

**Federal Register.** Through this Notice, the Coast Guard informs the owners and operators of facilities subject to 33 CFR 105.115(e) located within COTP Zones Charleston, Long Island Sound, Jacksonville, and Savannah that the deadline for their compliance with Coast Guard and TSA TWIC requirements is December 1, 2008.

The TSA and Coast Guard have determined that this date provides sufficient time for the estimated population required to obtain TWICs for these COTP Zones to enroll and for TSA to complete the necessary security threat assessments for those enrollment applications. We strongly encourage persons requiring unescorted access to facilities regulated by 33 CFR part 105 and located in one of these COTP Zones to enroll for their TWIC as soon as possible, if they haven't already. Additionally, we note that the TWIC Final Rule advises owners and operators of MTSA regulated facilities of their responsibility to notify employees of the TWIC requirements. Specifically, 33 CFR 105.200(b)(14) requires owners or operators of MTSA regulated facilities to "[i]nform facility personnel of their responsibility to apply for and maintain a TWIC, including the deadlines and methods for such applications." Information on enrollment procedures, as well as a link to the pre-enrollment Web site (which will also enable an applicant to make an appointment for enrollment), may be found at <https://twicprogram.tsa.dhs.gov/TWICWebApp/>.

You may also visit our Web site at [homeport.uscg.mil/twic](http://homeport.uscg.mil/twic) for a framework showing expected future compliance dates by COTP Zone. This list is subject to change; changes in expected future compliance dates will appear on that Web site. The exact compliance date for COTP Zones will also be announced in the **Federal Register** at least 90 days in advance.

Dated: July 25, 2008.

**Mark P. O'Malley,**

*Captain, U.S. Coast Guard, Chief, Ports and Facilities Activities.*

[FR Doc. E8-17557 Filed 7-30-08; 8:45 am]

**BILLING CODE 4910-15-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2006-1018; A-1-FRL-8691-5]

#### 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:** Final rule.

**SUMMARY:** The EPA is approving 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 requirements for interim emission reduction offsets in the event a project becomes delayed, modifies the project substitution process, revises the list of required transit projects, and expands public participation in and oversight of the projects. The intended effect of this action is to substitute specific transit projects and 1,000 park and ride spaces to replace certain transit projects currently approved into the SIP, and approve modifications to the delay and substitution procedures for transit projects. This action is being taken under the Clean Air Act.

**DATES:** *Effective Date:* This rule is effective on July 31, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification Number EPA-R01-OAR-2006-1018. All documents in the docket are listed on the <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 <http://www.regulations.gov> or in hard copy at the 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 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 Bureau of Waste Prevention, 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](mailto:cooke.donald@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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

Organization of this document: We are providing the following outline to aid in locating information in this preamble.

- I. Background and Purpose
- II. Response to Comments
- III. Compliance With Clean Air Act TCM Substitution Requirements
- IV. Final Action
- V. Statutory and Executive Order Reviews

#### I. Background and Purpose

On November 5, 2007 (72 FR 62422-62427), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed approval of Massachusetts' amendments to its 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 proposed to find 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 (CAA or Act).

On December 13, 2006, the Massachusetts Department of Environmental Protection (MA DEP) submitted its formal SIP revision 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 the 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 EOT to address this issue on the record at its upcoming September 6, 2007 public status report 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 plan 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.

On January 4, 2008, EOT submitted copies of its "State Implementation Plan—Transit Commitments, 2007

Annual Status Report, Agency Responses to Public Comments" to MA DEP and EPA. EOT's submittal provided a summary of and responses to public comments, a written certification that the public process requirements were met, and a written certification that complete information was provided on any actual or known project delays, project substitutions, and interim offsets. MA DEP determined that EOT met the public process and other requirements of 310 CMR 7.36(7)(d) by letter on March 4, 2008.

The Arborway Restoration, the Blue Line/Red Line connection, and the Green Line extension to Ball Square/Tufts University which were approved into the Massachusetts SIP on October 4, 1994 (59 FR 50495–50498), will be substituted with the Fairmount Line commuter rail improvements, 1,000 new park and ride parking spaces (serving MBTA transit and commuter rail in the Metropolitan Boston Area), and the Green Line transit line extension to Medford Hillside with a spur to Union Square. Air quality modeling demonstrates that the substitution projects will achieve a minimum of 110% of the emissions reductions that would have been achieved if the original projects had been built. In addition to the substitution of transit projects, EPA is today approving the other specific requirements of Massachusetts' amendments to the Transit System Improvements Regulation. The rationale for EPA's proposed action to approve those amendments is explained in the NPR and will not be restated here.

## II. Response to Comments

EPA received twenty-three public comments on our proposal to amend Massachusetts' Transit System Improvements Regulation (Transit Regulation). Copies of the public comments have been placed in the public docket without change and are available online at [www.regulations.gov](http://www.regulations.gov), docket number EPA–R01–OAR–2006–1018, document number EPA–R01–OAR–2006–1018–0022 through EPA–R01–OAR–2006–1018–0044. EPA's full Technical Support Document—Response to Comments is also available in the public docket, as well as at the Regional Office.

