approaches to emission reduction requirements adopted by Massachusetts.

Section 310 CMR 7.00 appendix B(4) is the portion of the program designated for emissions averaging, or bubbling. However, that portion of the regulation was not part of the February 9, 1994 SIP submittal. Section 310 CMR 7.00 appendix B(4) of the regulation has been reserved and is expected to be submitted in the coming months for inclusion into the Massachusetts SIP.

EPA Evaluation and Proposed Action

As submitted, 310 CMR 7.00 appendix B is approvable as a non-generic [1] Economic Incentive Program (EIP). This means that although these regulations provide the general requirements for applying for and implementing an approvable trade under the EIP guidance, the use of all Emission Reduction Credits (ERCs) must be made federally enforceable through a second step, such as the issuance of a federally enforceable permit or as a case-specific SIP revision. Due to a lack of specificity in the emission quantification, compliance assurance, and public participation procedures, these regulations do not qualify as a fully generic EIP for emissions banking and trading. Therefore, this approval does not provide Massachusetts with the authority to issue documents to make ERC generation or use federally enforceable. At a minimum, EPA will still need to review and concur on any documents which are issued by the DEP for ERC use.

In addition to case-specific SIP revisions, there are several available mechanisms for making State documents federally enforceable in the absence of a fully generic EIP. Since documents issued under any of these mechanisms would include public participation procedures, Region I would be able to ensure that replicable and enforceable procedures are incorporated as part of each trade. Other than case-specific SIP revisions, the following three mechanisms could be used for making State documents federally enforceable in the absence of a fully generic EIP. However, as indicated in 310 CMR 7.00 appendix B(3)(g), ERCs generated from the application of mobile source or demand-side management measures would need to be approved through the source-specific SIP revision process, to the extent the specific emissions quantification, compliance assurance, and public participation procedures have not already been approved by EPA as part of the SIP.

First, in the case where Massachusetts issues a preconstruction permit to the owner/operator of a facility seeking to generate and/or use ERCs as offsets under their SIP-approved New Source Review (NSR) program (310 CMR 7.00 appendix A), these banking and trading regulations would be sufficient for the State to set the necessary federally enforceable conditions. Second, at such time as Massachusetts has an EPA-approved title V operating permit program, the State could also use those permits at subject sources to make the necessary conditions of ERC generation or use federally enforceable. However, since Massachusetts does not yet have an approved title V operating permit program, this is not an option.

Alternatively, in the case where state operating permits are issued pursuant to a program which has been approved into the SIP as meeting EPA's June 28, 1989 guidance, "Requirements for the Preparation, Adoption, and Submittal of Implementation Plans" (54 FR 27274), the State could also use those permits to set the federally enforceable conditions for ERC generation or use. At the time Massachusetts proposed changes to 310 CMR 7.00 appendix B, they also proposed changes to 310 CMR 7.02: Plan Approval and Emission Limitations to allow the State to issue to existing sources permits which would meet the EPA's June 1989 guidance. However, since these changes have not been adopted by the State, this is not a viable option at this time.

One issue with the approval of 310 CMR 7.00 appendix B as an EIP framework concerns the provisions which appear to allow a source to accumulate and potentially use ERCs, during years other than the year in which the credits were generated (i.e., inter-temporal use of credits). Historically, EPA has only considered continuous streams of ERCs to be eligible for banking and use on a fixed tons per year basis. In the event that a portion of the continuous stream of credits was not used in a given year, that unused portion of total yearly credit was not normally allowed to be accumulated for use in later years. Similarly, where emission credits were generated by actions which produced only a limited stream of credits, such discrete ERCs were normally only considered surplus during the period of their generation.

As submitted, the Massachusetts' banking and trading regulations deal almost exclusively with the creation (i.e., banking) of ERCs. However, appendix B(3)(d)(2)(d) of 310 CMR 7.00 appears to allow ERCs generated from an action of limited duration (e.g., the use of natural gas instead of coal at a powerplant for one summer season), or the unused portion of ERCs generated from ongoing actions (e.g., reductions from the installation of control equipment), to be banked for use in any future year, including years other than the one in which the credit was generated. Appendix B (3)(d)(2)(d) also specifically states that the use of such accrued credits will be limited by the limits defined by 310 CMR 7.00, which include the requirement that reductions be surplus (i.e., not relied upon for any applicable attainment or reasonable further progress (RFP) milestone demonstration). Therefore, the question of whether accumulated reductions in emissions are surplus only arises with the use of such ERCs.

Under 310 CMR 7.00 appendix B, there are essentially two eligible uses of ERCs: to meet New Source Review (NSR) emissions offsetting requirements and to meet Reasonably Available Control Technology (RACT) limits. Currently, Massachusetts' NSR regulations explicitly require that offsetting credits be consistent with RFP. As for using ERCs to average between sources to meet RACT requirements, Massachusetts currently has no generic authority to allow emissions averaging. Therefore, in either case, the use of ERCs will still need to be made federally enforceable through a second step in the process which involves EPA review and concurrence. EPA's approval of any inter-temporal ERC trade will be predicated on the State documenting how such use of ERCs is consistent with the RFP and attainment plans and areawide RACT requirements applicable at that time. Therefore, since 310 CMR 7.00 appendix B deals almost exclusively with the creation (i.e., banking) of ERCs, and since this notice proposes only to approve 310 CMR 7.00 appendix B as a non-generic EIP, the credit accumulation provisions do not pose any contradiction to the requirements of the Clean Air Act.

Similarly, for the State to receive full approval of an emissions banking and trading EIP, including the generic authority to issue federally enforceable trading documents with inter-temporal banking and trading, they would need to meet an additional requirement to those

[1] EPA's Emission Trading Policy Statement (ETPS) promulgated on December 4, 1986, defines "generic rule" as a rule that assures that emissions trades otherwise requiring case-by-case SIP revisions under sections 110(j) and 110(a)(3) of the Clean Air Act will be evaluated under State procedures that are sufficiently replicable in operation to guarantee that emission limits produced under the rule will not interfere with the timely attainment and maintenance or jeopardize PSD increments or visibility (51 FR 43850).