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List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: October 23, 2007.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E7-21690 Filed 11-2-07; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2006-1018; A-1-FRL-8491-1]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Amendment to Massachusetts' State Implementation Plan for Transit System Improvements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision changes completion dates of delayed transit projects, provides interim deadlines for projects, maintains interim emission reduction offsets for delays in projects, modifies the project substitution process, revises the list of required transit projects, and expands public participation and oversight of the transit transportation control measure

projects. The intended effect of this action is to propose approval of specific named substitution projects to the State Implementation Plan's transportation control measure projects, and approve modifications to the delay and substitution procedures for transit projects. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before December 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2006-1018 by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail*: arnold.anne@epa.gov.

3. *Fax*: (617) 918-0047.

4. *Mail*: "Docket Identification Number EPA-R01-OAR-2006-1018", Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114-2023.

5. *Hand Delivery or Courier*: Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2006-1018. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov>, or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and

made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. 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 in <http://www.regulations.gov> or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, 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 to 4:30, excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the Bureau of Waste Prevention, Massachusetts Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114-2023, telephone number (617) 918-1668, fax number (617) 918-0668, e-mail cooke.donald@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us" and "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Summary of Changes to 310 CMR 7.00 and 7.36
- III. Results of EOT's Demonstration of Air Quality Emission Reductions

- IV. Criteria for Approving Amendments to the Transit System Improvements Regulation into the SIP
- V. Transportation Control Measure (TCM) Substitution and SAFETEA-LU
- VI. Proposed Action
- VII. Statutory and Executive Order Reviews

I. Background and Purpose

EPA approved the Massachusetts Transit System Improvements Regulation (the Regulation), 310 CMR 7.36 (effective December 6, 1991), into the Massachusetts State Implementation Plan (SIP) on October 4, 1994 (59 FR 50495—50498). The transit system improvement projects contained in the Regulation include transportation control measures deemed necessary to mitigate the air quality impacts of the Central Artery and Third Harbor Tunnel Project in Metropolitan Boston.

On December 13, 2006, the Massachusetts Department of Environmental Protection (MA DEP) submitted a revision to its SIP amending its Transit System Improvements Regulation. The revision consists of MA DEP's final amendments to 310 CMR 7.36, "Transit System Improvements," effective December 1, 2006. MA DEP held a hearing on the amendments to the Regulation on December 21, 2005. On June 1, 2007, MA DEP supplemented its SIP revision with a letter determining that Massachusetts Executive Office of Transportation (EOT) had met the requirements of 310 CMR 7.36 (8), Demonstration of Air Quality Emissions Reductions, along with EOT's air quality modeling analysis ("Description of Modeling Assumptions and Analysis Methodology for the State Implementation Plan Transit Commitment Projects Current and Proposed Substitutions," dated March 15, 2007). EOT held a public comment period on this supplemental material for a 45-day period commencing on January 2, 2007. The document was amended based on comments received and an additional two-week public comment period began on March 21, 2007, following posting in the "Environmental Monitor." DEP submitted EOT's responses to public comments received as part of the supplemental materials.

On August 22, 2007, we issued our determination that the Massachusetts SIP package is administratively and technically complete. In our completeness determination, we also highlighted EPA's interest in seeing that the transit projects are implemented in a timely manner and requested that MA DEP keep us apprised of the status of the replacement projects as they move forward. In addition, we specifically mentioned hearing recent reports of

potential delays in the Green Line extension project and encouraged Massachusetts Executive Office of Transportation (EOT) to address this issue on the record at the upcoming September 6, 2007 public meeting.

On September 6, 2007, the MA DEP held a public meeting to address EOT's annual status report on transit commitments. EOT presented the status of the uncompleted transit projects and took public comment. David Mohler, Acting Deputy Secretary for Planning, EOT, explained the Commonwealth's efforts in seeking Federal funds for the Green Line, which could delay the completion of the Green Line for up to two years. Mohler emphasized EOT's position to make up any time delay, and if a delay occurred, to propose mitigation projects and adequate emission offsets as required by the regulation. EOT also made available at the public meeting a September 4, 2007, letter from David Mohler to MA DEP's Acting Commissioner, Arlene O'Donnell, committing to accelerate the planning, design and environmental review and permitting of the project in order to meet the 2014 completion date.

