

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. 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. 804(2).

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 January 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, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements..

Dated: September 20, 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 52.1129 is added to subpart W to read as follows:

#### § 52.1129 Control strategy: Ozone.

Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on April 1, 1999, and supplemented on June 25, 1999 and September 9, 1999. The revisions are for the purpose of satisfying the rate of progress requirements of sections 182(b)(1) and 182(c)(2)(B) of the Clean Air Act for the Springfield, Massachusetts serious ozone nonattainment area.

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[MA-014-7195D; A-1-FRL-6882-5]

#### Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Enhanced Motor Vehicle Inspection and Maintenance Program

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires an enhanced inspection and maintenance program in Massachusetts. The intended effect of this action is to provide limited approval of the inspection and maintenance program which has been operating in Massachusetts since October 1, 1999. This action is being taken in accordance with the Clean Air Act.

**EFFECTIVE DATE:** This rule will become effective on December 15, 2000.

**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:**

Peter X. Hagerty, (617) 918-1049.

**SUPPLEMENTARY INFORMATION:** On September 27, 1999 (64 FR 51937), and

on November 30, 1999 (64 FR 66829), EPA published Notices of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPRs proposed approval of an enhanced inspection and maintenance (I/M) program once the Massachusetts Department of Environmental Protection (DEP) submitted supplemental documentation. Massachusetts submitted the formal SIP revision on May 14, 1999.

The September 27, 1999, proposed rulemaking notice stated that prior to final action, Massachusetts must submit certain items which had not yet been supplied by the program contractor. These items included requirements specified in the following sections of the EPA I/M Rule: Network Type and Program Evaluation—40 CFR 51.353, Test Procedures and Standards—40 CFR 51.357, Test Equipment—40 CFR 51.358, Quality Control—40 CFR 51.359, Quality Assurance—40 CFR 51.363, and On-road Testing—40 CFR 51.371. The November 30, 1999 supplemental notice indicated that Massachusetts could not claim full I/M 240 credit for the Massachusetts I/M program, but EPA believed the program would achieve at least low enhanced program credit, therefore proposed approval was still appropriate.

In response to the September 27, 1999, **Federal Register** document, Massachusetts made the following submissions: Test Procedures and Equipment Specifications on February 1, 2000, and Acceptance Test Protocol on March 15, 2000. These submittals were designed to better define the information required in Test Procedures and Standards—40 CFR 51.357, and Test Equipment—40 CFR 51.358. With these two submissions the Massachusetts I/M SIP now meets the requirements of these two sections of the EPA rule. On March 15, 2000 Massachusetts also submitted Overt Audit Software Specifications which addresses part of the requirements for Quality Assurance, 40 CFR 51.363. On July 14, 2000, Massachusetts submitted a Draft Quality Assurance and Quality Control Plan. In a letter dated August 8, 2000 EPA provided minor comments on this plan.

The following sections still require additional information to meet the requirements of the I/M rule: Network Type and Program Evaluation—40 CFR 51.353, Quality Control—40 CFR Part 51.359, Quality Assurance—40 CFR 51.363 and On-road Testing—40 CFR 51.371. These requirements were explained in the NPR and will not be restated here. In response to the Supplementary Proposed Rule

published in the **Federal Register** on November 30, 1999, EPA and the DEP have had extensive discussions concerning a comparison testing program between EPA's IM240 test and the Massachusetts I/M test. A testing program has been designed and will soon be started. DEP will provide EPA with copies of the work orders to initiate this program once they have been issued. The results of this program will enable EPA to assign appropriate emission reduction credit for the Massachusetts I/M program.

Massachusetts has been successfully operating a transient testing program with a 31 second test and NYTEST equipment, which is expected to provide high emitter identification rates which are close to the rates provided by IM240 testing. This expectation is based on testing of the NYTEST equipment by New York and the 31 second test by Oregon. Although we cannot at this time assign appropriate program credit, this will be done once the comparison testing is completed.

**Interim Credit**—There is no data available at this time to assign appropriate emission reduction credit for the combination of test type and equipment that the Commonwealth is implementing. Nevertheless, even if one makes extremely conservative assumptions about the efficacy of the Massachusetts test, EPA's mobile modeling shows that the I/M program demonstrates at least compliance with low enhanced I/M program performance standard, and it therefore meets the requirement for this aspect of the program. Moreover, this conservative estimate of the performance standard still provides sufficient emission reduction credits to support the 15% and 9% rate of progress plans EPA is approving elsewhere in today's **Federal Register**. EPA's analysis of these conservative assumptions is available in a technical support document in the docket for the November 30, 1999 **Federal Register** Notice.

Other specific requirements of the I/M rule and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

#### **Final Action**

EPA is providing limited approval of the Massachusetts inspection and maintenance program as a revision designed to strengthen the Massachusetts SIP.

