Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(241)(i)(A)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(241) * * *

(i) * * *

(A) * * *

(*3*) Rule 66, adopted on July 1, 1972, revised on July 25, 1995.

* * * * *

[FR Doc. 98–21349 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME014–01–6994a; A–1–FRL–6136–3]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Source Surveillance Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine on June 30, 1994. This revision consists of a continuous emissions monitoring (CEM) regulation. The intended effect of this action is to approve Maine's CEM rule into the Maine SIP. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule is effective on October 13, 1998 without further notice, unless EPA receives adverse comment by September 10, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, 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 Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: On July 13, 1994, EPA received a formal SIP submittal from the Maine Department of Environmental Protection (DEP) containing the State's Chapter 117 ''Source Surveillance'' regulation.

I. Summary of SIP Revision

Maine's Chapter 117 was first adopted by the State on August 9, 1988 and submitted to EPA as a SIP revision on August 22, 1988. EPA approved this rule into the Maine SIP on March 21, 1989 (54 FR 11525). Maine has since repealed the 1988 version of the rule and replaced it with a new Chapter 117. This new version of Chapter 117 was submitted to EPA as a SIP revision on June 30, 1994 and is the subject of today's action. This regulation is briefly summarized below.

Chapter 117: Source Surveillance

This regulation requires certain air emissions sources to operate continuous emission monitoring systems and details the performance specifications, quality assurance procedures, and recordkeeping and reporting requirements for such systems.

EPA's Evaluation of Maine's Submittal

EPA has evaluated Maine's Chapter 117 and has found that it is consistent with the requirements of 40 CFR Part 51, Appendix P. Maine's regulation and EPA's evaluation are detailed in a memorandum, dated June 24, 1998, entitled ''Technical Support Document—Maine—Source Surveillance Rule.'' Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

One aspect of Maine's Chapter 117 which is somewhat unique is the rule's data recovery requirements. The data recovery requirements of the Maine regulation contain a basic requirement that ''emission monitoring devices must record accurate and reliable data during all source-operating time except for periods when the emission monitoring devices are subject to established quality assurance and quality control procedures [(''QA/QC'')] or to unavoidable malfunction.'' (Chapter 117, Section 5.) This basic provision is consistent with both 40 CFR Part 51, Appendix P and 40 CFR part 60, appendix F. However, the regulation contains a limitation that prohibits the Department's enforcement of the basic requirement when a source's emission monitoring system records accurate and reliable data 90% of the time in a given quarter (95% of the time for opacity monitoring). The regulation further states that if the monitoring system does not record such data for the minimum percentage of time, then the Department may initiate an enforcement action for any period of down time that the owner or operator (''licensee'') cannot establish was due to QA/QC or unavoidable malfunctions. (See Chapter 117, Section 5.A and 5.B.)

The language in the Maine regulation and the authorizing state legislation, Title 38 MRSA Section 589(3), is not an express exemption from the basic data recovery requirement. If the regulation and the authorizing legislation were intended to provide an exemption, then a more direct statement of an exemption would have been drafted (e.g., ''Monitoring devices must record accurate and reliable data for 90% of the source-operating time * * * ''). Instead, the language simply provides direction to the Department on when it may initiate enforcement for failure to maintain operational CEMS. In this respect, the language is more of a mandate from the legislature on how the Department must manage its resources than a grant of immunity from all potential enforcement.

The EPA does not interpret the language restricting when the Department may initiate an enforcement action as applying to other potential enforcers such as citizens and the EPA. Otherwise, the basic underlying requirement to maintain operational CEMS at all times except during QA/QC and unavoidable malfunctions would have no binding effect. If this language were binding on other potential enforcers, then the limitation would make the Maine regulation less stringent than the requirements of Appendix P. Maine's regulation includes a note providing fair notice that the ''requirements under federal law may be more stringent than the requirements of Chapter 117 and Title 38 MRSA Section 589(3).'' (Chapter 117, section 5, Note.) This note confirms that the Department may have fewer opportunities to initiate enforcement under its regulation than others may have under federal law. Therefore, in incorporating by reference this rule into the SIP, the EPA adopts a literal interpretation of the language restricting when the Department may initiate an enforcement action as applying only to the Department and as not restricting when other potential enforcers may initiate enforcement action.

One other aspect of the data recovery requirements should be clarified as part of the EPA's approval of Chapter 117 into the SIP. The most natural reading of the affirmative defense available

when the licensee's monitors do not properly record data for the minimum percentage of time in the quarter would require the licensee to demonstrate a legitimate basis for all of the down time in the quarter. The affirmative defense (''unless the licensee can demonstrate * * * that the failure of the system to record accurate and reliable data was due to'') references the basic requirement to ''record accurate and reliable data'' without qualification rather than including a percent-of-the-time threshold (*e.g.*, ''record accurate and reliable data at least 90% of source-operating time'').