*Comment:* A number of commenters supported the transit system improvement projects. Six commenters supported all of the transit system improvement projects, three commenters expressed strong support for the Fairmount Line; two commenters supported the Green Line Extension; and one commenter supported the

Design of Red Line/Blue Line Connector.

*EPA Response:* EPA acknowledges the commenters' support for the transit system improvement projects.

*Comment:* Three commenters wanted the transit system improvement projects originally approved into the SIP in 1994 to be implemented without any substitutions or changes.

*EPA Response:* As a threshold matter, EPA notes that nothing in our approval of these revisions to the Transit Regulation into the SIP in any way prevents the Commonwealth from completing the projects originally included in the regulation as EPA approved it in 1994. Although the projects are being dropped from the SIP-approved Transit Regulation, if any of the projects have merit, the Commonwealth's transportation planning process may include them in the statewide transportation improvement program. The only question before EPA is whether Massachusetts has the option of revising the set of projects to which it will attach the specific requirements under the CAA that come when transit measures are specifically required in a SIP.

EPA does not underestimate the importance of a state's decision to drop transit projects from a SIP. EPA's approval of this SIP revision will have the effect of eliminating the requirement under the CAA to complete the projects dropped from the regulation. That requirement allowed direct enforcement of the project deadlines pursuant to state law and sections 113 or 304 of the Act. The SIP mandate for these projects also required the Commonwealth to demonstrate in the conformity process under section 176(c) of the Act that Massachusetts' transportation plan and transportation improvement program supported and would not interfere with completion of those projects. EPA agrees that these compliance mechanisms provide an incentive to complete SIP-approved transit projects.

But precisely because the decision to incorporate transit projects into a SIP is a significant commitment, subject to compliance mechanisms under the Act, a state should only include in its SIP those transit projects to which it is clearly committed. And the state is in the best position to determine the mix of transit measures that best meets the state's transit and air quality goals and that merits this high level of commitment. Accordingly, the Act assigns to EPA a limited role in reviewing a state's choice of transit measures. Essentially, EPA is required to approve a SIP revision if it meets the basic requirements of the Act, most

importantly in this case that the substitute transit projects will achieve equivalent or greater emissions reductions than the projects to be replaced. See CAA section 176(c)(8)(A)(i).

Below in Table 1 is a summary of EOT's March 2007 Modeling Analysis for daily air quality emission benefits from the original 1994 SIP-approved transit system improvement projects, as well as the new transit system improvement projects. EPA has

reviewed the modeling analysis report and concurs in the air quality benefits attributed to the transit system improvement projects. EPA addresses EOT's modeling analysis and air quality benefits in several of EPA's responses to comments 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 <sub>x</sub> )	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

The action before EPA is to approve or reject the Commonwealth's transit project substitution as part of the Commonwealth's revision to its Transit System Improvements regulations 310 CMR 7.36. Approval of the changes to the Transit System Improvements regulation including the substitute transit projects into the SIP extends federal-enforcement to the design, construction and in most cases operation of the transit projects. The fact that a project is not specifically approved into a SIP does not affect the Commonwealth's ability to include a transit project in its transportation plan process, seek future federal-funding or undertake a specific transit as a state initiative funded by State, City, public or private funding.

Indeed, outside the context of the Act's SIP process, there are several signs of activity in connection with the projects or project areas that will no longer be subject to a SIP mandate. On November 15, 2007, Ian A. Bowles, Secretary of Massachusetts Executive Office of Energy and Environmental Affairs, determined that the Red Line/Blue Line Connector (EEA Number 14101) requires the preparation of a mandatory Environmental Impact Report (EIR) initiating the Commonwealth's Massachusetts Environmental Policy Act for the proposed project. And in the Transit Settlement Agreement that resolved the case *Conservation Law Foundation v. Romney et al.*, Civil Action No. 05–10487–NG, is the following statement: “The parties agree that they will work in good faith with the City of Boston and other relevant parties to develop and agree upon recommended public transportation improvements to the

Arborway corridor over the course of the next year. All Parties agree to commit to and participate in a public process to identify and recommend any agreed upon improvements for the Arborway Corridor.” (The settlement agreement dated November 28, 2006 is available at [http://www.clf.org/uploadedFiles/Transit\\_settlement\\_signed\\_Jan2007.pdf](http://www.clf.org/uploadedFiles/Transit_settlement_signed_Jan2007.pdf).) EPA encourages all parties involved to fully implement this agreement.

*Comment:* Two commenters requested EPA reject EOT's request to remove the Arborway project from the SIP.

*EPA Response:* The Commonwealth has flexibility to revise SIP-approved transportation control measures (TCMs), provided the revisions are consistent with attaining and maintaining compliance with the national ambient air quality standards (NAAQSs). This flexibility to substitute projects follows the intent of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU). Section 6011(d) of SAFETEA–LU 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.

The action before EPA is to approve or reject the Commonwealth's transit project substitution as part of the Commonwealth's revision to its Transit System Improvements regulation 310 CMR 7.36. Under the Clean Air Act, the EPA 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)(3); 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. Here, DEP's SIP submission meets all the requirements of the Act, specifically the elements in section 176(c)(8) for substituting TCMs, including a demonstration that the new TCMs achieve emissions reductions equivalent to the projects being substituted.