This action will make the I/M program an enforceable part of the Massachusetts SIP, but DEP must still supplement the program to get full

approval and meet the I/M requirements of the Act. Edward Kunce, acting Commissioner of DEP submitted this plan revision on May 14, 1999 with subsequent submissions on February 1, 2000, and March 15, 2000, as a revision to the SIP. The Commonwealth must submit to EPA additional information on Network Type and Program Evaluation—40 CFR 51.353, On-road Testing—40 CFR 51.371 and a final QA/QC plan to meet the requirements of Quality Control—40 CFR 51.359, and Quality Assurance—40 CFR 51.363, prior to EPA giving full approval to the Massachusetts I/M SIP. EPA will then publish a subsequent final rulemaking notice in the **Federal Register**, when the State submits the needed information. This approval action will remain a part of the SIP until EPA takes final action fully approving or disapproving the revised I/M SIP submittal.

Massachusetts DEP Regulation 310 CMR 60.02 "Regulations for the Enhanced Motor Vehicle Inspection and Maintenance Program" replaces completely the existing regulation 310 CMR 7.20 "Motor Vehicle Inspection and Maintenance Emission Analyzer Approval Process and Inspection Requirements and Procedures." Regulation 310 CMR 7.20 will be removed from both the table identifying the SIP in the Code of Federal Regulations (CFR) and from the files where EPA incorporates by reference Massachusetts rules into the SIP.

Massachusetts Registry of Motor Vehicles Regulation 540 CMR 4.00 entitled "Periodic Annual Staggered Safety and Combined Safety and Emissions Inspection of All Motor Vehicles, Trailers, Semi-trailers and Converter Dollies" although part of the previous I/M program was not incorporated by reference and was not listed in Table 52.1167. This regulation which was revised for the enhanced I/M program and effective October 1, 1999 will be incorporated by reference and added to table 52.1167.

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.

#### **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 (Public Law 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. 804(2).

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 January 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 20, 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)(122) to read as follows:

**§ 52.1120 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(122) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on May 14, 1999, February 1, 2000 and March 15, 2000.

(i) Incorporation by reference.

(A) Regulation 310 CMR 60.02 entitled "Regulations for the Enhanced Motor Vehicle Inspection and Maintenance Program" which became

effective on October 1, 1999, and a September 17, 1999, Notice of Correction submitted by the Secretary of State indicating the effective date of the regulations.

(B) Sections 4.01, 4.02, 4.03, 4.04(1), (2), (3), (5), (15) 4.05(1), (2), (12)(d), (12)(e), (12)(o) 4.07, 4.08, and 4.09 of Regulation 540 CMR 4.00 entitled "Periodic Annual Staggered Safety and Combined Safety and Emissions Inspection of All Motor Vehicles, Trailers, Semi-trailers and Converter Dollies" which became effective on May 28, 1999."

(ii) Additional materials.

(A) Letters from the Massachusetts Department of Environmental Protection dated May 14, 1999, February 1, 2000, and March 15, 2000, submitting a revision to the Massachusetts State Implementation Plan.

(B) Test Procedures and Equipment Specifications submitted on February 1, 2000.

(C) Acceptance Test Protocol submitted on March 15, 2000.

**§ 52.1167 [Amended]**

3. Table 52.1167 is amended by removing Regulation 310 CMR 7.20 "Motor Vehicle Inspection and Maintenance Emission Analyzer Approval Process and Inspection Requirements and Procedures."

4. In § 52.1167 the Table 52.1167 is amended by adding new entries in numerical order for "310 CMR 60.02" and 540 CMR 4.00" 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 60.02	* Regulations for the enhanced Motor Vehicle Inspection and Maintenance Program	* 5/14/99	* 11/15/00	* 65 FR 68900	* 122	* Replaces requirements for I/M tests with enhanced I/M test requirements.
540 CMR 4.00	Periodic Annual Staggered Safety and Emissions Inspection of Motor Vehicles	5/13/99	11/15/00	65 FR 68900	122	Revises Requirements for Inspections and Enforcement of I/M Program

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 52 and 81**

[WI96-01-7327a; FRL-6901-3]

**Approval and Promulgation of Implementation Plans; Wisconsin Designation of Areas for Air Quality Planning Purposes; Wisconsin****AGENCY:** Environmental Protection Agency.**ACTION:** Direct final rule.

**SUMMARY:** On November 5, 1999, the Wisconsin Department of Natural Resources (WDNR) submitted a request to the Environmental Protection Agency (EPA) to redesignate a portion of the City of Rhinelander (Oneida County) Wisconsin from a primary sulfur dioxide (SO<sub>2</sub>) nonattainment area to attainment. In this action EPA is approving the State's request, because it meets all of the Clean Air Act (Act) requirements for redesignation.

