

§ 371.4 Organization and management.

The DPMO is hereby established as a DoD Field Activity under the authority, direction, and control of the Assistant Secretary of Defense for Regional Security Affairs (ASD(RSA)). The DPMO shall consist of a Director and such subordinate elements as the Director establishes, within the resources authorized by the Secretary of Defense.

§ 371.5 Responsibilities and functions.

(a) The Director, *Defense Prisoner of War/Missing in Action Office* shall:

- (1) Organize, direct, and manage the DPMO and all assigned resources.
- (2) Advise and assist the Under Secretary of Defense for Policy (USD(P)) and the ASD(RSA) within assigned mission, responsibilities, and functions.
- (3) Support the USD(P) and the ASD(RSA) in the execution of their responsibilities to develop, coordinate, and oversee the implementation of POW/MIA policy.

(4) Serve as the DoD focal point for POW/MIA matters.

(5) Provide DoD participation in the conduct of negotiations with officials of foreign governments in efforts to achieve the fullest possible accounting of missing American service members.

(6) Assemble and analyze information on U.S. military and civilian personnel who are, or were, prisoners of war or missing in action.

(7) Maintain data bases on U.S. military and civilian personnel who are, or were, prisoners of war or missing in action.

(8) Declassify DoD documents for disclosure and release in accordance with section 1082 of Public Law 102-190 and Executive Order 12812, 57 FR 32879, 3 CFR, 1992 Comp., p. 311.

(9) Maintain open channels of communication on POW/MIA matters between the Department of Defense and the Congress, POW/MIA families, and veteran organizations, through periodic consultations and other appropriate measures.

(10) Provide appropriate representation to established POW/MIA-related interagency fora.

(11) Provide a statement of intelligence collection requirements to the Defense Intelligence Agency, for which the DPMO identifies a need.

(12) Perform such other functions as the ASD(RSA) may prescribe.

(b) The Assistant Secretary of Defense for Regional Security Affairs shall:

(1) Exercise authority, direction, and control over the DPMO.

(2) Recommend policies and resources for the administration of the DPMO to the Under Secretary of Defense for Policy.

§ 371.6 Relationships.

(a) In the performance of assigned responsibilities and functions, the Director, DPMO, shall:

- (1) Report directly to the ASD(RSA).
- (2) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and other Federal officials having collateral or related functions.

(3) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of the DoD Components shall coordinate with the Director, DPMO, on all matters related to the responsibilities and functions of the DPMO.

§ 371.7 Authorities.

The Director, DPMO, is hereby delegated authority to:

(a) Obtain reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 8910.1,¹ as deemed necessary.

(b) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(c) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

§ 371.8 Administration.

(a) The DPMO shall be authorized such personnel, facilities, funds, and other resources as the Secretary of Defense deems necessary.

(b) The Military Departments shall assign military personnel to the DPMO in accordance with approved authorizations and established procedures for assignment to joint duty.

(c) Administrative support required for the DPMO shall be provided by the Director, Washington Headquarters Services.

Dated: September 10, 1993.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 93-22523 Filed 9-14-93; 8:45 am]

BILLING CODE 5000-04-M

¹ Copies may be obtained, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

ENVIRONMENTAL PROTECTION AGENCY**40 CFR PART 52**

[WV13-1-5870; A-1-FRL-4726-7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a state implementation plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). This SIP revision was submitted by the State to satisfy the Federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this document; additional information is available at the address indicated in the ADDRESSES section. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective November 15, 1993, unless notice is received on or before October 15, 1993, 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 Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia 25311.

FOR FURTHER INFORMATION CONTACT: Jennifer Moss at (215) 597-2923.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and state roles in meeting the new statutory provisions and as a tool to provide further guidance to the states on submitting acceptable SIP revisions.

On January 13, 1993, the State of West Virginia submitted a SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, a state submittal must provide for each of the following PROGRAM elements:

(1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses;

(2) The establishment of a state Small Business Ombudsman to represent the interests of small business stationary sources in connection with the implementation of the CAA; and

(3) The creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP and state Small Business Ombudsman.

II. Analysis

1. Small Business Assistance Program

Section 16-20-19 of the Code of West Virginia authorizes the Secretary of the Department of Commerce, Labor and Environmental Resources (DCLER) to establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program which

meets the requirements of title V of the CAA. In developing West Virginia's PROGRAM submittal, the Secretary of DCLER has delegated the authority to implement the provisions of West Virginia's SBAP to the Division of Environmental Protection's Office of Air Quality (OAQ).