*Comment:* Three commenters objected to the substitution of the Red Line/Blue Line Connector with a commitment only to design the connector but dropping the SIP commitment to construct the project. Four commenters supported the construction of the Red Line/Blue Line Connector and outlined benefits of constructing and operating the Red Line/Blue Line Connector.

*EPA Response:* EPA is aware of the merits and benefits of the operation of the Red Line/Blue Line Connector. EPA acknowledges the commenters' support for construction of the Red Line Blue Line Connector by 2014. However, the Commonwealth of Massachusetts has taken advantage of the flexibility provided under the Clean Air Act to revise SIP-approved TCMs, provided the revisions are consistent with attaining and maintaining compliance with the NAAQSs. Here, the Commonwealth has decided to drop the commitment to construct the Connector as part of a larger package of substitute projects designed to achieve an equivalent emission reduction. Again, this flexibility to substitute projects follows the requirements of the new Clean Air Act 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.

*Comment:* Eight commenters wanted EPA to enforce the transit system improvement project deadlines. One commenter supported a two year delay of the Medford Green Line Extension, asserting that completion of the transit project by 2014 was optimistic.

*EPA Response:* EPA concurs in the need for an enforceable deadline for the transit system improvement projects. EPA's approval of Massachusetts' Transit System Improvements regulation into the SIP will make the design, construction and operation deadlines in the Commonwealth's regulation federally-enforceable. In addition, transportation air quality conformity determinations required by section 176(c) of the Clean Air Act will require the Boston Metropolitan Planning Organization as well as the U.S. Department of Transportation to make a positive finding that all SIP-approved transportation control measures are being implemented in a timely manner and in accordance with established SIP deadlines (40 CFR 93.113) prior to approving the long range transportation plans and transportation improvement programs for Eastern Massachusetts.

EPA notes that in at least one respect, the compliance deadlines provided for in this new version of 310 CMR 7.36 are more firm than the deadlines in the version EPA approved in 1994. The original "Project Delays and Project Deadline Extensions," (310 CMR 7.36 (3)) previously approved into the SIP allowing up to three years delay in project completion has been removed.

In further support of the 2014 completion date for the Green Line Extension, the Massachusetts Executive Office of Transportation and Public Works (EOTPW) has committed to make up delays in the Green Line Extension Project, associated with seeking federal funding and addressing federal requirements, to the maximum extent possible.

*Comment:* Four commenters requested enhancements to the transit system improvement projects. One Commenter raised concerns with a transit system improvement project's impact on transportation, environment, social and economic impacts and lack of community involvement. Two commenters wanted alternatives to the Green Line extension to be evaluated, while another commenter wanted more specificity in the broad terms of the regulation providing for the Green Line extension terminus station.

*EPA Response:* EPA acknowledges the commenters' support for the transit

system improvement projects. EPA must accept the transit system improvement projects as presented, or reject the Transit Project substitutions, based on the Act's criteria established for approving SIPs (i.e., substitution projects must provide for equivalent emissions reductions in the same time frame). EPA has no authority to dictate specific enhancements to any of the proposed transit project substitutions. However, EPA believes the submitted projects could be enhanced during the public participation process associated with the Commonwealth's state environmental process and design of the transit measure.

The action before EPA is to approve or reject the Commonwealth's transit project substitution as part of the Commonwealth's revision to its Transit System Improvements regulation 310 CMR 7.36. The concerns raised by the commenters regarding transportation, environmental, social and economic impacts of the Green Line Extension project should be addressed and mitigated during the Commonwealth's state environmental process. See MGL c. 30 § 61–62 and regulations, 301 CMR 11.00. And should the Green Line Expansion Project receive federal funding, these concerns may also be addressed under any future federal environmental review and public participation process conducted in accordance with the National Environmental Policy Act. 42 U.S.C. 4321–4370f.

*Comment:* Two commenters wanted Massachusetts EOT to specify the location of the 1,000 park and ride locations, and identify an implementation schedule.

*EPA Response:* The Park and Ride provisions in section 7.36 provide that before December 31, 2011, construction shall be completed and 1,000 new park and ride parking spaces opened to full public use serving commuter transit facilities within the 101 cities and towns constituting the Boston Metropolitan Planning Organization. These park and ride facilities are subject to "Project Interim Deadlines," established under 310 CMR 7.36(3), which identifies timeframes for hiring a design consultant, completing a conceptual design, filing an Environmental Notification Form (ENF) with MEPA, completing the Environmental Impact Report, completing final design, applying for necessary permits and funding, and proceeding to construction. Therefore, there is still considerable work to be done before the specific location of these lots can be determined.

EPA agrees with the commenters that it is impossible to fully assess the emissions reductions that these 1,000 spaces will accomplish without knowing where they will be located. And EPA recognizes that the individual transit substitution projects will undergo project refinement as these projects proceed through environmental evaluation, public participation and project design. Nevertheless, EPA has concluded that the uncertainty about the location of these parking spaces does not prevent EPA from approving the entire package of transit project substitutions. First, the package of new transit projects demonstrates equivalent emissions reductions to the substituted projects even if one were to eliminate entirely any credit for the lots. Therefore, EPA does not believe that EOT's inability to specify the location of these lots provides EPA a basis to disapprove this SIP revision. Second, EPA has reviewed the assumptions EOT made about the park and ride lots in modeling their emissions impact. EPA agrees that EOT made reasonably conservative assumptions in assigning any emissions reductions value to the lots.

