Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: June 21, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA076–7209b, FRL–6731–7]

Approval and Promulgation of Implementation Plans; Massachusetts; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In November 1999, the Commonwealth of Massachusetts (MA) submitted a State Implementation Plan (SIP) to reduce air emissions of nitrogen oxides (NO_X). The submittal responds to the EPA's regulation entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' The submittal includes a narrative and a regulation that establish a statewide NO_X budget and a NO_X allowance trading program for large electricity generating and industrial sources beginning in 2003.

The Environmental Protection Agency (EPA) is proposing approval of the MA's November 1999 SIP submittal including, MA's NO_X control regulation, 310 CMR 7.28, ''NO_X Allowance Trading Program,'' and the SIP narrative materials: ''Background Document and Technical Support For Public Hearings on the Proposed Revisions to the State Implementation Plan for Ozone,'' July 1999; ''Supplemental Background Document For Public Hearings on Modifications to the July, 1999 Proposal to Revise the State Implementation Plan For Ozone,'' September 1999; and ''Summary of Comments and Response To Comments From Public Hearings on Proposed Revisions to the State Implementation Plan for Ozone, Including Proposed 310 CMR 7.28.'' EPA is also proposing to approve changes to regulations 310 CMR 7.19, ''Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO_X),'' and 310 CMR 7.27, ''NO_X Allowance Program,'' related to emissions monitoring. EPA is proposing to approve Massachusetts' submittal for its strengthening effect pursuant to section 110 of the Clean Air Act (CAA).

DATES: EPA must receive written comments on or before August 11, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA 02114, and at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, (617) 918–1048 or at Rapp.Steve@EPA.GOV.

SUPPLEMENTARY INFORMATION:

Overview

On November 19, 1999, MA submitted a package of regulatory and narrative materials in order to comply with the NO_X SIP Call and strengthen its ozone SIP. EPA proposes full approval of MA's submittal.

The following table of contents describes the format for this

SUPPLEMENTARY INFORMATION:

In the following questions and answers, the term ''you'' refers to the reader of the notice and ''we'' refers to the EPA.

I. EPA's Action

A. What Action Is EPA Proposing Today?

EPA is proposing approval of MA's SIP submittal, including MA's NO_X control regulation, 310 CMR 7.28, ''NO_X Allowance Trading Program'' and the SIP narrative materials listed above. EPA is also proposing to approve changes to regulations 310 CMR 7.19, ''Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO_X),'' and 310 CMR 7.27, ''NO_X Allowance Program,'' related to emissions monitoring.

MA submitted the adopted 310 CMR 7.28 and the SIP narrative, as well as the amendments to 310 CMR 7.19 and 310 CMR 7.27, with a request to revise the SIP on November 19, 1999. MA submitted the regulation and narrative in order to strengthen its one-hour ozone SIP and to comply with the NO_X SIP Call in each ozone season, *i.e.,* May 1 to October 1, beginning in 2003. EPA finds that MA's submittal is fully approvable as a SIP strengthening measure for Massachusetts' one-hour ground level ozone SIP and it meets the air quality objective of the NO_X SIP Call requirements that EPA has published to date. EPA will take action in a separate future rulemaking on whether Massachusetts's submittal meets the applicable NO_X SIP Call requirements themselves.

B. Why Is EPA Proposing This Action?

EPA is proposing this action in order to:

- Fulfill MA's and EPA's requirements under the Clean Air Act (the Act);
- Make MA's control regulation federally-enforceable and available for credit in the SIP;
- Make MA's SIP narrative, including the ozone season NO_X budget, federally enforceable as part of the MA SIP; and
- Give you the opportunity to submit written comments on EPA's proposed actions, as discussed in the **DATES** and **ADDRESSES** sections.

C. What Are the General NO_X SIP Call Requirements?

On October 27, 1998, EPA published a final rule entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' See 63 FR 57356. The NO_X SIP Call requires 22 States and the District of Columbia [1] to meet statewide NO_X emission budgets during the five month period between May 1 and October 1 in order to reduce the amount of ground level ozone that is transported across the eastern United States. The NO_X SIP Call set out a schedule that required the affected states to adopt regulations by September 30, 1999 [2], and implement control strategies by May 1, 2003.