Section 507(a) of the CAA sets forth seven requirements that states must meet to have an approvable SBAP. Six requirements will be discussed in this section of this notice, while the seventh requirement, establishment of a state Small Business Ombudsman, will be discussed in the next section. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the CAA. The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. Under its authority to implement the SBAP, the OAQ will meet these requirements by serving as a clearinghouse for information related to compliance methods and control technologies, pollution prevention and accidental release prevention and detection. Information on pollution prevention/accidental release will focus on the requirements under the accidental release provisions of title III of the CAA, the Emergency Planning and Community Right-to-Know Act of 1986, the Occupational Safety and Health Administration (OSHA) process safety standards, etc. Relevant clearinghouse material will be translated into layman's terms and organized into information packets. The OAQ will maintain a directory of additional information resources, such as U.S. EPA's Control Technology Center (CTC), Emissions Measurement Technical Information Center (EMTIC) and Pollution Prevention Clearinghouse (PPIC) and other state, regional and private resources. The OAQ will work closely with other State agencies, particularly the West Virginia Small Business Development Center (SBDC) and establish memoranda of understanding as necessary to optimize information exchange and program effectiveness. Information dissemination

shall take two forms. *Proactive* or "outreach" mechanisms will utilize industry groups, trade associations, the West Virginia SBDC, and additional avenues as needed to disseminate information to eligible small business stationary sources. Under its delegated authority to implement the SBAP, the OAQ will also disseminate information in a *reactive* manner by designating a contact person who will be responsible for answering questions directly or referring them to appropriate agency experts. The contact person will also be responsible for distributing information packets on request and helping sources access information resources housed in the directory.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the CAA in a timely and efficient manner. Pursuant to its authority to implement the SBAP, the OAQ will develop fact sheets which will detail new and existing regulatory requirements on a source category basis. The fact sheets will be disseminated in a timely manner by the proactive and reactive mechanisms described in the preceding paragraph. Specific questions about permitting eligibility, responsibilities and procedures will be directed to appropriate experts in the Permitting Branch of the OAQ.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the CAA in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the CAA. The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring such sources to qualified auditors or, at the option of the state, for providing audits of the operations of such sources to determine compliance with the CAA. Under its delegated authority to implement the SBAP, the OAQ will maintain a database of all small business stationary sources subject to Federal and/or state requirements. The OAQ will collect source information from the SBDC, commerce data, permitting and emission inventory lists. Database sources will be notified, in a timely manner by the proactive mechanisms described above, about rights and obligations under the CAA, related West

Virginia statutes and associated air quality regulations. In addition, the OAQ will be responsible for developing and maintaining a list of qualified auditors for small business stationary sources to contact. The list will include qualified OAQ personnel who will perform simple complimentary audits on request as well as other environmental consultants who will charge for their activities.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practices or compliance methods preceding any applicable compliance date. Under its delegated authority to implement the SBAP, the OAQ will meet this requirement by developing, in consultation with the state Small Business Ombudsman, formal procedures in accordance with section 507(a)(7) of the CAA to receive, review and process requests for work practice, compliance method or milestone modifications by no later than November 15, 1994. The Ombudsman will serve as a facilitator for these requests.

2. Ombudsman

Section 507(a)(3) of the CAA requires the designation of a state office to serve as the Ombudsman for small business stationary sources in connection with the implementation of the CAA. West Virginia's Secretary of DCLER will designate an office within the DCLER to serve as Ombudsman for small business concerns as they relate to the implementation of the CAA. It is anticipated that the Ombudsman will be located in the Economic Development Office. The DCLER will provide written notification to EPA confirming the designation and location of the Ombudsman's office by March 30, 1994. The Ombudsman will be readily accessible to small businesses and, on their behalf, be authorized to provide reports to and communicate with state air pollution control authorities and the Secretary of DCLER. The Ombudsman will also participate in many aspects of SBAP implementation such as assisting small businesses in locating sources of funds to comply with environmental regulations. Provisions in the PROGRAM submittal indicate that the Ombudsman's office will be adequately staffed and funded to fulfill its function in relation to the program.

3. Compliance Advisory Panel

Section 507(e) of the CAA requires the state to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small business stationary sources; four members selected by the state legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the air pollution permit program. Section 16-20-19 of the Code of West Virginia authorizes the establishment of a Compliance Advisory Panel in accordance with the method of selection described above and in section 507(e)(2) for a bicameral legislature. Panel members will be appointed no later than July 1, 1994.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities of the panel:

(A) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions;

(B) To review and assure that information for small business stationary sources is easily understandable;

(C) To periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act. (Section 507(e)(1)(B) requires the CAP to report on the *compliance* of the SBAP with these three statutes. However, since state agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal Statutes.); and

(D) To develop and disseminate the reports and advisory opinions made through the SBAP. A description of the duties and authorities delegated to West Virginia's Compliance Advisory Panel indicates that it will be responsible for all four of the activities listed above.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals,

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

Except for source categories which the EPA Administrator or the State of West Virginia determines, in accordance with sections 507(c)(3)(A) and (B), to have sufficient financial and technical capabilities to meet the requirements of the CAA without PROGRAM assistance, all small business stationary sources located in West Virginia will be eligible to receive assistance under the PROGRAM. West Virginia's PROGRAM criteria for defining a "small business stationary source" is equivalent to the criteria listed in section 507(c)(1) of the CAA. The State of West Virginia has not provided for the extension of eligibility for assistance under the PROGRAM beyond the requirements of sections 507(c)(1)(C)-(E). However, the State may provide "unofficial" PROGRAM assistance to any source that requests help if resources are available.