II. Summary of Changes to 310 CMR 7.00 and 7.36

Listed below are the changes in Massachusetts Department of Environmental Protection's Air Pollution Control Regulations 310 CMR 7.00, "Statutory Authority; Legend; Preamble; Definitions," and 310 CMR 7.36, "U Transit System Improvements" which went into effect on December 1, 2006 at the state level. EPA is proposing approval of these changes as a SIP revision.

Definitions

The following definition of "Boston Metropolitan Planning Organization" (MPO) is added and included in 310 CMR 7.00: "BOSTON METROPOLITAN PLANNING ORGANIZATION means the organization designated for maintaining a continuing, cooperative, and comprehensive (3C) transportation planning process under Section 134 of the Federal Aid Highway Act and Section 5303 of the Federal Transit Act, as amended, in the Boston metropolitan region."

Revisions to the List of Required Projects

The Green Line Arborway Restoration, the Blue Line Connection from Bowdoin Station to the Red Line at Charles Station, and the Green Line extension to Ball Square/Tufts University, will be replaced by the Fairmont Line Project (construction to be completed and opened to full public

use by December 31, 2011), 1000 new park and ride parking spaces (construction to be completed and opened to full public use by December 31, 2011) and an enhanced Green Line Extension Project (construction to be completed and opened to full public use by December 31, 2014). The Green Line Arborway Restoration was originally assigned a completion date of December 31, 1997, with an extension to December 31, 2000 previously granted pursuant to the Regulation, and project emission offsets required to mitigate the delay after December 31, 2000 until project completion. The Blue Line connection and the Green Line extension to Ball Square/Tufts University were originally assigned a completion date of December 31, 2011.

The New Replacement/Substitution Projects

"The Fairmount Line Project." The Fairmount commuter rail line is approximately 9.2 miles long, running from South Station to Readville, passing through the communities of Dorchester, Roxbury and Mattapan. Fairmount Line improvements will consist of: Enhancements of existing stations including, without limitation, platform extensions, improved lighting and improved access; a new Four Corners Station plus a new station in each of the neighborhoods of Dorchester, Mattapan and Roxbury; and bridge upgrades and other measures to improve service and increase ridership.

"1000 new park and ride parking spaces." These 1000 new park and ride parking spaces are in addition to those required by 310 CMR 7.36(2)(c)3 and 310 CMR 7.36(2)(d), and will serve commuter transit facilities, within the 101 cities and towns constituting the Boston Metropolitan Planning Organization.

"The Green Line Extension Project." The Green Line extension consists of extending the Green Line from Lechmere Station to Medford Hillside and construction of a spur to Union Square.

"The Red Line/Blue Line Connector." The revision requires final design of the connection from the Blue Line at Government Center to the Red Line at Charles Station before December 31, 2011, but no longer commits to its construction.

Revised Deadlines

Old Colony Commuter Rail Extension Greenbush Line, originally assigned a completion date of December 31, 1996, must now be completed and open to full public use before December 31, 2007. Project emission offsets were required to

mitigate the delay of the Greenbush spur after December 31, 1999 until project completion.

Blue Line Platform Lengthening and Modernization, originally assigned a completion date of December 31, 1998, with an extension to December 31, 2008 previously granted pursuant to the Regulation, must now be completed and open to full public use before December 31, 2008. Project emission offsets were required to mitigate the delay after December 31, 2001 until project completion.

Project Interim Deadlines

MA DEP has added interim project deadlines for the Fairmount Line improvements, the Green Line extension to Medford Hillside, the Green Line Union Square spur, and the 1000 Park and Ride parking spaces. EPA believes these interim milestones, in combination with the EOT's annual reporting on the status of the transit commitments, will help keep the transit system improvements projects construction on schedule.

New Requirements Added To Address Potential Project Delays of the New Projects

If the Fairmount Line improvements, the Green Line extension to Medford Hillside, the Green Line Union Square spur, or 1000 Park and Ride spaces are delayed, interim air quality offset projects are required to be implemented. The revised regulation does not place a limit on the amount of time EOT may delay a project, as long as it obtains offsets for the delay.

EOT is required to petition MA DEP to delay a project, and the petition will undergo "public review" before MA DEP acts on the petition.

Substitution Criteria

Projects may be substituted after completion of specified interim project deadlines. The revised Regulation no longer requires a finding that the project to be replaced is "infeasible."