The NO_X SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. But, the SIP Call notice suggested that imposing statewide NO_X emissions caps on large fossil-fuel fired industrial boilers and electricity generating units would provide a highly cost effective means for States to meet their NO_X budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO_X per million British thermal units (lb. NO_X/mmBtu) at EGUs, multiplied by the projected heat input (mmBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO_X SIP Call state budgets also assumed on average a 30% NO_X reduction from cement kilns, a 60% reduction from industrial boilers and combustion turbines, and a 90% reduction from internal combustion engines. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 mmBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day.

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final rulemaking notice included a model NO_X allowance trading regulation, called ''NO_X Budget Trading Program for State Implementation Plans,'' (40 CFR Part 96), that could be used by states to develop their regulations. The NO_X SIP Call notice explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by the EPA. See 63 FR 57458–57459.

D. What Is EPA's NO_X Budget and Allowance Trading Program?

EPA's model NO_X budget and allowance trading rule for SIPs, 40 CFR Part 96, sets forth a NO_X emissions trading program for large electric generating units (EGUs) and non-electric generating units (non-EGUs). A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998 **Federal Register** notice contains a full description of the EPA's model NO_X budget trading program. See 63 FR 57514–57538 and 40 CFR Part 96.

In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a ''cap and trade'' program.

In an emissions budget and allowance trading program, the state or EPA sets a regulatory limit, or emissions budget, in mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, *e.g.,* one ton of airborne NO_X.

At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner. An example of a budget and allowance trading program is EPA's Acid Rain Program for reducing sulfur dioxide emissions.

E. What is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO_X SIP Call, the final NO_X SIP Call provided each affected state with a ''compliance supplement pool.'' The compliance supplement pool is a quantity of NO_X allowances that may be used to cover excess emissions from sources that are unable to meet control requirements during the 2003 and 2004 ozone seasons. Allowances from the compliance supplement pool will not be valid for compliance past the 2004 ozone season. Despite disagreeing with commenters' concerns, EPA included these voluntary provisions in the NO_X SIP Call to address commenters' concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply or on other industries required to install controls as the result of a state's response to the SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms. First, a state may issue some or all of the pool to sources with credits from implementing NO_X reductions beyond all applicable requirements after September 30, 1999 but before May 1, 2003 (*i.e.,* early reductions). In this way, sources that cannot install controls prior to May 1, 2003, can purchase other sources' early reduction credits in order to comply. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 1, 2003 compliance deadline due to undue risk to the electricity or other industrial sectors and where early reductions are not available. See 40 CFR 51.121(e)(3).

F. What Guidance Did EPA Use to Evaluate Massachusetts' Submittal?

EPA evaluated MA's NO_X SIP Call submittal using EPA's ''NO_X SIP Call

[1] Alabama, Connecticut, District of Columbia, Delaware, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and West Virginia.

[2] On May 25, 1999, the D.C. Circuit issued a partial stay of the submission of the SIP revisions required under the NO_X SIP Call. The NO_X SIP Call had required submission of the SIP revisions by September 30, 1999. State Petitioners challenging the NO_X SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the court. Michigan v. EPA, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part).

On November 19, 1999, Massachusetts voluntarily submitted this revision to EPA for approval notwithstanding the court's stay of the SIP submission deadline. On March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the SIP call and remanding certain other portions to the Agency. The court's ruling does not affect this action because it is being proposed as a SIP-strengthening measure regardless of the status of the case.

Checklist,'' (the checklist), issued on April 9, 1999. The checklist reflects and follows the requirements of the NO_X SIP Call set forth in 40 CFR § 51.121 and § 51.122. The checklist outlines the criteria that the EPA Regional Office used to determine the completeness and approvability of MA's submittal.

As noted in the checklist, the key elements of an approvable submittal under the NO_X SIP Call are: a budget demonstration; enforceable measures for control; legal authority to implement and enforce the control measures; compliance dates and schedules; monitoring, recordkeeping, and emissions reporting; as well as elements that apply to states that choose to adopt an emissions trading rule in response to the NO_X SIP Call. The checklist is available to the public on EPA's website at: http://www.epa.gov/ttn/otag/sip/related.html.

