **Why Is EPA Approving Massachusetts’ Revised Stage II Rule?**

EPA is approving Massachusetts’ revised Stage II rule because the revisions will significantly improve the enforceability and emission reductions associated with the rule. Previously, the resources DEP devoted to Stage II enforcement and the wording of the existing rule called into question the Stage II reductions assumed in the Massachusetts SIP. With the revised Stage II rule, along with the resources DEP is currently devoting to Stage II enforcement, EPA believes that the assumed level of SIP credit will be achieved.

#### **What Comments Did EPA Receive on its Proposed Approval of This Rule and What Is EPA’s Response to These Comments?**

EPA received two comment letters pursuant to the publication of its proposed approval of Massachusetts’ revised Stage II rule. Comments were submitted by ExxonMobil Refining and Supply Company and by the Massachusetts Petroleum Council. A summary of the comments received and EPA’s response is presented below.

*Comment #1:* ExxonMobil commented that the requirements for facility compliance certification should be more specific in outlining who should certify the various operating and testing requirements, noting that their company owns, and directly operates with company employees, certain retail stores but also leases certain stores to independent dealer/operators who directly operate these stores with their own employees.

*Response:* The revised 310 CMR 7.24(6)(c)(8) states, “Any certification submitted \* \* \* shall be signed by an individual who is a responsible official regarding the Stage II system \* \* \*.” The rule, however, is silent as to who is the appropriate responsible official. As stated in the response to comments document<sup>1</sup> prepared by the DEP, the DEP intends to leave the identification of the responsible official to be worked out between each facility’s owner, operator, lessee, or controller on a case-by-case basis. The DEP document also notes that the responsible official’s compliance certification may rely, as necessary, on the inquiry of other parties who may have responsibility for various aspects of a facility’s compliance program. Specifically, 310 CMR 7.24(c)(8)(a) requires the responsible official to certify that “I personally examined the foregoing and am familiar with the information contained in this document and all the attachments and that, based on my inquiry of those persons immediately responsible for obtaining the information, I believe that the information is true, accurate and complete.” (Emphasis added.) Furthermore, in response to industry’s concerns, DEP added a provision to the final rule regarding the person immediately responsible for obtaining certification information. Specifically, 310 CMR 7.24(c)(9) states, “Any person immediately responsible for obtaining information referenced in 310 CMR 7.24(6)(c)(8)(a) who knowingly and willfully makes false, inaccurate, incomplete, or misleading statements pursuant to any certification or notification required under 310 CMR 7.24(6), may be in violation of 310 CMR 7.24(6).” These provisions should address the concern that, in some cases, the person providing the certification may not be the person immediately responsible for obtaining all of the information.

*Comment #2:* Both commenters called into question the DEP’s basis for

adopting revisions to its Stage II vapor recovery regulation.

*Response:* EPA believes there was a justifiable basis for DEP proceeding with revisions to its Stage II rule. Previously, EPA raised concerns regarding the lack of Stage II enforcement oversight by the DEP and the high rate of non-compliance by facilities. Specifically, the DEP was not conducting annual inspections of each Stage II subject facility as recommended in EPA’s Stage II enforcement guidance.<sup>2</sup> Also, as indicated in DEP’s background document,<sup>3</sup> DEP conducted inspections of 122 facilities in 1997 and found that only 54% of the inspected facilities were correctly operated and maintained. Clearly the DEP needed to take action to ensure that the anticipated Stage II emissions reductions would be achieved. Additionally, it is not disputed that the measures in this rule, taken as a whole, will reduce emissions associated with activities covered by the rule, and that the amended rule will be more enforceable. Disputes about the adequacy of the state’s substantive basis for adopting these rules are matters for the state. Procedurally, the rule submission appears sound. Therefore, the comment does not provide EPA with suitable justification for rejecting a state submission that enhances the SIP’s stringency.

EPA is approving Massachusetts’ revised Stage II rule because the revisions will significantly improve the enforceability and emission reductions associated with the rule. With the revised Stage II rule, along with the resources DEP is currently devoting to Stage II enforcement, EPA believes that the assumed level of SIP credit will be achieved.

#### **Final Action**

EPA is approving Massachusetts’ revised 310 CMR 7.24(6) “Dispensing of Motor Vehicle Fuel” and incorporating this rule into the Massachusetts SIP.

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.

<sup>2</sup> “Enforcement Guidance for Stage II Vehicle Refueling Control Programs,” Office of Mobile Sources, October 1991.

<sup>3</sup> “Background Document for Proposed Revisions to 310 CMR 7.24(6) dispensing of Motor Vehicle Fuel (The State II Vapor Recovery Program),” December 1999.

<sup>1</sup> “Response to Comments Document: Proposed Amendments to Stage II Vapor Recovery Program,” September 2000.

### III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub.L. 104-4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C.

272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C.

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 February 16, 2000. 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, Hydrocarbons,

Incorporation by reference, Intergovernmental relations, Ozone.

Dated: November 28, 2000.

**Mindy S. Lubber,**

*Regional Administrator, EPA-New England.*

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 *et seq.*

#### Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(116) to read as follows:

#### § 52.1120 Identification of plan

\* \* \* \* \*

(c) \* \* \*

(116) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on August 9, 2000, September 11, 2000 and July 25, 1995.

(i) Incorporation by reference.

(A) 310 CMR 7.24(6) "Dispensing of Motor Vehicle Fuel," effective in the Commonwealth of Massachusetts on September 29, 2000.