III. Summary of SIP Revision

The State of West Virginia has submitted a SIP revision implementing each of the required PROGRAM elements required by section 507 of the CAA. As previously stated, the authority to implement the SBAP has been delegated to the OAQ. Program implementation will begin no later than November 15, 1994. The Secretary of West Virginia's DCLER will designate an office within DCLER to serve as Ombudsman for small business concerns as they relate to the SBAP by no later than March 30, 1994. Section 16-20-19 of the code of West Virginia authorizes the creation of a Compliance Advisory Panel to periodically review the effectiveness of the SBAP. All panel members will be appointed by no later than July 1, 1994. In this action, EPA is approving the SIP revision submitted by the State of West Virginia. Accordingly, § 52.2560 is added to 40 CFR part 52, subpart XX-West Virginia to reflect EPA's approval action and the fact that it is considered part of the West Virginia SIP.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of

the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on November 15, 1993.

IV. Final Action

EPA is approving West Virginia's plan for the establishment of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. Accordingly, § 52.2560 is added to 40 CFR part 52, subpart XX-West Virginia to reflect EPA's approval action. The Agency has reviewed this request for revision of the federally-approved state implementation plan for conformance with the CAA including sections 507 and 110(a)(2)(E).

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

Under 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.

By this action, EPA is approving a state program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because EPA's approval of this program does not impose any new regulatory requirements on small businesses, the Administrator certifies that it does not have a significant economic impact on any small entities affected.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP

revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, approving West Virginia's Small Business Stationary Source Technical and Environmental Compliance Assistance Program, must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication]. 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

Air pollution control, Environmental protection, Small business assistance program.

Dated: August 23, 1993.

W. T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52 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 XX-West Virginia

2. Section 52.2560 is added to read as follows:

§ 52.2560 Small business technical and environmental compliance assistance program.

On January 13, 1993 the Secretary of the West Virginia Department of Commerce, Labor and Environmental Resources submitted a plan for the establishment and implementation of a Small Business Technical and Environmental Compliance Assistance Program as a state implementation plan revision (SIP), as required by title V of the Clean Air Act. EPA approved the Small Business Technical and Environmental Compliance Assistance Program on September 15, 1993, and made it part of the West Virginia SIP. As with all components of the SIP, West

Virginia must implement the program as submitted and approved by EPA.

[FR Doc. 93-22062 Filed 9-14-93; 8:45 am]

BILLING CODE 6550-50-F

40 CFR Part 52

[IL 7-2-5992; FRL-4702-3]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Final rule.

SUMMARY: U.S. EPA is approving a request by the State of Illinois to revise its Illinois State Implementation Plan (SIP) for Total Suspended Particulate (TSP) matter. The requested revision constitutes a relaxation of existing requirements as they pertain to particulate emissions from continuous automatic stoking animal pathological waste incinerators. Included with this revision request is a demonstration that the emission relaxations will not interfere with attainment and maintenance of the PM-10 (particulate matter with a nominal diameter of 10 micrometers or less) National Ambient Air Quality Standards (NAAQS) or of any other applicable requirement of the Clean Air Act (Act). U.S. EPA's action is based upon a revision request which was submitted by the State under the requirements of part D of the Act.

EFFECTIVE DATE: This action is effective on November 15, 1993 unless notice is received by October 15, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18f), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this revision to the Illinois SIP is available for inspection at: Jerry Kurtzweg (ANR-443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch, Regulation Development Section (AR-18f), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: U.S. EPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and replaced the TSP ambient air quality

standard. The revised standard is expressed in terms of PM-10. However, at the State's option, U.S. EPA continues to process TSP SIP revisions which were in process at the time the new (PM-10) standard was promulgated. In the policy document published on July 1, 1987 (52 FR 24679, column 2), U.S. EPA stated that it would regard existing TSP SIPs as necessary interim particulate matter plans during the period preceding the approval of State plans specifically aimed at PM-10. Section 110(l) of the amended Act, 42 U.S.C. 7410(l), prohibits U.S. EPA from approving a revision of a plan if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirements of the Act. If the SIP revision is judged to include more stringent provisions than are in the existing plan, U.S. EPA's general policy is to approve it. Regulations in the TSP SIP cannot be relaxed without a demonstration that the revision will not interfere with attainment and maintenance of the PM-10 NAAQS. It is U.S. EPA's judgment that although this revision constitutes a relaxation of existing requirements, the State has provided an approvable demonstration that this requested SIP revision will not interfere with the attainment and maintenance of the PM-10 NAAQS nor of any other applicable requirement of the amended Act, as required by section 110(l).

Description of SIP Revision

On July 21, 1986, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to Illinois' TSP SIP for parallel processing. The proposed revision changes TSP emission limitations for continuous automatic stoking animal pathological waste incinerators. The only existing source that this revision would apply to is a pathological waste incinerator operated by the City of Chicago at Goose Island. Basic Environmental Engineering, Inc. designed and manufactured the Goose Island incinerator.