As described above, the final NO_X SIP Call rule included a model NO_X budget trading program regulation. See 40 CFR Part 96. EPA used the model rule to evaluate 310 CMR 7.28. Additionally, EPA used the October 1998 final NO_X SIP Call rulemaking notice, as well as the subsequent technical amendments to the NO_X SIP Call, published in May 1999 (64 FR 26298) and March 2000 (65 FR 11222), to evaluate the approvability of MA's submittal. EPA also used § 110 of the CAA, Implementation Plans, to evaluate the approvability of MA's submittal as a revision to the SIP.

II. Massachusetts's NO_X Budget Program

A. What Is Massachusetts' NO_X SIP Call Submittal?

Massachusetts' September 30, 1999, SIP submittal included the following:

- Adopted control regulations which require emission reductions beginning in 2003, *i.e.,* 310 CMR 7.28;
- A description of how the state intends to use the compliance supplement pool, *i.e.,* as part of the control regulation;
- A baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007 as published in the May 14, 1999, technical amendments to the NO_X SIP Call, *i.e.,* as part of the SIP narrative;
- A 2007 projected inventory (budget) reflecting NO_X reductions achieved by the state control measures contained in the submittal, *i.e.,* as part of the SIP narrative; and
- A commitment to meet the annual, triennial, and 2007 reporting requirements, *i.e.*, as part of the SIP narrative.

As described above, in order to reduce NO_X emissions statewide from 2003 and beyond, MA adopted 310 CMR 7.28. The regulation applies to all EGUs with nameplate electricity generating capacities greater than 15 megaWatts that sell any amount of electricity as well as any non-EGU units that have a heat input capacity equal to or greater than 250 mmBtu per hour. Regarding other non-EGUs, MA has no cement kilns or internal combustion (IC) engines with emissions large enough to exceed the applicability threshold for assumed control requirements, *i.e.,* one ton per day. So, MA's SIP submittal does not assume any additional reductions from those sources. Furthermore, you should note that MA is not relying on any reductions beyond anticipated federal measures in the mobile and area sectors.

Below is a table of the 2007 baseline and budget emission levels that Massachusetts has submitted with as part of its SIP narrative.

Source category	2007 Baseline NO_X emissions (tons/season)	2007 NO_X budget emissions (tons/season)	Projected reductions (tons/season)
EGUs	27,708	23,490	4,218
Non-EGU Point			
Area Sources	11,048	11,048	0
Non-Road Mobile	20,166	20,166	0
Highway Mobile	28,641	28,641	0
MA Total	87,563	83,345	4,218

B. When Did Massachusetts Propose and Adopt the Program?

In July and September 1999, MA published public notices to announce the availability of the proposed 310 CMR 7.28, proposed changes to 310 CMR 7.19 and 310 CMR 7.27, as well as the SIP narrative materials that included the statewide 2007 NO_X emission budget. The public notices started 30 day public comment periods. Public hearings were held on August 4, August 6, and October 28. The final 310 CMR 7.28, as well as the amendments to 310 CMR 7.19 and 310 CMR 7.27, were filed with the Secretary of State on November 15, 1999. The 310 CMR 7.28 and the changes to 310 CMR 7.19 and 310 CMR 7.27 became effective on December 10, 1999.

C. When Did Massachusetts Submit the SIP Revision to EPA and When Did EPA Find the Submittal Technically and Administratively Complete?

On November 19, 1999, MA DEP submitted 310 CMR 7.28 and the SIP narrative materials, as well as the amendments to 310 CMR 7.27 and 310 CMR 7.19, to EPA with a request to revise the MA SIP. Subsequently, on January 7, 2000, MA submitted copies of the regulations as promulgated in the Code of Massachusetts Regulations. On January 25, 2000, EPA sent a letter to MA deeming the SIP submittal technically and administratively complete.

D. What Is Massachusetts' NO_X Budget Trading Program?

In response to the NO_X SIP Call, MA adopted 310 CMR 7.28, ''Post-2002 Nitrogen Oxides NO_X Budget Program.'' With 310 CMR 7.28, MA established a NO_X cap and allowance trading program for the ozone seasons of 2003 and beyond. MA developed the regulation in order to reduce NO_X emissions and allow its sources to participate in the kind of interstate NO_X allowance trading program described in § 51.121(b)(2).