(B) 310 CMR 7.00 definitions of the following terms associated with 310 CMR 7.24(6) and effective in the Commonwealth of Massachusetts on September 29, 2000: "commence operation"; "emergency situation"; "executive order"; "Stage II system"; "substantial modification"; "vacuum assist system"; and "vapor balance system."

(C) 310 CMR 7.00 definitions of the following terms associated with 310 CMR 7.24(6) and effective in the Commonwealth of Massachusetts on June 30, 1995: "emergency motor vehicle;" and "tank truck."

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. In § 52.1167, Table 52.1167 is amended by adding new entries to existing state citations 310 CMR 7.00 and 310 CMR 7.24(6) to read as follows:

#### § 52.1167 EPA-approved Massachusetts State regulations

\* \* \* \* \*

TABLE 52.1167—EPA-APPROVED RULES AND 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 .....	* Definitions .....	* 07/25/95 08/ 09/00 9/11/ 00	* 12/18/00	* [Insert <i>FR</i> citation from published date].	* 116	* Definitions associated with State II vapor recovery rule.
* 310 CMR 7.24(6) .....	* Dispensing Motor Vehicle Fuel.	* 08/09/00 09/ 11/00	* 12/18/00	* [Insert <i>FR</i> citation from published date].	* 116	* Rule revised to include annual compliance testing and certification.
* .....	* .....	* .....	* .....	* .....	* .....	* .....

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

[FRL–6918–4]

#### Protection of Stratospheric Ozone: Notice 14 for Significant New Alternatives Policy Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Acceptability; Request for Information.

**SUMMARY:** The Environmental Protection Agency (EPA) is expanding the list of acceptable substitutes for ozone-depleting substances (ODS) under our Significant New Alternatives Policy (SNAP) program. Substitutes are for the refrigeration and air conditioning, foams, non-aerosol solvent cleaning, and aerosol solvents and propellants sectors. Today's action also requests information from readers on the composition and safety of certain refrigerants for motor vehicle air conditioners; the possible expansion of the SNAP program to include review of, and potentially to establish use conditions for, operations that involve manual (hand) cleaning with solvents for precision, electronics, and metals cleaning; and the possible restriction of non-aerosol solvent substitutes to equipment that meets the cleaning equipment standards in the National Emission Standards for Halogenated Solvent Cleaning. Finally, this action updates readers on the SNAP program's review of n-propyl bromide for use as a substitute for ozone-depleting solvents used in the non-aerosol solvents cleaning, aerosol solvents and

propellants, and adhesives, coatings and inks sectors.

**EFFECTIVE DATE:** December 18, 2000.

**ADDRESSES:** Information relevant to this document is contained in Air Docket A–91–42, Room M–1500, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone: (202) 260–7548. You may inspect the docket between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

**FOR FURTHER INFORMATION CONTACT:** Margaret Sheppard by telephone at (202) 564–9163, by fax at (202) 565–2141, by e-mail at sheppard.margaret@epa.gov, or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, Washington, D.C. 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, N.W., Washington, D.C., 20001. Further information can be found by calling the Stratospheric Protection Hotline at (800) 296–1996, or by viewing EPA's Ozone Depletion World Wide Web site at [www.epa.gov/ozone/title6/snap/](http://www.epa.gov/ozone/title6/snap/).

#### SUPPLEMENTARY INFORMATION:

- I. Listing of Acceptable Substitutes
  - A. Refrigeration and Air Conditioning
  - B. Foams
  - C. Non-Aerosol Solvent Cleaning
  - D. Aerosol Solvents and Propellants
- II. Request for Information on Refrigerants for Motor Vehicle Air Conditioners
- III. Request for Information on Expanding SNAP Non-Aerosol Solvent Cleaning Program Review to Include Operations that Involve Manual Precision, Electronics, or Metals Cleaning with Solvents
- IV. Request for Information on Restricting SNAP Acceptability Decisions in the Non-Aerosol Solvent Cleaning Sector to Operations that Involve the Use of Equipment that Meets Equipment Standards in the National Emission Standards for Halogenated Solvent Cleaning

- V. Status of EPA Review of n-Propyl Bromide
- VI. Section 612 Program
  - A. Statutory Requirements
  - B. Regulatory History
- VII. Additional Information
- VIII. References
- Appendix A—Summary of Acceptable Decisions

#### I. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes in the refrigeration and air conditioning, non-aerosol solvent cleaning, and aerosol solvents and propellants sectors. For copies of the full list of SNAP decisions in all industrial sectors, contact the EPA Stratospheric Protection Hotline at (800) 296–1996. You also can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations at EPA's Ozone Depletion World Wide Web site at [www.epa.gov/ozone/title6/snap/chron.html](http://www.epa.gov/ozone/title6/snap/chron.html).

The sections below present a detailed discussion of the acceptability decisions EPA is making today. The table summarizing today's listing decisions is in Appendix A. The comments contained in the table in Appendix A provide additional information, but are not legally binding under section 612 of the Clean Air Act. Thus, adherence to recommendations in the comments section of the table is not mandatory for use of a substitute, unless the comments refer to applicable regulatory requirements. Nevertheless, EPA strongly encourages users to use these substitutes in a manner consistent with the recommendations in the comments section. In many instances, the comments simply refer to standard operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of these recommendations, if adopted, would not require significant changes in existing operating practices for the affected industry. In addition, such