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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2012-0951; FRL-9800-2]

#### Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revisions to Fossil Fuel Utilization Facilities and Source Registration Regulations and Industrial Performance Standards for Boilers

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving several State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. The revisions add new monitoring, inspection, maintenance and testing requirements for certain fossil fuel utilization facilities, rename and clarify stationary source emission reporting requirements, and establish compliance and certification standards for new boilers. The intended effect of this action is to approve the Commonwealth's revised "Fossil Fuel Utilization Facility" regulation, "Source Registration" regulation, and new "Industrial Performance Standards for Boilers." This action is being taken under the Clean Air Act.

**DATES:** This rule is effective on May 27, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification Number EPA-R01-OAR-2012-0951. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics and Indoor Programs Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER**

**INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

#### FOR FURTHER INFORMATION CONTACT:

Brendan McCahill, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency Region 1, 5 Post Office Square—Suite 100, (Mail code OEP05-2), Boston, MA 02109-3912, Telephone number (617) 918-1652, Fax number (617) 918-0652, Email [McCahill.Brendan@EPA.GOV](mailto:McCahill.Brendan@EPA.GOV).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

#### Table of Contents

- I. What action is EPA approving in this document?
- II. What portions of the SIP submittals will EPA incorporate into the SIP?
- III. Final Action.
- IV. Statutory and Executive Order Reviews.

#### I. What action is EPA approving in this document?

On February 7, 2013 (78 FR 9016), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts.

The NPR proposed approval of the following SIP submittals:

- A June 28, 1990 and a July 11, 2001 SIP amendment revising 310 CMR 7.04 entitled, "U Fossil Fuel Utilization Facilities,"
- A July 11, 2001 SIP amendment revising 310 CMR 7.12 entitled, "U Source Registration,"
- A September 14, 2006 SIP amendment adopting 310 CMR 7.26(30)–(37) entitled, "Industrial Performance Standards—U Boiler," and
- A February 13, 2008 SIP amendment that, among other things, revises 310 CMR 7.04, corrects several typographical errors, clarifies certain requirements to 310 CMR 7.12 and 310 CMR 7.26(30)–(37) and updates the list of Massachusetts cities in 310 CMR 7.00.

The specific requirements of four SIP submittals and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. EPA did not receive any public comments on the NPR.

## II. What portions of the SIP submittals will EPA incorporate into the SIP?

On January 18, 2013, the Massachusetts Department of Environmental Protection (MassDEP) issued a letter to EPA withdrawing outdated and obsolete submittals and replacing them with SIP submittals containing effective versions of the regulations for approval into the SIP. The letter included two attachments. Attachment I identified the regulations that MassDEP requests EPA to approve into the SIP. The attachment includes struck out versions of those regulations MassDEP is withdrawing from consideration and the final version of the regulations (without strikeout) that MassDEP requests to be included in the SIP.

Attachment 2 includes a list of regulations previously submitted to EPA for approval. The list indicates the regulation name and CMR regulation number, CMR page number, the MassDEP disposition of the rule (i.e., whether to withdraw it or have EPA act upon it), and the reason for the MassDEP's disposition.

Based on the information from the two attachments, EPA is incorporating the latest versions of 310 CMR 7.00, "Massachusetts Cities & Towns with Corresponding DEP Regional Offices and Air Pollution Districts," 310 CMR 7.04(2) and 7.04(4)(a), 310 CMR 7.12 and 310 CMR 7.26(30)–(37) into the SIP. The February 13, 2008 SIP submittal included the latest version of the 310 CMR 7.00, 310 CMR 7.04(2) and 7.04(4)(a) and 310 CMR 7.26(30)–(37). Numerous SIP submittals provided a portion of 310 CMR 7.12. The August 9, 2001 SIP submittal included provision 310 CMR 7.12(1)(a)1. The September 14, 2006 SIP submittal included provisions 310 CMR 7.12(2)(c), 310 CMR 7.12(3) and 310 CMR 7.12(4). The February 13, 2008 SIP submittal included provisions 310 CMR 7.12(1)(a)2–9, (1)(b) and (1)(c), and 310 CMR 7.12(2)(a) and (b).

These versions of the regulations are the versions that were made available in the docket for the February 7, 2013 NPR. We are re-stating this information here, not because anything has changed since the publication of the NPR, but rather for clarity given the complex history of these submissions.

In addition, as described in the January 18, 2013 letter, the MassDEP has withdrawn the following regulations from inclusion into the SIP; 310 CMR 7.02, 310 CMR 7.03, 310 CMR 7.11, and 310 CMR 7.26(28)–(29).

### III. Final Action

EPA is approving the following SIP submittals as a revision to the Massachusetts SIP:

- The June 28, 1990 SIP amendment revising 310 CMR 7.04,
- The July 11, 2001 SIP amendment revising 310 CMR 7.12,
- The September 14, 2006 SIP amendment revising 310 CMR 7.12, and
- The February 13, 2008 SIP amendment revising 310 CMR 7.04, 310 CMR 7.12, 310 CMR 7.26(30)–(37), and updating the list of Massachusetts cities in 310 CMR 7.00.