Under 310 CMR 7.28 Massachusetts allocates NO_X allowances to its EGUs and large industrial units. Each NO_X allowance permits a source to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations. For each ton of NO_X emitted in a control period, EPA will remove one allowance from the source's NO_X Allowance Tracking System (NATS) account. Once the allowance has been retired in this way, no one can ever use the allowance again.

Source owners will monitor their NO_X emissions by using systems that meet

the requirements of 40 CFR Part 75, subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the federal Acid Rain program).

Generally, regulation 310 CMR 7.28 differs from EPA's model NO_X budget trading rule in three ways. First, 310 CMR 7.28 is applicable to smaller electric generating sources than the model rule. Second, the allocation method in 310 CMR 7.28 is based on useful output and results in fewer allocations (*i.e.*, lower NO_X emissions) than would be allowed by the model rule. Finally, MA's allowance trading rule does not provide the 25 ton per season exemption set forth in 40 CFR § 96.4(b). These differences make the regulation more stringent than 40 CFR Part 96 would be and are allowed under § 51.121(p). Therefore, 310 CMR 7.28 can be considered substantively identical to 40 CFR Part 96.

Regulation 310 CMR 7.28 provides for the distribution of 473 early reduction allowances to sources that implement NO_X reductions beyond applicable requirements after September 30, 1999, but before May 1, 2003. Under 310 CMR 7.28, MA will only provide early reduction credits to those sources holding banked allowances that were allocated in 2000, 2001, and 2002, under MA's current NO_X budget and allowance trading program (*i.e.*, regulation 310 CMR 7.27). Regulation 310 CMR 7.27 is MA's SIP approved NO_X budget and allowance trading program that is part of the Ozone Transport Commission's regional NO_X cap and allowance trading program that began in May 1999. See 64 FR 29567, June 2, 1999.

The amendments to 310 CMR 7.19 and 310 CMR 7.27 contain changes to MA's existing OTC MOU allowance trading program and NO_X RACT regulations. These minor changes were necessary to provide for a smooth transition to 310 CMR 7.28, and to ensure consistency between the regulatory requirements of 310 CMR 7.19, 310 CMR 7.27, 310 CMR 7.28, and 40 CFR Part 75.

For additional information regarding EPA's evaluation of MA's NO_X SIP Call submittal, the reader should refer to the document entitled, ''Technical Support Document for Massachusetts's NO_X SIP Call Submittal,'' dated May 4, 2000. Copies of the technical support document (TSD) can be obtained at either of the addresses listed in the **ADDRESSES** section of this notice.

E. How Will Massachusetts and EPA Enforce the Program?

Once approved into MA's SIP, both MA and EPA will be able to enforce the requirements of the NO_X budget and allowance trading program in 310 CMR 7.28. All of the sources subject to the NO_X allowance trading program will have federally-enforceable operating permits that contain source specific requirements, such as emissions monitoring or pollution control equipment requirements. MA and EPA will be able to enforce the source specific requirements of those permits, as well as the requirements of 310 CMR 7.28, 310 CMR 7.27, and 310 CMR 7.19.

Additionally, in order to determine compliance with the emission requirements of the program, at the end of each ozone season, MA and EPA will compare sources' allowance and emission accounts in the NO_X Allowance Tracking System (NATS). To be in compliance, sources must hold a number of available allowances that meets or exceeds the number of tons of NO_X emitted by that source and recorded in the Emissions Tracking System (ETS) for a particular ozone season. For sources with excess emissions, penalties include EPA deducting three times the unit's excess emissions from the unit's allocation for the next control period.

F. How Does Massachusetts' Program Protect the Environment?

Based on air quality modeling assessments performed for the NO_X SIP Call, EPA believes that the NO_X reductions in MA and other states subject to the SIP Call will reduce the transport of ozone starting in 2003.