*Comment:* Four commenters repeated modeling questions and concerns previously addressed through the Commonwealth's public participation process.

*EPA Response:* These questions and concerns were raised during the Commonwealth's approval of the revised Transit System Improvements regulations. Based on EPA's review of the Commonwealth's Response to Comments as well as EOT's Response to Public Comments identified during the public participation process on the Transit Commitments 2007 Annual Status Report, EPA believes the commenters' concerns have been adequately addressed.

The March 15, 2007, "Description of Modeling Assumptions and Analysis Methodology for the State Implementation Plan Transit Commitment Projects Current and Proposed Substitutions," prepared by the Central Transportation Planning Staff is consistent with methodology and assumptions used in developing the SIP and developing the long range transportation plans and transportation improvement program. It is also consistent with the methodology and assumptions used in the transportation conformity process to determine that transportation planning is consistent with the air quality plan for the SIP. EPA recognizes that the transit substitution projects will continuously undergo refinement as they proceed

through the environmental development phase and project design phase; however, EPA has determined the current project delineation to be sufficient in defining the project and for air quality evaluation.

*Comment:* One of the commenters submitted a number of modeling issues regarding the Green Line Arborway Restoration Project that were previously submitted during the Commonwealth's public participation process.

*EPA Response:* These Arborway modeling concerns were addressed in a June 27, 2005 Central Transportation Planning Staff memorandum from Karl Quackenbush and Scott Peterson to Dennis DiZoglio and Joe Cosgrove of the Massachusetts Bay Transit Authority, as well as addressed in EOT's "Summary of Comments Received on Modeling Analysis for Proposed Substitute State Implementation Plan Transit Projects and Agency Responses" dated May 3, 2007.

EPA concurs with the Commonwealth's modeling to evaluate air quality impacts associated with the original 1994 SIP-approved transit improvement projects and the proposed transit system improvement substitution projects. EPA did not assign or grant specific emission reduction credit to the 1994 SIP-approved projects, so to model the original projects and new substitution projects on an equal basis is the only fair way to evaluate potential air quality emission benefits from the transit improvement projects.

After review of the transportation and air quality modeling submitted as part of the SIP revision package, EPA has determined that the modeling is consistent with methodology and assumptions used in developing the SIP, consistent with developing the long range transportation plans and transportation improvement programs, as well as consistent with the methodology and assumptions used in the transportation conformity process to determine that transportation planning is consistent with the air quality planning for the SIP. See March 2007 re-evaluation submitted to EPA June 1, 2007, conducted to satisfy subsection (8) "Determination of Air Quality Emission Reductions" of the Transit System Improvements regulation, 310 CMR 7.36; CTPS's March 15, 2007 "Description of Modeling Assumptions and Analysis Methodology for the State Implementation Plan Transit Commitment Projects Current and Proposed Substitutions"; CTPS's June 16, 2005 Memorandum on "SIP Transit Modeling Assumptions"; and CTPS Memorandum dated June 27, 2005 on "Responses to Arborway Comments."

EPA has evaluated the submitted SIP revision package, including Central Transportation Planning Staff's March 15, 2007 "Description of Modeling Assumptions and Analysis Methodology for the State Implementation Plan Transit Commitment Projects Current and Proposed Substitutions." EPA independently concurs with the Massachusetts Department of Environmental Protection's June 1, 2007, determination that the emission reductions associated with the transit improvement projects in the revised State Regulation 310 CMR 7.36 "Transit System Improvements" will achieve in excess of the requirement in the state regulations that the substitute projects must achieve an emissions reduction of at least 110 percent of the reductions that would be expected from eliminated projects. As presented in Table 1, above, the reductions expected from the new projects when compared to the original SIP-approved projects as a percentage are for volatile organic compounds 154%, nitrogen oxides 137.5%, and carbon monoxide 149%.

*Comment:* Five commenters expressed their belief that there were no real substitutions for the Green Line Extension project. The commenters did not want further substitutions, and wanted air quality benefits to remain in the proposed Green Line Extension project area which they assert is an environmental justice area.

*EPA Response:* The Transit System Improvements Regulation provides for substitution of this project at 310 CMR 7.36(5) should the Commonwealth wish to take advantage of this flexibility in its regulation in the future. This substitution procedure for the Green Line Extension requires Massachusetts EOT to:

1. Identify the reasons for seeking a project substitution;
2. Conduct a public participation process for the substitution process;
3. Achieve interim emission reduction offsets of non-methane hydrocarbons, carbon monoxide, and nitrogen oxides;
4. Comply with original project interim deadlines;
5. Prioritize funding in the long range transportation plan and transportation improvement program of the Boston Metropolitan Planning Organization (MPO);
6. Require substitute project(s) that enhance or improve existing public transit service, or provide new transit service within the municipalities of Boston, Cambridge, Somerville, and Medford;
7. Demonstrate that the proposed substitute project will achieve 110% of the emission reductions of that would

have been achieved had all components of the original project been completed; and to require that the Massachusetts Department of Environmental Protection determine in writing whether the substitution requirements of 310 CMR 7.36(5) have been met and whether the administrative record reasonably supports EOT's substitution determination.