If EPA receives adverse comments on this action, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**DATES:** This "direct final" rule is effective January 16, 2001, unless EPA receives adverse or critical comments by December 15, 2000. If the rule is withdrawn, EPA will publish timely notice in the **Federal Register**.

**ADDRESSES:** Send written comments to Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), United Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Madeline Rucker at (312) 886-0661, before visiting the Region 5 Office.)

A copy of this redesignation is available for inspection at this Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 260-7548.

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Regulation Development Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8328.

**SUPPLEMENTARY INFORMATION:****I. Background**

This Supplementary Information section is organized as follows:

- A. What action is EPA taking?
- B. Why was this SIP revision submitted?
- C. Why can we approve this request?
- D. What requirements must be met for approval of a redesignation, and how did the state meet them?

**A. What Action Is EPA Taking?**

We are approving the State of Wisconsin's request to redesignate a portion of the City of Rhinelander (Oneida County) from a primary SO<sub>2</sub> nonattainment area to attainment of the SO<sub>2</sub> NAAQS. We are also approving the maintenance plan for this area into the Wisconsin SO<sub>2</sub> SIP.

**B. Why Was This SIP Revision Submitted?**

WDNR believes that the City of Rhinelander is now eligible for redesignation because EPA approved Wisconsin's SO<sub>2</sub> SIP in 1995 and SO<sub>2</sub> monitors in Rhinelander have not recorded exceedances of either the primary or secondary SO<sub>2</sub> air quality standards since 1986.

**C. Why Can We Approve This Request?**

Consistent with the Act's requirements, EPA developed procedures for redesignation of nonattainment areas that are in a September 4, 1992, memorandum from John Calcagni, EPA, titled, *Procedures for Processing Requests to Redesignate Areas to Attainment*. This EPA guidance document contains a number of conditions that a State must meet before it can request a change in designation for a federally designated nonattainment area. That memorandum and EPA's Technical Support Document set forth the rationale in support of the redesignation of Rhinelander's SO<sub>2</sub> nonattainment area to an attainment status.

**D. What Requirements Must the State Meet for Approval of a Redesignation and How Did the State Meet Them?****1. The State Must Show That the Area Is Attaining the Applicable NAAQS**

There are two components involved in making this demonstration:

- a. Ambient air quality monitoring representative of the area of highest concentration must show no more than one exceedance annually; and
- b. EPA approved air quality modeling must show that the area in question meets the applicable standard.

The first component relies on ambient air quality data representative of the

area of highest concentration. The primary 24-hour concentration limit of the SO<sub>2</sub> NAAQS is 365 micrograms per cubic meter (µg/m<sup>3</sup>). The primary annual concentration limit is 80 µg/m<sup>3</sup>. According to 40 CFR 50.4, an area must show no more than one exceedance annually. WDNR's monitoring data satisfies the first component, indicating that there has been no exceedance of the 24-hour concentration limit since 1986. Monitoring data for the annual concentration limit goes back to 1994 and indicates no exceedance of the annual limit since that time.

The second component relies on supplemental EPA approved air quality modeling. Air quality modeling, however, could not be used in this case because the modeling under-predicted actual ambient air concentrations due to the unique topography of the area. Under EPA modeling guidelines, ambient data (*i.e.*, a rollback analysis) may be used to determine appropriate emission limits. A rollback analysis takes a monitored ambient exceedance recorded during a specific set of facility operating conditions and determines the amount of the exceedance due to each of the source's SO<sub>2</sub>-emitting operations in use at that time. These estimates are then linearly "rolled back" to acceptable SO<sub>2</sub> emission limits that provide for attainment of the NAAQS under that set of operating conditions. The State submitted emission limits determined by using the rollback analysis in an October 21, 1994 SIP revision. EPA approved these limits into the Wisconsin SO<sub>2</sub> SIP by EPA on December 7, 1994 at 59 FR 63046.

Therefore, WDNR satisfied the second component by supplying monitoring information as a substitute for the modeling demonstration requirement, showing that the area has been in attainment of the SO<sub>2</sub> NAAQS since 1987.

**2. The SIP for the Area Must Be Fully Approved Under Section 110(k) of the Act and Must Satisfy all Requirements That Apply to the Area**

WDNR submitted the Rhinelander SO<sub>2</sub> SIP revision to EPA on October 21, 1994 to fulfill the requirements of section 110 and part D of the Act. The state's submittal consisted primarily of an August 22, 1994 Consent Order (AM-94-38) between the state and the Rhinelander Paper Company (RPC). EPA approved the permanent requirements of the consent order for RPC into the federally enforceable SO<sub>2</sub> SIP on December 7, 1994 at 59 FR 63046.