Decreases of NO_X emissions will also help improve the environment in several important ways. Decreases in NO_X emissions will decrease acid deposition, nitrates in drinking water, excessive nitrogen loadings to aquatic and terrestrial ecosystems, and ambient concentrations of nitrogen dioxide, particulate matter and toxics. On a global scale, decreases in NO_X emissions reduce greenhouse gases and stratospheric ozone depletion.

G. What Is the Result of EPA's Evaluation of Massachusetts' SIP Submittal?

EPA has evaluated MA's November 19, 1999, SIP submittal and finds it fully approvable. The submittal will strengthen MA's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2003. The submittal also meets the air quality objectives of the NO_X SIP Call. EPA finds the NO_X control measures, 310 CMR 7.28, the SIP narrative that includes MA's 2007 NO_X baseline and controlled budgets, as well as the changes to 310 CMR 7.27 and 310 CMR 7.19, fully approvable. EPA finds that the submittal contained the information necessary to demonstrate that MA has the legal authority to implement and enforce the control measures, as well as a description of how the state intends to use the compliance supplement pool. Furthermore, EPA finds that the submittal demonstrates that the compliance dates and schedules, and the monitoring, record keeping and emission reporting requirements will be met.

EPA finds that MA's control regulation and SIP narrative materials are consistent with EPA's guidance and meet the air quality objectives of the NO_X SIP Call, including, 40 CFR Part 51, § 51.121 and § 51.122 as well as the general SIP submittal requirements of the Act, § 110, 42 U.S.C. 7401 *et seq.* Regulation 310 CMR 7.28 does contain differences from the model rule, including: (1) 310 CMR 7.28 is applicable to smaller electric generating sources than the model rule; (2) the allocation method in 310 CMR 7.28 is based on useful output but results in fewer allocations (*i.e.*, lower NO_X emissions) than would be allowed by the model rule; and (3) the State's SIP trading rule does not provide the 25 ton/season exemption set forth in 40 CFR § 96.4(b). These differences are allowed under § 51.121(p). Therefore, EPA considers 310 CMR 7.28 to be substantively identical to 40 CFR Part 96.

Regarding MA's SIP narrative, EPA finds that the submittal contains the required elements, including: The baseline inventory of NO_X mass emissions from EGUs, non-EGUs, area, highway and non-road mobile sources in the year 2007; the 2007 projected inventory reflecting NO_X reductions achieved by the state control measures contained in the submittal; and the commitment to meet the annual, triennial, and 2007 state reporting requirements. EPA further finds that MA's 2007 projected inventory, reflecting the control strategies, is approvable, reflecting the air quality objectives of the NO_X SIP Call.

In order to approve MA's 2007 projected inventory as meeting the air quality objectives of the NO_X SIP Call,

however, it is necessary to consider the adopted 2007 emission budgets and adopted NO_X reducing measures in Connecticut (CT) and Rhode Island (RI) as well. Comparing the most recent technical amendments to the NO_X SIP Call budgets to the adopted and submitted NO_X SIP Call related measures from the three states, you can see that the adopted measures in CT, MA, and RI will reduce more NO_X from the EGU and non-EGU sectors than the NO_X SIP Call notices have required.

H. Why Is EPA Considering the NO_X SIP Call Submittals From CT, MA, and RI at the Same Time?

In February 1999, CT, MA, RI, and EPA signed a memorandum of understanding (*i.e.*, ''the Three State MOU'') agreeing to redistribute the EGU portions of the three states' budgets, as well as the compliance supplement pool allocations, amongst themselves. Under the Three State MOU, the combined 2007 controlled emission level and compliance supplement pool did not change for the three states, only the individual state EGU allocations and supplement pools were redistributed to provide CT with additional flexibility.

On September 15, 1999, EPA published a Notice of Proposed Rulemaking (NPR) to approve the redistribution of the three states' allocations as described in the MOU and modified by the EPA's May 1999 NO_X SIP Call technical corrections.[3] See 64 FR 50036. As described in the NPR, the sum of the 2007 budgets and supplement pool allocations for the three states after redistribution is identical to the sum of the three budgets and supplement pool allocations for the states as published in the May 1999 technical corrections **Federal Register** notice. In other words, the total NO_X reduction expected from the three states due to the SIP Call would be the same before and after the redistribution of budgets under the Three State MOU. In fact, both the May 1999 technical amendments and the September 1999 NPR required a NO_X reduction of 5,491 tons by the three states each ozone season from 2007 onward and provided a combined allocation of 961 tons from the compliance supplement pool.