Goose Island is located in North Town Township, which has been redesignated to attainment for TSP. See 58 FR 25567 (April 27, 1993). The 1990 Amendments to the Act, upon enactment, provided that all areas of the country be designated either nonattainment or unclassifiable for PM-10 (section 107(d)(4)(B)). As further provided in section 107(d)(4)(B)(iii) of the Act, those areas in the State not designated nonattainment for PM-10 are designated as unclassifiable for PM-10. Goose

Island was not among those areas designated as a nonattainment area for PM-10 under section 107(d)(4)(B). See 56 FR 56694 (November 6, 1991).

On January 4, 1984, a stack test at the Goose Island incinerator measured a TSP particulate concentration, corrected to 12 percent carbon dioxide (CO₂) utilizing the following methodology:

The emission rate (C₁₂) of particulate matter, corrected to 12 percent CO₂, is computed for each stack test run using the following equation:

$$C_{12} = C_S(12/\%CO_2)$$

where:

C₁₂ = concentration of particulate matter, corrected to 12 percent CO₂.

C_S = concentration of particulate matter.

%CO₂ = CO₂ concentration.

The stack test found a particulate concentration of 0.464 gr/dscf, which is well above the current limit of 0.1 gr/scf.¹ A second stack test was conducted on April 12, 1984, with 40 pounds (lbs) of charcoal added to each load of animal carcasses entering the incinerator. Charcoal is not considered an auxiliary fuel; therefore, the CO₂ produced by the charcoal is not subtracted from the total flue gas CO₂. With the addition of charcoal, the TSP particulate concentration, corrected to 12 percent CO₂, measured at 0.097 gr/dscf. This is in compliance with the State rule. The Goose Island incinerator was granted a permit, with an operating condition requiring charcoal to be burned with the carcasses to maintain emissions in compliance with the State rule.

The source contends that adding charcoal to the charge is burdensome and expensive. The source would prefer that the incinerator have a less stringent limitation and be allowed to burn natural gas. The source also contends that the amount of particulate matter emitted per 100 lbs of charged waste is reduced when charcoal is not added to the waste.

The current regulation, Title 35 of the Illinois Administrative Code (35 IAC), Section 212.181,² limits particulate emissions from new incinerators

¹ To convert from grains per dry standard cubic foot (gr/dscf) to grains per standard cubic foot (gr/scf), multiply the gr/dscf by (1—percent moisture) to get gr/scf.

gr/scf = (gr/dscf)(1—percent moisture)

The higher the moisture content the greater the difference between "gr/dscf" and "gr/scf". The January 4, 1984 stack test averaged 14.3 percent moisture.

² It should be noted that Section 212.181 (35 IAC) was incorporated into the Illinois' SIP as Illinois Pollution Control Board (IPCB) Rule 203(e) on November 27, 1981 (46 FR 57893). Illinois has subsequently recodified its environmental regulations into 35 IAC. The regulations in the SIP have not been recodified. U.S. EPA treats this requested SIP revision as a modification to IPCB Rule 203(e).

burning less than 2000 lbs of refuse per hour to 0.10 gr/scf of effluent gases corrected to 12 percent carbon dioxide (CO₂).

The revision that has been submitted by Illinois, Section 212.185, would limit particulate emissions from continuous automatic stoking animal pathological waste incinerators to 0.1 lbs TSP per 100 lbs of animal pathological waste charged. In addition, the particulate matter emissions produced when burning animal pathological waste, using gaseous auxiliary fuel, shall not exceed the lbs TSP/hour emission rate equivalent to the maximum concentration rate set forth in Section 212.181(d) (the current rule) when applied to burning a maximum of 2000 lbs of mixed charge animal pathological waste plus solid waste for demonstration of compliance. "Mixed charge" shall contain no more than 25 percent by weight of solid waste other than animal pathological waste.

To determine compliance with the equivalent lbs TSP/hour emission limit, two series of tests would be performed. The first series of tests would be performed with a maximum of 2000 lbs of mixed charge and must demonstrate that the incinerator can meet the 0.1 gr/scf limit. The results of this series of tests are converted to a lbs TSP/hour rate. The second series of tests would be performed with animal pathological waste only to determine the lbs TSP/hour that is being emitted. To be in compliance with Section 212.185(d), the results of the second series of tests must be less than or equal to the results of the first series of tests.

The State rule requires that the following conditions also be met:

(1) The incinerator shall burn animal pathological waste exclusively, except as otherwise prescribed by the IEPA during specified test operations.

(2) The incinerator shall burn no more than 2000 lbs of waste per hour.

(3) The incinerator shall be a multi-stage controlled air combustion incinerator having a cyclical pulse stoking hearth.

Evaluation of Requested Revision

The requested SIP revision, Section 212.185, would establish two particulate emission limits for automatic stoking pathological waste incinerators. Section 212.185(c) establishes a 0.1 lbs TSP/100 lbs of charge limit. With a 2000 lbs of waste per hour capacity limit, this would allow the incinerator to emit up to 2 lbs TSP/hour. Section 212.185(d) limits the incinerator to a lbs TSP/hour emission rate equal to or less than the maximum equivalent lbs TSP/hour

emission rate allowed under a 0.1 gr/scf limit corrected to 12% CO₂.