Finally, any future substitution would have to meet the requirements of CAA section 176(c)(8), which governs substitution of transportation control measures in a SIP. In addition to concurrence from the state air pollution control agency as provided by the substitution provision of the state regulation, CAA section 176(c)(8) also requires formal concurrence by the metropolitan planning organization and the EPA New England Regional Administrator to adopt substitute or additional control measures into the SIP. The requirements in the CAA overlap substantially with the requirements in the new section 7.36. Indeed, section 7.36 sets a higher hurdle for emissions reductions than the Act, requiring not just mere equivalency, but reductions of at least 110% compared with the substituted projects.

With respect to a Green Line Extension substitution transit project trading off air quality benefits with other neighborhoods, the regulations define the geographic area of Boston, Cambridge, Somerville, and Medford for Green Line Extension substitution transit projects. This delineation is more restrictive than how the CAA requires EPA to evaluate emissions reductions in an ozone nonattainment area. As long as the emissions reductions come from within the applicable nonattainment area, in this case Eastern Massachusetts, they would qualify under the federal CAA. Here again, the state requirement in section 7.36 sets a higher bar by restricting the geographic area for an allowed substitution to only four municipalities within the Eastern Massachusetts nonattainment area.

*Comment:* One commenter raised the issue of timely implementation of TCMs adopted into the SIP.

*EPA Response:* EPA believes the Transit System Improvements regulation, with its defined project deadlines, interim project deadlines, and annual public reporting of update and status of SIP-approved TCMs, (which is open to public participation and requires a written determination by Massachusetts Department of Environmental Protection whether the public process and other requirements of 310 CMR 7.36(7) "Public Process

Requirements," were met) will assist in completing the SIP-approved TCMs on time.

Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with ("conform to") the purpose of the SIP. EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP. One criterion established at 40 CFR 93.113 is that all SIP-approved transportation control measures are being implemented in a timely manner and in accordance with established SIP deadlines. EPA believes the conformity process will ensure the timely implementation of these TCMs.

If a SIP-approved TCM identified in the transportation improvement program does fall behind schedule, a positive conformity determination can still be made in accordance with 40 CFR 93.113 if:

(1) \* \* \* The MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the transportation improvement program (TIP) cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding intended for air quality improvement projects, e.g., the Congestion Mitigation and Air Quality Improvement Program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

See 40 CFR 93.113(c).

*Comment:* Two commenters expressed concern that past transportation air quality conformity evaluations did not adequately address timely implementation of TCMs.

*EPA Response:* EPA is finalizing an action to approve a TCM substitution and revisions to the Massachusetts Transit System Improvements regulation. EPA is not re-evaluating past transportation conformity determinations. The timely implementation of the substitute TCMs

will be evaluated in future transportation conformity determinations to ensure that the requirements of Clean Air Act section 176(c)(2)(B) and 176(c)(3)(A)(ii) and the transportation conformity rule (49 CFR 93.113) are satisfied.

*Comment:* A commenter claimed that the air quality benefit associated with the substituted transit projects ignores the fact that the 1990 Conservation Law Foundation (CLF) Agreement and EPA intervention were intended to complement the parking restrictions in and near downtown Boston.

*EPA Response:* While the metropolitan Boston parking freezes complement traffic reduction strategies, the approval of the proposed transit improvement substitution projects is independent of the parking freezes, in the sense that nothing in the Act, including section 176(c)(8), requires EPA to link one set of TCMs with another. Admittedly, if the success of the state's proffered TCM substitutions relied heavily on the enforcement of TCMs that the state was not prepared to make part of the SIP, EPA would need to consider whether it could credit the substitute TCMs with the level of reduction the state was assuming from their combined effect with the TCMs outside the SIP. Here, however, the relevant parking freezes are part of the SIP, and DEP has not abandoned the use of parking freeze requirements as part of the strategy included in its SIP. Therefore that question is not before EPA.

EPA has approved Parking Freezes for Cambridge, Downtown Boston, South Boston, East Boston and Logan Airport. Since the 1994 adoption of the transit system improvement projects into the SIP, EPA has approved the South Boston Parking Freeze and amended the East Boston/Logan Parking Freeze.

On October 15, 1996, EPA approved the South Boston Parking Freeze SIP Amendment as a revision to the Massachusetts SIP (61 FR 53628). Massachusetts Air Pollution Control Regulation 310 CMR 7.33 entitled "City of Boston/South Boston Parking Freeze," established and requires the Boston Air Pollution Control Commission (BAPCC) and the Massachusetts Port Authority (MassPort) to control the growth of parking spaces in the South Boston neighborhood of Boston. The effect of controlling parking growth is anticipated to be a decrease in vehicle miles traveled (VMT), thereby holding automobile usage to levels within the practical capacity of the local street network.