On March 2, 2000, EPA published additional technical amendments to the NO_X SIP Call in the **Federal Register** (65 FR 11222). As can be seen in the tables below, the March 2, 2000 technical corrections primarily changed the highway mobile and non-EGU 2007 baselines and budgets for CT, MA, and RI. However, these changes largely cancel each other out, *e.g.*, the 2007 highway sub-inventory baselines and budgets increased by the same amounts. The March 2000 technical corrections, however, did not effect the amount of reduction expected from the EGU sector. The tables below compare the 2007 baselines and budgets for each sub-inventory sector for CT, MA, and RI as published in the May 1999 and March 2000 technical amendment **Federal Register** notices.

CT	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	5,636	5,636	0	2,652	2,652	0
Non-EGU	5,124	5,397	273	4,970	5,216	246
Area	4,821	4,821	0	4,821	4,821	0
Nonroad	10,736	10,736	0	10,736	10,736	0
Highway	19,902	19,424	–478	19,902	19,424	–478
Total	46,220	46,015	–205	43,081	42,849	–232

MA	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	16,479	16,479	0	15,145	15,146	1
Non-EGU	11,229	11,210	–19	10,296	10,298	2
Area	11,048	11,048	0	11,048	11,048	0
Nonroad	20,166	20,166	0	20,166	20,166	0
Highway	28,641	28,190	–451	28,641	28,190	–451
Total	87,563	87,092	–471	85,296	84,848	–448

RI	5/99 baseline	3/00 baseline	Change in baseline	5/99 budget	3/00 budget	Change in budget
EGU	1,082	1,082	0	997	997	0
Non-EGU	2,031	1,635	−396	2,031	1,635	−396
Area	448	448	0	448	448	0
Nonroad	2,455	2,455	0	2,455	2,455	0
Highway	3,879	3,843	−36	3,879	3,843	−36
Total	9,895	9,463	–432	9,810	9,378	−432

The March 2000 **Federal Register** listed 2007 ozone season baseline emissions from CT, MA, and RI as 46,015 tons, 87,092 tons, and 9,463 tons, respectively. The March 2000 **Federal Register** listed the 2007 ozone season budgets for CT, MA, and RI as 42,849 tons, 84,848 tons, and 9,378 tons, and provided the three states with compliance supplement pools of 569 tons, 404 tons, and 15 tons, respectively, or a total of 988 tons. In total, the March 2000 notice required the three states to reduce their NO_X emissions by 5,495 tons per ozone season beginning in 2007.

In the Fall of 1999, CT, MA, and RI all adopted and submitted SIP packages in response to the NO_X SIP Call. All three states adopted and submitted NO_X control regulations that rely on reductions from the EGU and large non-EGU units to achieve their emission budgets. The 2007 baseline ozone

[3] You should note that EPA took comments on the Three State MOU NPR and intends to address those comments in a future rulemaking. Therefore, we are not seeking comments on the specifics of the Three State MOU NPR at this time.

season emissions adopted by the states were 46,219 tons, 87,563 tons, and 9,895 tons, respectively, or a three state total of 143,677 tons per ozone season. The SIP packages adopted and submitted by CT, MA, and RI, included 2007 projected NO_X inventories of 44,993 tons, 83,345 tons, and 9,798 tons, respectively, or a three state total of 138,136 tons per ozone season. Therefore, the total NO_X reduction expected from the adopted and submitted SIP packages from CT, MA, and RI is 5,541 tons per ozone season.

As discussed above, EPA signed the Three State MOU between CT, MA, and RI. We endorse the concept that states can voluntarily join together and redistribute their NO_X SIP Call budgets and compliance supplement pool allocations, provided that the total after the redistribution is less than or equal to before redistribution, and provided that the states have formalized such an agreement in an MOU or similar device to which EPA also agrees. EPA supports this concept because such a redistribution is no different than the effects of trading. For a detailed discussion of why EPA supports the concept that states can collectively redistribute their NO_X SIP Call budgets, see the proposed Three State MOU notice, 64 FR 49989, September 15, 1999. Given the fact that together the three states' regulations achieve at least the same NO_X reduction and allocate fewer than required compliance supplement pool allocations, EPA finds that the NO_X SIP Call SIP submittals from the three states collectively meet the air quality objectives of the NO_X SIP Call as published to date. In separate **Federal Register** notices today, EPA is also proposing approval of CT's and RI's NO_X SIP Call submittals.