As stated above, regulations in the TSP SIP cannot be relaxed without a demonstration that the revision will not interfere with attainment and maintenance of the PM-10 NAAQS. IEPA performed a dispersion modeling analysis according to U.S. EPA guidance to demonstrate attainment and maintenance of the PM-10 NAAQS. IEPA used the Industrial Source Complex Short Term model, version 92273. The modeling analysis was submitted on May 7, 1993, and supplementary documentation was received by U.S. EPA on June 5, 1993. The analysis models the PM-10 emissions of the incinerator and of three nearby PM-10 sources, and includes a conservative background ambient concentration estimate.

Considering all modeled sources, background emissions, and the maximum PM₁₀ emissions allowed by the 0.1 lbs TSP/100 lbs charge limit at the incinerator, a maximum 24-hour ambient PM₁₀ concentration of 131.5 µg/m³ was predicted. This is well below the PM₁₀ 24-hour standard of 150 µg/m³. The annual ambient PM₁₀ concentration predicted was 40 µg/m³, which is below the PM₁₀ annual standard of 50 µg/m³. It is U.S. EPA's judgment that, in accordance with section 110(l), the State has provided an acceptable demonstration that this requested SIP relaxation revision will not interfere with attainment and maintenance of the PM-10 NAAQS nor of any other applicable requirement of the amended Act. A more detailed description of the attainment demonstration analysis may be found in the June 25, 1993 Technical Support Document available at the above address.

Rulemaking Action

Based on its review of the information presented by the State of Illinois, U.S. EPA is approving the requested SIP revision. As noted above, IEPA's submitted modeling analysis demonstrates that the requested SIP revision, while constituting a relaxation of the State of Illinois' existing requirements pertaining to particulate emissions from continuous automatic stoking animal pathological waste incinerators, will not interfere with attainment and maintenance of the PM-10 NAAQS nor of any other applicable requirement of the amended Act, as required by section 110(l).

Because U.S. EPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on November 15, 1993.

However, if we receive notice by October 15, 1993 that someone wishes to submit adverse comments, then U.S. EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on U.S. EPA's request.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP.

U.S. EPA shall consider each request for revision to the SIP 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., U.S. 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, U.S. EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 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 any small entities affected. 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 U.S. EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

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 November 15, 1993. 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

Air pollution control, Environmental Protection, Incorporation by Reference, Particulate matter.

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

Dated: August 20, 1993.

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 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)(98) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(98) On July 21, 1986, the State a submitted revision to its particulate matter regulations to incorporate an emission limit for continuous automatic stoking animal pathological waste incinerators.

(i) Incorporation by reference.

(A) Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, part 212 Visible and Particulate Matter Emissions, subpart D: Particulate Matter Emissions from Incinerators, section 212.185 Continuous Automatic Stoking Animal Pathological Waste Incinerators. Adopted December 18, 1986, added at 11 Ill. Reg. 1410, effective December 30, 1986.

[FR Doc. 93-22556 Filed 9-14-93; 8:45 am]

BILLING CODE 6550-50-P

40 CFR Part 52**[MA-9-5-5824; A-1-FRL-4700-7]****Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Stage II Vapor Recovery****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The EPA is taking action to approve Massachusetts' revised Stage II vapor recovery rule, entitled "Dispensing of Motor Vehicle Fuel," located at 310 CMR 7.24(6), as a revision to the Massachusetts State implementation plan (SIP) for ozone. Massachusetts submitted this revised regulation in response to the Stage II requirements of section 182(b)(3) of the Clean Air Act, as amended in 1990, which requires all ozone nonattainment areas classified as moderate or worse to require owners and operators of gasoline dispensing facilities to install and operate Stage II vapor recovery equipment, and EPA's December 14, 1992 Federal Register notice (57 FR 58993) regarding Massachusetts' existing Stage II regulation.

EFFECTIVE DATE: This action will become effective November 15, 1993, unless notice is received by October 15, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Jerry Kurtzweg, U.S. Environmental Protection Agency, 401 M Street, SW., (ANR-443), Washington, DC 20460; and the 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) 565-3166.

SUPPLEMENTARY INFORMATION: Under section 182(b)(3), EPA was required to issue guidance as to the effectiveness of Stage II systems. In November 1991, EPA issued technical and enforcement guidance to meet this requirement. These two documents are entitled

"Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (Technical Guidance)(EPA-450/3-91-022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs" (Enforcement Guidance). In addition, on April 16, 1992, EPA published the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what EPA believes a State submittal needs to include to meet that requirement.

Under section 182(b)(3) of the amended Act, moderate and above ozone nonattainment areas were required to submit Stage II vapor recovery rules by November 15, 1992. In addition, section 184(b)(2) of the amended Act requires all areas that are located in an ozone transport region (OTR) to adopt Stage II regulations in accordance with section 182(b)(3) or measures that EPA has identified as capable of achieving equivalent reductions to section 182(b)(3) Stage II controls.¹ These measures must be submitted within 1 year of EPA's completion of its Stage II comparability study.

The entire Commonwealth of Massachusetts is designated nonattainment for ozone and is classified as serious. See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.322. In addition, Massachusetts is also located in the northeast ozone transport region. See CAA section 184(a). Thus, Massachusetts is required to adopt Stage II vapor recovery rules in accordance with sections 182(b)(3) and 184(b)(2) of the amended Act.