Substitution determinations require an EOT public meeting and a public comment period.

The proposed substitute project must achieve 110% of the emission reductions that would have been achieved by the original project to be replaced.

EOT must implement interim emission reduction offsets to address any delay in achieving the emission reductions that would have been achieved had all components of the original project been completed on time.

Project substitutions may proceed after MA DEP determines in writing that EOT has met the substitution provisions of the Regulation.

Potential Future Project Substitutions

The Green Line Extension may be substituted with transit projects in Boston, Cambridge, Somerville, or Medford.

The Fairmount Line project may be substituted with transit projects in Dorchester, Hyde Park, Mattapan, or Roxbury.

Public Process Requirements

EOT is required to conduct an annual public meeting to provide a thorough update and status report on each project and to disclose any need for potential or actual project delays and/or substitutions.

EOT is required to submit an annual certification to MA DEP with a commitment to complete and fund projects and disclose project delays/substitutions/interim offset measures to be implemented.

Development of Emission Reduction Baseline

MA DEP added a new Subsection 8 to provide substantive public comment on the air quality modeling for the Regulation and EOT's remodeling of the revised transit projects.

EOT must calculate baseline emission reductions by modeling the original three projects, the Green Line Arborway Restoration, the Blue Line-Red Line Connection, and the Green Line extension to Ball Square, and adding 10% to the total.

EOT is required to demonstrate that new projects will deliver the required baseline emission reductions. If the new projects do not deliver the baseline emission reductions, EOT is required to implement additional projects in the same geographic areas.

EOT is required to take public comment on the results of the emission analysis and respond to those comments.

Demonstration of Emission Reductions

When all projects required by 310 CMR 7.36 are substantially complete, EOT shall complete an analysis of the total air quality benefits of such projects. EOT shall perform such analysis in accordance with EPA requirements in effect at the time of the analysis.

III. Results of EOT's Demonstration of Air Quality Emission Reductions

MA DEP's supplemental SIP revision submitted to EPA on June 1, 2007,

contained MA DEP's determination that EOT had met the requirements of 310 CMR 7.36(8)(d) and (e) and that the "administrative record reasonably supports the results and conclusions of the report required pursuant to 310 CMR 7.36(8)(c)." Thus, MA DEP agreed that EOT has demonstrated that the new projects achieve at least 110% of the emissions reductions that would have been achieved by the projects being replaced.

In addition, the supplement included EOT's air quality modeling demonstration mandated by 310 CMR 7.36(8)(a) through (8)(e) entitled, "Description of Modeling Assumptions and Analysis Methodology for the State Implementation Plan Transit Commitment Projects Current and Proposed Substitutions March 15, 2007," prepared by the Boston MPO's Central Transportation Planning Staff for the Executive Office of Transportation Office of Transportation. These documents are part of the publicly available docket materials accessible for inspection electronically in the Federal Docket Management System at <http://www.regulations.gov>, Docket Number EPA-R01-OAR-2006-1018.

EOT's air quality analysis modeled the emissions reductions of: (1) The original SIP-approved package of projects; (2) the replacement/substitution package of projects; and (3) the no-build or baseline scenario. This analysis concluded that the substitution projects (Green Line to Union Square and Medford Hillside, Fairmount Line Improvements, and Additional Parking) results in reductions of 435 kilograms per day of Carbon Monoxide (CO), 11 kilograms per day of Nitrogen Oxides (NO_x), and 17 kilograms of Volatile Organic Compounds (VOC) over the no-build baseline. The package of transit projects are estimated to result in emission reductions in 2025 of 149% CO, 137.5% NO_x and 154% VOC of the original SIP-approved projects, which are in excess of the 110% emission reduction required by subsection (5)(f) of the amended transit system improvements regulation. For all three pollutants, CO, NO_x and VOC [MA DEP's regulations refers to hydrocarbon emissions (VOC) as non-methane hydrocarbons—NMHC], MA DEP's requirement of 110% threshold is met. Please see Table 1 "EOT Air Quality Analysis Comparison of Project Packages Benefits in the Year 2025," below.