On March 12, 2001, EPA approved revisions to the Massachusetts Port Authority/Logan Airport Parking Freeze, 310 CMR 7.30, and City of Boston/East Boston Parking Freeze, 310 CMR 7.31, into the Massachusetts SIP (66 FR 14318). The revisions allow the Commonwealth to automatically approve the transfer of parking spaces from the East Boston Parking Freeze to the Logan Parking Freeze provided the total parking space inventory number for the Logan Parking Freeze remains at or below 21,790 parking spaces. Future modifications in the parking freeze inventories for the Logan Airport and East Boston Parking Freezes will be regulated by the Commonwealth's revisions to Massachusetts State Regulations 310 CMR 7.30 and 310 CMR 7.31.

*Comment:* A commenter stated that the SIP substitution proposal shifts the responsibility to enforce the Environmental Justice Executive Order from EPA, the Federal agency required to comply with the Executive Order, to the state. Another commenter identified Jamaica Plain, served by the Green Line Arborway Restoration Project, as an environmental justice neighborhood with a high asthma hospitalization rate among children under age 5 (11.1 per 1,000).

*EPA Response:* It is not this SIP revision, but rather the structure of the CAA as Congress designed it, that rests consideration of environmental justice issues here primarily with the state. 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)(3); 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 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 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," (59 FR 7629, February 16, 1994).

The Federal executive policy on environmental justice is established by Executive Order 12898. 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 and when implementing public transportation improvements to the Arborway corridor promised in the Transit Settlement Agreement that resolved the case *Conservation Law Foundation v. Romney et al.*, Civil Action No. 05-10487-NG. EPA believes the transit improvement substitution projects can be enhanced and additional consideration be given to minority populations and low-income populations during the public participation process associated with the environmental evaluation phase and engineering design phase of the transit measures. 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.

*Comment:* One commenter identified the Commonwealth's transit substitutions as contrary to the Commonwealth's financial interests and claimed that restoring the Arborway Green Line would result in significant operating cost savings. Another commenter questioned whether the Commonwealth had accurately compared the relative costs of constructing and operating the Red-Blue Line connector with the proposed substitute projects.

*EPA Response:* The CAA assigns to the state the responsibility for assessing the cost implications of SIP measures. Indeed, EPA has no authority to disapprove a SIP revision solely because the Agency might disagree with the cost-effectiveness of a state's chosen control strategy. See *Union Electric Co. v. EPA*, 427 U.S. 246 (1976), rehearing denied 429 U.S. 873 (1976). Massachusetts EOT's position in responding to this issue during the state

public participation process is that the restoration of Green Line Arborway service is not a cost-effective way to achieve the desired transportation and air quality benefits. Correspondingly, the CAA provides EPA no basis for disapproving this SIP revision even if EPA did not agree with the Commonwealth's weighing of the costs of the Red-Blue Line connector with the substitute projects.

*Comment:* Two commenters stated that particulate matter impacts are particularly harmful and expressed concern about the particulate matter and other emissions from diesel trains used on the Fairmount/Indigo Line.

*EPA Response:* The Massachusetts transit system improvement projects were originally approved into the SIP in 1994 as control strategies for carbon monoxide and ozone (control of precursors volatile organic compounds and nitrogen oxides), but no emission credits were assigned to these projects. EPA has also established National Ambient Air Quality Standards for Particulate Matter (PM<sub>10</sub>—Particles less than 10 micrometers in diameter, and PM<sub>2.5</sub>—Particles less than 2.5 micrometers in diameter and referred to as "fine" particles). Currently air quality monitoring within the Boston Metropolitan area indicates attainment of the PM<sub>10</sub> annual standard, as well as the PM<sub>2.5</sub> annual and 24-hour standards. As such, the area is not subject to the CAA conformity requirements for particulate matter.

EPA supports the Commonwealth's on-going efforts to reduce particulate matter from mobile sources through the use of lower sulfur fuel, alternative fuels, and retrofits for diesel equipment and vehicles including construction equipment and school buses.

*Comment:* One commenter looking at an earlier version of the air quality modeling analysis stated that "Attempts to deduce the benefits of the incremental extension of the Green Line, by subtracting the benefits claimed for the new Green Line extension from the benefits attributable to the Existing SIP Commitments, yield an incredible result: by increasing the number of stations by three, nitrogen oxides (NO<sub>x</sub>) benefits increase nearly 300 percent and hydrocarbon (HC) benefits increase by nearly 400 percent. This result strains credulity and requires far more detailed background to justify such an anomalous result."

*EPA Response:* The air quality modeling submitted with the SIP revision showed that extending the Green Line from Tufts University/Ball Square to Medford Hillside and adding the Green Line spur to Union Square

Somerville would add the following daily emission benefits to the original Green Line Extension: 7 kilograms of nitrogen oxides; 12 kilograms of volatile organic compounds; and 212 kilograms of carbon monoxide. As a result, the demonstration submitted to EPA shows that the extension of the Green Line project to Medford Hillside and Union Square accounted for only a 0.025% increase in emission reduction benefits for NO<sub>x</sub> and 0.041% for VOC when compared to the no-build emissions for the modeled area. It is more realistic to compare the marginal emission benefits for the expanded Green Line extension alternative with the overall emission benefits of the entire original Green Line to Tufts University/Ball Square. EPA finds these incremental benefits to be reasonable.