Under section 182(b)(3), moderate and above ozone nonattainment areas are required to adopt regulations requiring owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. Section 182(b)(3)(A) of the Act specifies that Stage II controls must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more than 50,000 gallons of gasoline per month. Section 324 of the Act defines an ISBM.

¹ Pursuant to section 184(b)(2), by November 15, 1993, EPA must complete a study identifying control measures capable of achieving emission reductions comparable to those achievable through the section 182(b)(3) State II controls. The EPA is in the process of performing that study.

In addition, EPA's guidance states that States should require that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiency by using: (1) A method tested and approved by the California Air Resources Board (CARB); (2) a testing program that is equivalent to the CARB program, that will be conducted by the State (or by a third party recognized by the State), and that EPA has approved (or is proposing for approval) for incorporation into the SIP; or (3) a system approved by CARB. EPA guidance also states that facilities should be required to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major modification of a facility (i.e., 75 percent or more equipment change).

On May 17, 1990, EPA received a formal SIP submittal from the Massachusetts Department of Environmental Protection (DEP) containing the State's newly adopted Stage II vapor recovery regulation entitled "Dispensing of Motor Vehicle Fuel" located at 310 CMR 7.24(6). This state-initiated SIP submittal was submitted prior to the November 15, 1990 enactment of amendments to the Act. EPA published a Final Rulemaking Notice (FRN) approving Massachusetts' existing Stage II regulation on December 14, 1992 (57 FR 58993). As stated in EPA's FRN, although there were still outstanding issues associated with the existing Stage II rule, EPA approved this revision to the Massachusetts SIP, since it would strengthen the existing SIP and contribute to a reduction in volatile organic compound emissions until such time as DEP revised its Stage II rule to meet all of the requirements of section 182(b)(3) of the CAA. EPA's FRN also enumerated the outstanding issues associated with this rule which the State would need to address in order for EPA to approve the regulation as meeting the requirements of the CAA. Massachusetts subsequently adopted revisions to this regulation in accordance with the amendments outlined in EPA's FRN. The necessary amendments outlined in EPA's FRN and the State's response are discussed below.

On November 13, 1992, Massachusetts DEP submitted a formal request to EPA to amend the Massachusetts SIP. This SIP revision request contains amendments to the State's Stage II vapor recovery rule. In addition, on February 17, 1993, DEP submitted the adopted version of the revised Stage II regulation along with additional documentation regarding the

effective date of this rule. The EPA has reviewed this regulation against the statutory requirements and for consistency with EPA guidance. Massachusetts' regulation and EPA's evaluation are detailed in a memorandum dated April 5, 1993, entitled "Technical Support Document—Massachusetts—Stage II Vapor Recovery Revisions." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice. A summary of EPA's analysis is provided below.

310 CMR 7.24(6)—Dispensing of Motor Vehicle Fuel

This regulation requires all existing motor vehicle fuel dispensing facilities in Massachusetts with throughput volumes of greater than 10,000 gallons per month to install and operate Stage II vapor recovery equipment. The required installation date for this equipment varies depending on a facility's annual gasoline throughput (i.e., larger throughput facilities must comply earlier than smaller throughput facilities). The required installation dates range from April 1, 1991 to April 1, 1994. In addition, this regulation also requires any motor vehicle fuel dispensing facility, which has been constructed or substantially modified after November 1, 1989, regardless of throughput, to install and operate a Stage II vapor recovery and control system at the completion of its construction or substantial modification, or April 1, 1991, whichever is later.

Outstanding Issues Cited in EPA's FRN and Massachusetts' Response

1. The first necessary amendment noted in EPA's FRN relates to the applicability levels of Massachusetts' Stage II regulation. At the time of EPA's FRN, the regulation required that all motor vehicle fuel dispensing facilities with a throughput volume of greater than 20,000 gallons of motor vehicle fuel per month since January 1, 1988 install Stage II vapor recovery systems. Section 182(b)(3)(A) of the CAA, however, requires that Stage II provisions be adopted for facilities which dispense greater than 10,000 gallons per month, or 50,000 gallons per month in the case of ISBMs. Thus, the Massachusetts applicability levels were not consistent with the requirements of the CAA. For those stations that are not considered ISBMs, the Massachusetts regulation had a less stringent applicability cutoff.

In response to this noted deficiency, Massachusetts revised subsection 310

CMR 7.24(6)(a) to state that the Stage II requirements of the regulation apply to all facilities which dispense 10,000 gallons or more per month. In addition, the State revised the compliance schedule of the regulation in accordance with this change in applicability. Specifically, subsection 310 CMR 7.24(6)(d)2c was revised to state that compliance must be achieved by April 1, 1993 for facilities where the annual throughput is less than 500,000 gallons per year but is greater than or equal to 20,000 gallons in any one calendar month. Also, a new subsection was added, 310 CMR 7.24(6)(d)2d, which requires compliance by April 1, 1994, or thirty days after dispensing 10,000 gallons in any calendar month, whichever is later, for all other facilities subject to this rule.