TABLE 1.—EOT AIR QUALITY ANALYSIS COMPARISON OF PROJECT PACKAGES BENEFITS IN THE YEAR 2025

	Daily emission benefits in kilograms (kg.)		
	Carbon monoxide (CO)	Nitrogen oxides (NO _x)	Volatile organic compounds (VOC)
SIP Approved Projects (Package): Arborway Restoration, Green Line Extension to Ball Square/Tufts University, and Blue Line/Red Line Connection (Bowdoin Station to Charles Station)	292	8	11
SIP Approved Projects (Package) Plus Ten Percent	321.2	8.8	12.1
Replacement/Substitution Projects (Package): Green Line to Union Square and Medford Hillside, Fairmont Line Improvements, and Additional Parking	435	11	17

IV. Criteria for Approving Amendments to the Transit System Improvements Regulation Into the SIP

EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. An adequate SIP revision is one that meets the Clean Air Act's requirement under section 110(l) that a SIP revision must not interfere with attainment and maintenance of national ambient air quality standards (NAAQSs). The Commonwealth has flexibility to revise SIP-approved transportation control measures (TCMs), provided the revisions are consistent with attaining and maintaining compliance with the NAAQSs. In addition, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA-LU) section 6011(d) amended the Clean Air Act by adding a new section 176(c)(8) that establishes specific criteria and procedures for replacing TCMs in an existing approved SIP with new TCMs and adding TCMs to an approved SIP. As discussed below, MA DEP's Regulation does not need to comply with all elements of section 176(c)(8) to be approvable as a SIP revision, but it must not conflict with any of those elements.

The Federal executive policy on environmental justice is established by Executive Order (EO) 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," (59 FR 7629 (Feb. 16, 1994)). Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Here the Clean Air Act directs EPA to approve a SIP revision unless it does not meet the Act's requirements.

Although the Act does not provide EPA the authority to modify the Commonwealth's regulatory decision solely on the basis of environmental justice considerations, EPA continues to encourage EOT to consider environmental justice concerns when deciding the location of the additional Park and Ride spaces and the new stations along the Fairmount commuter rail line and the Green Line extension project. EPA also urges EOT and DEP to consider environmental justice concerns when deciding whether to meet project deadlines, to approve proposals for project delays, and to approve offset or substitute projects.

V. Transportation Control Measure (TCM) Substitution and SAFETEA-LU

Clean Air Act section 176(c)(8), added by SAFETEA-LU, establishes the procedures for ensuring that substitute TCMs provide equal or greater emissions reductions than the TCMs that are being replaced. It also establishes the process for EPA and state air agency concurrence on the substitution or addition of TCM projects. Finally, it ensures that the state and EPA maintain up-to-date information on the TCMs in approved SIPs so that the public is aware of the TCMs that are to be implemented. EPA and U.S. Department of Transportation (DOT) issued joint guidance on February 14, 2006, on the implementation of all of the Clean Air Act amendments made by SAFETEA-LU. This guidance clarified EPA and DOT expectations for how TCM substitutions and additions are to be carried out by state and local agencies. The guidance is available at <http://www.epa.gov/otaq/stateresources/transconf/420b06901.pdf>.¹

¹ EPA has proposed regulations to implement SAFETEA-LU, but specifically declined to propose regulations addressing section 176(c)(8), finding that the statute is already sufficiently detailed and that the EPA/DOT guidance would address

As explained in the guidance, section 176(c)(8) applies directly to any TCM substitution made in a SIP, whether or not the SIP already includes a substitution mechanism designed by a state and approved by EPA. The section does not eliminate the requirement to comply with any such substitution procedures in a SIP, even if the state includes requirements that go beyond the minimum elements required under section 176(c)(8). Correspondingly, complying with the substitution process in the SIP does not eliminate the requirement to meet all the elements of the process laid out in section 176(c)(8). In the unlikely event there is a conflict between section 176(c)(8) and the SIP substitution process, the substitution must comply with section 176(c)(8). See EPA/DOT Guidance at pages 20–21, section 5.2.

Therefore, for the purposes of this SIP approval, EPA must determine whether any element of the MA DEP Transit System Improvements Regulation conflicts with section 176(c)(8). EPA sees no conflict between the requirements of the MA DEP Regulation and section 176(c)(8). There are provisions in the MA DEP Regulation that go beyond the requirements of section 176(c)(8), such as the requirement to demonstrate that the substitution achieves an extra 10% emissions reduction beyond that achieved by the projects being replaced or the specific geographic limits on substitute projects. But EPA has found no instance in which complying with the MA DEP regulation would result in a conflict with or violate any corresponding requirement of section 176(c)(8).