*Comment:* One commenter raised a number of concerns about how the modeling analysis handled assumptions for the proposed "West Medford Green Line extension with a Union Square spur" and the "Fairmount Commuter Rail project" such as headways, fares, number of transit stations and transfers. The commenter asserted that modeling assumptions would have a significant impact on the forecast of ridership and corresponding emissions.

*EPA Response:* The Central Transportation Planning Staff (CTPS) maintains a regional travel demand model set that is used to measure a variety of impacts associated with changes to existing transportation infrastructure, one of which is air quality emissions. CTPS's model set is continuously improved as newer information is made available. This process of updating inputs and methods has led to several intermediate sets of results during the process of evaluating the SIP transit commitments. The commenter based his concerns on a review of an early state air quality modeling analysis and not the final analysis submitted June 1, 2007 with a supplement to the December 13, 2006 SIP revision. The March 2007 re-evaluation submitted to EPA June 1, 2007, was conducted to satisfy subsection (8) "Determination of Air Quality Emission Reductions" of the Transit System Improvements regulation, 310 CMR 7.36. Technical documentation identifying and explaining the model and modeling assumptions is addressed in the CTPS's March 15, 2007 "Description of Modeling Assumptions and Analysis Methodology for the State Implementation Plan Transit Commitment Projects Current and Proposed Substitutions." Additional modeling support documents provided



to EPA as part of the SIP revision include CTPS's June 16, 2005 Memorandum on "SIP Transit Modeling Assumptions," and a second CTPS Memorandum dated June 27, 2005 on "Responses to Arborway Comments." These updates and refinements to the modeling appear to address the concerns about fares, number of transit stations and transfers and represent the most recent information about and analysis of the emissions effect of the project substitutions.

Even with the refinement of the model and the supporting documentation, it remained unclear to EPA how the state's submittal responded to a comment concerning headways, specifically the potential for three minute headways on the Green Line Extension when the service from the two new branches is combined and travels through the Lechmere Station. One commenter indicated that the model's assumption of three minute headways was unrealistic. EPA contacted CTPS and the Massachusetts Bay Transportation Authority (MBTA) and learned that the Green Line has operated in the past on three minute headways outbound from Government Center Subway Station as well as inbound from Lechmere Station. The MBTA has made structural improvements to the Lechmere viaduct to allow 3 (2-car) trains per direction operating at 25 miles per hour. Finally, a 1999 operational analysis of the Green Line showed that within the Lechmere to Government Center area, the segment of the Green Line between the North Station and Haymarket stations serves as the capacity "pinch point," with a maximum number of trains per hour on this segment of 34. Under the proposed Green Line Extension operating plan, the C, D and E Lines on the Green Line would operate through this pinch point with 34 trains per hour during the peak period. Therefore, it does not appear to be unrealistic that the new service could operate at three minute headways.

As explained in the response above, EPA has determined that the modeling is consistent with methodology and assumptions used in developing the State Implementation Plan, consistent with developing the long range transportation plans and transportation improvement programs, as well as consistent with the methodology and assumptions used in the transportation conformity process to determine that transportation planning is consistent with the air quality planning for the SIP.

### III. Compliance With Clean Air Act TCM Substitution Requirements

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 MPO, 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, a copy of which has been placed in the electronic docket. 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>.<sup>1</sup>

On June 1, 2007, MA DEP concurred in EOT's determination that the substitute projects achieved at least equivalent emissions reductions. 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 TCMs 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. In a May 1, 2008 letter to EPA, the Boston MPO concurred in the finding that the transit system improvements projects will achieve emission benefits equivalent to or greater than the benefits from the original transit system improvements projects being replaced. For EPA's concurrence on the substitutions included in this SIP revision, the Agency sent a letter to the Boston MPO, contemporaneous with our final action on this SIP revision, to document EPA's concurrence on the substitutions being

<sup>1</sup> EPA issued regulations to implement SAFETEA-LU, and concluded that no regulations were needed to implement section 176(c)(8), because the statute is already sufficiently detailed. Additionally, EPA/DOT have issued guidance that addresses questions that might arise about TCM substitutions. (73 FR 4420-4441; January 24, 2008).

approved with the revisions to MA DEP's regulation.<sup>2</sup> 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.

Section 176(c)(8) now also 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, the codification that results from the final action on this SIP revision will address this requirement. For future substitutions, although the state 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.

### IV. Final Action

EPA is approving 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.