Under the interpretations discussed above, if an emission monitoring system recorded accurate and reliable data for 91% of the operating time in the quarter, then the Department could not initiate an enforcement action under the regulation no matter the cause of the down time. If a monitoring system provided accurate and reliable data for 85% of the operating time in a quarter, then the Department could proceed with an enforcement action because the monitors would not have been properly recording data for the minimum percentage of time (90% or 95% of the quarter). In the latter case, Maine may enforce the data recovery requirements unless the licensee can show that unavoidable malfunctions and QA/QC accounted for all of the time the system failed to properly record data. However, in all these cases, the EPA or a private citizen could initiate an enforcement action against the licensee for violation of the basic requirement to record accurate and reliable data during all operating time, subject to the licensee's affirmative defenses.

EPA seeks comment on whether it has correctly interpreted the continuous monitoring data recovery provisions of the Maine rule. Comments disagreeing with EPA's understanding of these provisions would be relevant and adverse to the basis of EPA's approval of these provisions into the SIP for Maine.

II. Final Action

EPA is approving Maine's Chapter 117 ''Source Surveillance'' regulation as a revision to the Maine SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should relevant adverse comments be filed. This rule will be effective on October 13, 1998 without further notice, unless EPA receives relevant adverse comment by September 10, 1998.

If relevant adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule did not take effect. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective October 13, 1998.

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.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

The final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Because small governments will not be significantly or uniquely impacted by this rule, the Agency is not required to develop a plan with regard to small governments.

D. Submission to Congress and the Comptroller General

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**. This rule is not a

''major rule'' as defined by 5 U.S.C. 804(2).

E. Petition for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1998. 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).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: July 29, 1998.

John P. DeVillars,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 et seq.

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraph (c)(39) to read as follows:

§ 52.1020 Identification of plan.

* * * * * *

(c) * * *

(39) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on June 30, 1994.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated June 30, 1994 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 117 of the Maine Department of Environmental Protection Regulations, ''Source Surveillance,'' effective in the State of Maine on May 9, 1994.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. In § 52.1031, Table 52.1031 is amended by adding a new entry following existing state citation ''117'' to read as follows:

§ 52.1031 EPA-approved Maine regulations

* * * * *

TABLE 52.1031—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020
*	*	*	*	*	*
117	Source Surveillance	4/27/94	8–11–98	[Insert FR citation from published date]	(c)(39)
*	*	*	*	*	*

[FR Doc. 98–21347 Filed 8–10–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6136–8]

RIN: 2060–AI07

Protection of Stratospheric Ozone: Halon Recycling and Recovery Equipment Certification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final determination.

SUMMARY: Today's action consists of EPA's determination that it is neither necessary nor appropriate under section 608(a)(2) of the Clean Air Act as amended in 1990 (CAA or ''Act'') to issue a proposed rule requiring the certification of recycling and recovery equipment for halons; and further, that it is neither necessary nor appropriate under section 608(a)(2) of the CAA to require that halons be removed only through the use of certified equipment. Halons are gaseous or easily vaporized halocarbons used primarily for fire and explosion protection and are listed as group II, Class I ozone-depleting substances (ODSs) under 40 CFR part 82, subpart A. Section 608 of the CAA directs EPA to issue regulations which reduce the use and emissions of ozone-depleting substances to the lowest achievable level and which maximize the recapture and recycling of such substances. In developing regulations concerning use, emissions and recycling, EPA considers both technological and economic factors. The objective of an equipment certification program, and associated provisions allowing the removal of halons only through the use of certified equipment, would be to verify that all recycling and recovery equipment sold was capable of minimizing emissions, and that such certified equipment was in fact used, thereby minimizing emissions during recycling and recovery activities. Research completed by EPA in association with this determination, however, suggests that the great majority of halon recovery and recycling equipment currently in use or on the market consists of highly efficient halon closed recovery systems achieving a minimum recovery efficiency of 98%. Entities which perform the vast majority of halon transfers employ these efficient units. Operations utilizing less efficient halon recycling and recovery equipment and methods are estimated to account for less than 1% of total annual halon emissions in the United States during recycling and recovery activities. With regard to halon emissions arising from the use of inefficient, non-closed halon recovery and recycling devices, sections 82.270(d) and (e) of an EPA rule issued March 5, 1998 (63 FR 11084), were intended to eliminate the use of such devices and restrict halon recovery and recycling equipment to the highly efficient category of closed recovery