Massachusetts' recent revisions, therefore, sufficiently address the previously noted deficiency regarding Stage II applicability levels. The applicability of Massachusetts' revised Stage II rule is more stringent than the CAA, since, in addition to requiring facilities which dispense 10,000 gallons or more per month to install Stage II systems, this rule also requires all facilities which have been constructed or substantially modified after November 1, 1989, regardless of throughput, to install Stage II systems. Furthermore, this regulation does not contain a 50,000 gallon per month exemption for ISBMs as allowed by the CAA.

2. EPA's FRN also noted that the following testing requirements should be included in the Massachusetts' Stage II regulation as outlined in EPA's Enforcement Guidance:

a. Testing, for verification of proper installation and function of the entire system, must be required once all of the equipment is in operational condition at the gasoline dispensing pumps. Liquid Blockage testing, Leak Check testing, and all other related tests for auto shutoff and flow prohibiting mechanisms, as applicable, must be conducted in accordance with the test procedures found in Appendix J of EPA's Technical Guidance.

b. Recertification of the function of Stage II equipment must be required at least every five years, or upon major system replacement or modification, whichever occurs first. This recertification must include a Leak Check Test and any and all other functional tests that were required for the initial system certification. A major system modification is considered to be replacing, repairing or upgrading 75 percent or more of a facility's Stage II equipment.

In response to this noted deficiency, Massachusetts added a new subsection, 310 CMR 7.24(6)(i), entitled "Testing at Installation," to its Stage II regulation. This section requires that any person installing a Stage II system, or replacing 75% or more of an existing system, conduct Liquid Blockage testing, Leak Check testing, and all other related testing for automatic shutoff and flow prohibiting mechanisms in accordance with EPA's Stage II Technical Guidance. In addition, this section requires that these tests also be conducted at least once every five years over the entire lifetime of the Stage II system. Massachusetts' recent revisions, therefore, sufficiently address the previously noted deficiency regarding Stage II testing requirements.

3. The third deficiency noted in EPA's FRN relates to Stage II recordkeeping requirements. The FRN noted that the recordkeeping provision in Massachusetts' regulation would need to be amended to include that the following records be kept, as specified by EPA's Stage II Enforcement Guidance:

a. Any and all permits and licenses to operate a facility or a specific system at a facility;

b. Records which verify that the Stage II system meets or exceeds the requirements of a Liquid Blockage Test, a Leakage Test, or other applicable tests and which indicate the date of the test results and the installing and test companies' names, addresses and phone numbers;

c. A chronological file of inspection reports issued by the state;

d. A chronological file of compliance records including warnings, notices of violation, and other compliance records issued by the state; and

e. Training certification records showing proof of attendance and completion of required training.

In addition, the FRN also noted, that, although the State's recordkeeping provisions required the recording of any failures of the Stage II equipment, the recording of maintenance performed in response to these system failures should also be included.

In response to the above-noted deficiencies in the State's Stage II recordkeeping requirements, Massachusetts amended the recordkeeping section of its Stage II rule, section 310 CMR 7.24(6)(f). The amended section (f) contains seven subsections which together address all of the recordkeeping deficiencies outlined above. Specifically, the deficiency stated in 3.a. has been addressed by subsection (f)(6) which requires that any and all permits, orders

or licenses to operate issued for the facility be kept. The deficiency stated in 3.b. has been addressed by subsection (f)(4) which requires that records of the results and dates of any testing performed, and the identity of the person who performed such tests, be maintained. The deficiencies stated in 3.c. and 3.d. have been addressed by subsection (f)(7) which requires that the facility maintain a chronological file of any inspection reports or other compliance documents issued for the facility by the DEP. The deficiency stated in 3.e. has been addressed by subsection (f)(5) which requires a record of certification that facility operators and employees have received training be kept.

In addition, subsection (f)(1) requires records of the failure or malfunction of the Stage II system and the date of its repair and subsection (f)(2) requires records of all maintenance performed, including the type and date of maintenance. These two subsections, therefore, sufficiently address the previously noted lack of requirements regarding the recording of maintenance performed in response to system failures. Finally, section (f) also requires that all records be kept on site for at least five years, rather than two years as was previously required.

Massachusetts' recent revisions to subsection (f), therefore, sufficiently address all of the previously noted deficiencies regarding Stage II recordkeeping requirements.

In summary, EPA's December 14, 1992 FRN cited outstanding issues associated with the Stage II applicability levels, testing requirements, and recordkeeping requirements in Massachusetts' existing Stage II regulation. Since that time, Massachusetts has adopted revisions to this regulation which sufficiently address all of the previously noted deficiencies.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective November 15, 1993, unless, by October 15, 1993, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on November 15, 1993.

Final Action

Because EPA believes that Massachusetts' revised Stage II regulation is consistent with sections 182(b)(3) and 184(b)(2) of the Act, as interpreted in EPA's guidance, EPA is approving 310 CMR 7.24(6) "Dispensing of Motor Vehicle Fuel" (effective in the State of Massachusetts on February 12, 1993) as meeting the requirements of sections 182(b)(3) and 184(b)(2).