EPA has determined that today's rule falls under the "good cause" exemption

<sup>2</sup> 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, section 176(c)(8)(A)(v) does not 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 its concurrence on the substitution in a letter to the Boston MPO under section 176(c)(8) of the Act.



in section 553(d)(3) of the Administrative Procedures Act (APA) which, upon finding “good cause,” allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). EPA has concluded that it is not necessary to delay the effectiveness of this rule for 30 days because the entities that will be directly affected by the transit system improvements regulation have had ample notice of the requirements in the regulation, and they wish to use the substitute transit projects as soon as possible in the conformity process under the Clean Air Act. First, the requirements of the transit system improvements regulation have been effective as a matter of state law since December 1, 2006. Therefore, it is unnecessary to wait an additional thirty days to make the regulation federally enforceable, because the entities subject to the regulation have already had ample time to anticipate the compliance requirements of this regulation under state law. Second, the state and U.S. Departments of Transportation (DOTs) and the Boston Metropolitan Planning Organization (Boston MPO) must use timely implementation of these SIP-approved transportation control measures to determine whether their long range transportation plans and transportation improvement programs conform with the state’s implementation plan. The DOTs and Boston MPO will be most immediately affected by EPA’s approval of these transit system improvements and their transportation planning obligations are directly impacted by changes in the SIP-approved list of transportation control projects. EPA and the Massachusetts DEP have been consulting extensively with the DOTs and the Boston MPO about the transit system improvements. The DOTs and Boston MPO are not only ready to use the new list of transit system improvement projects without waiting 30 days, they are eager to use them as soon as possible to avoid delays in the transportation planning process. Therefore, since the entities that are most directly impacted by this approval are ready to use the transit system improvements and prefer to use them immediately, EPA is making this rule effective immediately. This rule will be effective July 31, 2008.

## V. 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 (Public Law 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 September 29, 2008. 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: July 5, 2008.

**Robert W. Varney,**

*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)(136) to read as follows:

### § 52.1120 Identification of plan

\* \* \* \* \*

(c) \* \* \*

(136) Revisions to the State Implementation Plan submitted by the Massachusetts Department of

Environmental Protection on December 13, 2006 and June 1, 2007.

(i) Incorporation by reference.

(A) Massachusetts Regulation 310 CMR 7.00 entitled "Definitions," adding the definition for the term "Boston Metropolitan Planning Organization," effective in the Commonwealth of Massachusetts on December 1, 2006.

(B) Massachusetts Regulation 310 CMR 7.36 entitled "Transit System Improvements," effective in the Commonwealth of Massachusetts on December 1, 2006.

(C) Massachusetts Regulation Filing, dated November 16, 2006, substantiating December 1, 2006, State effective date for amended 310 CMR 7.00 entitled "Definition," (addition of term "Boston Metropolitan Planning Organization," which appears on the replaced page 173 of the State's Code of Massachusetts Regulations,) and 310 CMR

7.36 entitled "Transit System Improvements."

(ii) Additional Materials.

(A) Letter from the Massachusetts Department of Environmental Protection dated December 13, 2006 submitting a revision to the Massachusetts State Implementation Plan.

(B) Letter from the Massachusetts Department of Environmental Protection dated June 1, 2007 submitting a revision to the Massachusetts State Implementation Plan.

(C) Letter from the Massachusetts Executive Office of Transportation dated September 4, 2007 identifying its commitment to the Green Line extension and to make every effort to accelerate the planning, design and environmental review and permitting of the project in order to work towards the 2014 completion date.

(D) Letter from the Chair of the Boston Region Metropolitan Planning Organization

dated May 1, 2008 concurring in the finding that the transit system improvements projects will achieve emission benefits equivalent to or greater than the benefits from the original transit system improvements projects being replaced.

(E) Letter from EPA New England Regional Administrator dated July 5, 2008 concurring in the finding that the transit system improvements projects will achieve emission benefits equivalent to or greater than the benefits from the original transit system improvements projects being replaced.

■ 3. In § 52.1167, Table 52.1167 is amended by adding two new citations to the existing entry for 310 CMR 7.00 and two new citations to the existing entry for 310 CMR 7.36 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 7.00.	* Definitions .... .....	12/13/06  12/13/06	* 07/31/08  07/31/08	* [Insert <b>Federal Register</b> page number where the document begins]. [Insert <b>Federal Register</b> page number where the document begins].	* 136  136	* Addition of the term, "Boston Metropolitan Planning Organization."  Massachusetts Regulation Filing, dated November 16, 2006, substantiating December 1, 2006, State effective date for amended 310 CMR 7.00 entitled "Definition," (addition of term "Boston Metropolitan Planning Organization," which appears on the replaced page 173 of the State's Code of Massachusetts Regulations.).
* 310 CMR 7.36.	* Transit system im- provements regulation. .....	12/13/06  12/13/06	* 07/31/08  07/31/08	* [Insert <b>Federal Register</b> page number where the document begins]. [Insert <b>Federal Register</b> page number where the document begins].	* 136  136	* Amendments to Transit System Improvements Regulation.  Massachusetts Regulation Filing, dated November 16, 2006, substantiating December 1, 2006, State effective date for amended 310 CMR 7.36 entitled "Transit System Improvements."
*	*	*	*	*	*	*

**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.

[FR Doc. E8-17595 Filed 7-30-08; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 1**

[FCC 08-154]

**Inflation Adjustment of Maximum Forfeiture Penalties**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document increases the maximum monetary forfeiture penalties available to the Commission under its rules governing monetary forfeiture proceedings to account for inflation. The inflationary adjustment is necessary to implement the Debt Collection Improvement Act of 1996, which requires federal agencies to adjust "civil