In addition, EPA must work with MA DEP to ensure that any requirements in section 176(c)(8) that are not addressed in its Regulation will be met. There appear to be two requirements in

questions that might arise about TCM substitutions. (72 FR 24472, 24485–24486; May 2, 2007).

section 176(c)(8) that are not provided for in the MA DEP Regulation.

First, in addition to the state air pollution control agency, section 176(c)(8)(A)(v) specifically requires both the MPO and EPA to concur with the equivalency of the substitute TCM before the substitution can take effect. On May 3, 2007, Massachusetts Secretary of Transportation, Bernard Cohen, submitted EOT's air quality modeling analysis for the substitution projects to MA DEP. This analysis demonstrates that the required emission reductions set forth in section 7.36(8) of the Regulation will be achieved by the new projects. All that remains is for the MPO to submit evidence to EPA that the MPO concurs in that analysis. For EPA's concurrence on the substitutions included in this SIP revision, the Agency will send a letter, contemporaneous with our final action on this SIP revision, to document EPA's concurrence on the substitutions being approved with the revisions to MA DEP's regulation.² For any future substitutions, EPA will work with MA DEP to coordinate EPA's review with DEP's review of the proposed substitution so that the substitution can take effect as a matter of federal law if both DEP and EPA approve it.

Second, section 176(c)(8) now requires all substitutions of TCM's to be submitted to EPA for incorporation into the codification of the SIP. For the purposes of the substitutions provided for in the revisions of the Regulation, EPA is proposing that any codification that results from our final action on this SIP revision will address this requirement. For future substitutions, although the Regulation does not specifically require MA DEP to forward to EPA the results of MA DEP's substitution determinations, it should be a routine matter for MA DEP to submit any substitution it approves under section 7.36(5)(h) so that the federally approved SIP can accurately

reflect the current requirements under the Regulation.

EPA's review of Massachusetts' SIP Revision indicates the amendments to the SIP-approved Massachusetts Transit System Improvements, with substitution projects and changes to projects timelines, adequately demonstrate continued emission reductions and do not relax current provisions in the SIP. EPA is proposing to approve the Massachusetts SIP revision for Transit System Improvements, which was submitted on December 13, 2006, and supplemented on June 1, 2007.³ EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

VI. Proposed Action

EPA is proposing to approve Massachusetts' amendments to Transit System Improvements Regulation, 310 CMR 7.36, and Definition Regulation, 310 CMR 7.00 (which were filed with the Massachusetts Secretary of State on November 16, 2006 and were effective on December 1, 2006,) as a revision to the Massachusetts SIP. EPA finds that the transit measures in the revised transit system improvements regulation remain directionally sound and that all proposed substitution projects identified in the Regulation will collectively contribute to achieving the national ambient air quality standard for ozone and maintaining the carbon monoxide standard, thereby satisfying requirements set forth in Section 110(l) of the Clean Air Act.

VII. Statutory and Executive Order Reviews

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. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). 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 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), or Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," because it approves a state rule implementing a Federal standard.

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. This rule does not impose an information collection burden under the provisions of the

² Both the authority to approve this SIP revision and the authority to concur on TCM substitutions under section 176(c)(8) have been delegated to the Regional Administrator. See EPA Delegations of Authority Nos. 7-10 (Approval/Disapproval of State Implementation Plans) and 7-158 (Transportation Control Measure Substitutions and Additions). Note that while EPA is using an informal rulemaking to act on this proposed SIP revision, we are not interpreting section 176(c)(8)(A)(v) to require a rulemaking to accomplish EPA's concurrence. See EPA/DOT Guidance at page 27, section 5.17. Indeed, section 176(c)(8) was added to the Act precisely to avoid the need for a full SIP revision to implement TCM substitutions in the routine case. In this instance, where the TCM substitution is occurring as part of a proposed SIP revision, EPA is simply acting on the SIP in a rulemaking under section 110 of the Act contemporaneous with any concurrence on the substitution in a letter to MA DEP under section 176(c)(8) of the Act.

³ In addition, EPA is planning to concur pursuant to section 176(c)(8) that the substitute TCM's achieve equivalent or greater emission reductions than the measures being replaced.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 25, 2007.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E7-21691 Filed 11-2-07; 8:45 am]

BILLING CODE 6560-50-P