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 a SIP shall be considered in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 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 any small entities affected. 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 EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of 2 years (54 FR at 2222). The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP

revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

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 November 15, 1993. 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

Air pollution control, Hydrocarbons, Incorporation by reference, 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: August 16, 1993.

Patricia Meaney,

Acting 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)(98) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(98) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on November 13, 1992, January 15, 1993, and February 17, 1993.

(i) Incorporation by reference.

(A) Letters from the Massachusetts Department of Environmental Protection dated November 13, 1992, January 15, 1993, and February 17, 1993 submitting a revision to the Massachusetts State Implementation Plan.

(B) 310 CMR 7.24(6) "Dispensing of Motor Vehicle Fuel," effective in the State of Massachusetts on February 12, 1993.

(ii) Additional materials.
 (A) Nonregulatory portions of the submittal.
 3. In § 52.1167, Table 52.1167 is amended by adding new entries to state

citation "310 CMR 7.24(6)" to read as follows:

§ 52.1167 EPA-Approved Massachusetts regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/sub- ject	Date sub- mitted by state	Date ap- proved by EPA	Federal Register ci- tation	52.1120 (c)	Comments/unapproved sections
310 CMR 7.24(6)	Dispensing of motor vehicle fuel.	02/17/93	9/15/93	[Insert FR citation from pub- lished date].	98	Previous version of rule approved as strengthening the Massachusetts SIP. Revised rule being approved as meeting the Clean Air Act requirements.

[FR Doc. 93-22533 Filed 9-14-93; 8:45 am]
 BILLING CODE 6560-50-P

40 CFR Part 73

[FRL-4728-8]

Acid Rain Program: Allowance Tracking System; Manual Recordation of Allowance Transfers

AGENCY: Environmental Protection Agency.

ACTION: Notice of procedure for manual recordation of certain allowance transfers.

SUMMARY: The Environmental Protection Agency is instituting a procedure to implement subpart D of 40 CFR part 73, which governs EPA's recordation of transfers of sulfur dioxide (SO₂) emission allowances within the Allowance Tracking System (ATS). This procedure applies prior to the commencement of operation of the automated ATS in certain exceptional circumstances. Two criteria must be met before EPA will accept transfer forms for manual recordation: (1) There must be a risk of substantial loss of public funds should the transaction not be completed and the transfer not be recorded prior to the commencement of operation of the automated ATS; and (2) parties to the transfer agreement must have relied upon EPA's announced date of "late spring 1993" for the commencement of operation of the automated ATS when entering into the transfer agreement.

EFFECTIVE DATE: September 8, 1993.

ADDRESSES: All correspondence in this matter shall be sent to: U.S. Environmental Protection Agency, Acid Rain Division (6204J), 401 M Street,

SW., Washington, DC 20460, Attn: ATS Manual Recordation.

FOR FURTHER INFORMATION CONTACT: Janice K. Wagner, Chief, Allowance Market Section, Acid Rain Division, (202) 233-9118 or by mail at the address above.

SUPPLEMENTARY INFORMATION: Subpart C of 40 CFR part 73 establishes an Allowance Tracking System (ATS) for the allocation, transfer, and use of SO₂ emissions allowances as required by section 403(b) of the Clean Air Act (CAA). Section 403(b) specifically provides that allowance transfers are not effective, for purposes of compliance with the allowance holding requirements of the Acid Rain Program, until EPA receives and records a written certification of the transfer signed by a responsible official of each party to the transfer. EPA will provide Allowance Transfer forms for this written certification. Subpart D of 40 CFR part 73 establishes the procedure by which EPA will record transfers of allowances to and from accounts established within the ATS.

EPA is in the process of implementing an automated system for handling the recordation of allowance transfers. To ensure the integrity of the recordation process, EPA decided that it would not begin accepting allowance transfer requests for recordation until this automated system is fully operational. EPA believes that the necessary task of recording numerous allowance transfers will be administratively feasible only if the automated ATS is operational and serial numbers for allowances involved in such transfers are issued.

EPA's general policy has been and will continue to be to not issue

Allowance Transfer forms to parties nor to record allowance transfers prior to the commencement of operations of the automated ATS. When EPA developed the general policy on issuing Allowance Transfer forms and recording allowance transfers, EPA anticipated that the automated ATS would likely be operational in the late spring of 1993 and so informed ATS authorized account representatives in letters sent to them as their accounts were opened. However, the anticipated operational date for the ATS has been delayed. While the provisions of the Acid Rain Program authorize allowances to be sold without recordation with EPA, the Agency recognizes that, in certain limited circumstances, the delay in making operational the automated ATS may irreparably impair some transfer agreements. Furthermore, the failure to allow these agreements to go forward may have detrimental financial impacts not only on the parties to the transfer agreement but also on the public because of the extensive involvement of public entities in financing electricity production.

After examining the factors described above, the Agency has decided that an exception to the general policy may be appropriate in certain limited circumstances. The Agency believes that manual recordation is appropriate: (1) When substantial public funds are at risk if recording the transfer is delayed until the automated ATS commences operation; and (2) when parties to transfer agreements relied on EPA's representation concerning the anticipated operational date of the ATS to conclude agreements that are contingent on recordation.