With today's final action, EPA has completed its action on Massachusetts's February 13, 2008 SIP submittal. Nothing more regarding this submittal is pending before EPA.

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 June 23, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 27, 2013.

**H. Curtis Spalding,**

*Regional Administrator, EPA New England.*

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

### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 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)(140) to read as follows:

#### § 52.1120 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(140) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on Protection on August 9, 2001, September 14, 2006, and February 18, 2008.

(i) Incorporation by reference.

(A) Provision 310 CMR 7.12(1)(a)1 of 310 CMR 7.12, "U Source Registration" effective on August 3, 2001.

(B) Provisions 310 CMR 7.12(2)(c), 7.12(3), and 7.12(4) of 310 CMR 7.12, "U Source Registration" effective on September 23, 2005.

(C) Provision 310 CMR 7.00, Table entitled, "Massachusetts Cities & Towns with Corresponding DEP Regional Offices and Air Pollution Districts" effective on December 28, 2007.

(D) Provisions 310 CMR 7.04(2) and 7.04(4)(a) of 310 CMR 7.04, "U Fossil Fuel Utilization Facilities" effective on December 28, 2007.

(E) Provisions 310 CMR 7.12(1)(a)2 through 9, (1)(b), (1)(c), (2)(a) and (b) of 310 CMR 7.12, "U Source Registration" effective on December 28, 2007.

(F) Provisions 310 CMR 7.26(30) through (37) of 310 CMR 7.26 "Industry Performance Standards" effective on December 28, 2007.

(ii) Additional materials.

(A) A letter from the Massachusetts Department of Environmental Protection dated August 9, 2001 submitting a

revision to the State Implementation Plan.

(B) A letter from the Massachusetts Department of Environmental Protection dated September 14, 2006 submitting a revision to the State Implementation Plan.

(C) A letter from the Massachusetts Department of Environmental Protection dated February 13, 2008 submitting a

revision to the State Implementation Plan.

(D) A letter from the Massachusetts Department of Environmental Protection dated January 18, 2013 withdrawing certain outdated and obsolete regulation submittals and replacing them with currently effective versions of the regulation for approval and inclusion into the SIP.

■ 3. In § 52.1167, Table 52.1167 is amended by adding new entries in numerical order for 310 CMR 7.00, 310 CMR 7.04(2), 310 CMR 7.04(4)(a), 310 CMR 7.12, and 310 CMR 7.26(30)–(37) to read as follows:

**§ 52.1167 EPA-approved Massachusetts State regulations.**

\* \* \* \* \*

**TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS**

[See Notes at end of Table]

| State citation         | Title/Subject                                                         | Date submitted by state     | Date approved by EPA | Federal Register citation                                               | 52.1120(c) | Comments/Unapproved sections                                                                                                                                                            |
|------------------------|-----------------------------------------------------------------------|-----------------------------|----------------------|-------------------------------------------------------------------------|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| * * *                  | * * *                                                                 | * * *                       | * * *                | * * *                                                                   | * * *      | * * *                                                                                                                                                                                   |
| 310 CMR 7.00 .....     | Table of MA cities and towns with corresponding DEP Regional offices. | 11/13/07                    | 4/24/14              | [Insert <b>Federal Register</b> page number where the document begins]. | 140        |                                                                                                                                                                                         |
| 310 CMR 7.04(2)        | U Fossil fuel Utilization Facilities.                                 | 11/13/07                    | 4/24/14              | [Insert <b>Federal Register</b> page number where the document begins]. | 140        | Clarifies new applicability requirements for smoke density instrument removal for certain facilities.                                                                                   |
| 310 CMR 7.04(4)(a).    | U Fossil Fuel Utilization Facilities.                                 | 11/13/07                    | 4/24/14              | [Insert <b>Federal Register</b> page number where the document begins]. | 140        | Requires inspection, maintenance testing at facilities with heat inputs over 3 MMBtu/ hr (excluding combustion turbines and engines); requires posting of test results near facilities. |
| 310 CMR 7.12 .....     | U Source Registration.                                                | 5/31/01, 8/23/05 & 11/13/07 | 4/24/14              | [Insert <b>Federal Register</b> page number where the document begins]. | 140        | Revises applicability threshold emission levels, expands list of sources required to report emissions, and clarifies types of information reported.                                     |
| 310 CMR 7.26(30)–(37). | Industry Performance Standards—U Boilers.                             | 11/13/07                    | 4/24/14              | [Insert <b>Federal Register</b> page number where the document begins]. | 140        | Sets standards for certain types of new boilers: replaces requirements to obtain a plan approval under 310 CMR 7.02(2).                                                                 |
| * * *                  | * * *                                                                 | * * *                       | * * *                | * * *                                                                   | * * *      | * * *                                                                                                                                                                                   |

**Notes:**

1. This table lists regulations adopted as of 1972. It does not depict regulatory requirements which may have been part of the Federal SIP before this date.

2. The regulations are effective statewide unless otherwise stated in comments or title section.

**Editorial Note:** This document was received for publication by the Office of the Federal Register on April 11, 2014.

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