You can find the NO_X SIP Call 2007 baselines, budgets, and compliance supplement pool allocations from the March 2000 technical amendments and the state adopted SIPs summarized in the table below.

State	SIP Call 2007 Baseline (tons NO_X per ozone season) as of 03/00	State adopted 2007 baseline (tons NO_X per ozone season)	SIP Call 2007 Budget as of 03/00 (tons NO_X per ozone season)	State adopted 2007 budget (tons NO_X per ozone season)	SIP Call Projected reduction (tons NO_X per ozone season) as of 03/00	State Projected Reduction (tons NO_X per ozone season)	Compliance Supplement Pool State Allocations as of 03/00	State Adopted Compliance Supplement Pool
CT	46,015	46,219	42,849	44,993	13,166	1,226	569	473
MA	87,092	87,563	84,848	83,345	2,244	4,218	404	473
RI	9,463	9,895	9,378	9,798	85	97	15	15
Total	142,570	143,677	137,075	138,136	5,495	5,541	988	961

For additional information regarding EPA's evaluation of MA's NO_X SIP Call submittal, the reader should refer to the TSD available at either of the addresses listed in the **ADDRESSES** section of this notice.

I. What Other Significant Items Relate to Massachusetts' Program?

In addition to fulfilling the NO_X SIP Call obligation, 310 CMR 7.28 was adopted as part of MA's one hour ozone attainment plan for the serious ozone nonattainment area in Western MA. The attainment plan relies on the NO_X reductions associated with 310 CMR 7.28 in 2003 and beyond. EPA proposed conditional approval of MA's attainment plans for both the serious and severe nonattainment areas on December 16, 1999. See 64 FR 70318. Therefore, the approval and implementation of 310 CMR 7.28 is also necessary in order for MA to fulfill a requirement of its one hour ozone attainment plan.

Regulation 310 CMR 7.28 is also related to the Ozone Transport Commission's (OTC's) ozone season NO_X budget program. On September 27, 1994, OTC adopted a Memorandum of Understanding (MOU) that committed the signatory states, including MA, to the development and proposal of a region-wide reduction in NO_X emissions. The OTC agreement committed the states to one phase of NO_X reductions by 1999 and another phase of reductions by 2003.

As a signatory state of the MOU, MA adopted its NO_X budget and allowance trading regulation, 310 CMR 7.27, on June 5, 1997. Regulation 310 CMR 7.27 contained a NO_X emissions budget and allowance trading system for the ozone seasons of 1999 through 2002, the period known as ''OTC Phase II.'' MA's phase II budget is 18,146 tons per ozone season. EPA approved MA's phase II OTC NO_X budget regulation on June 2, 1999. See 64 FR 29567.

Regulation 310 CMR 7.28 contains a new NO_X emissions budget and allowance trading program for the ozone seasons of 2003 and thereafter, the period known as ''OTC phase III.'' Although EPA's technical corrections and the Three State MOU described above would allow MA an EGU budget of 13,245 tons per season in 2003 and beyond, 310 CMR 7.28 contains an ozone season EGU (and affected non-EGU) budget of 12,861 tons. This is equal to the budget agreed upon by OTC for affected sources in MA under phase III of the OTC program. Therefore, although the OTC MOU obligations are not federal requirements, 310 CMR 7.28 can be seen as satisfying the OTC phase III program requirements as well.

J. What Issues Are Associated With Massachusetts' NO_X SIP Call Submittal?

On March 3, 2000, the D.C. Circuit ruled on Michigan v. EPA, affirming many aspects of the NO_X SIP Call and remanding certain other portions to the Agency (*e.g.,* the definition of an EGU and the control assumptions for internal combustion engines). Due to the Court's remanding of the EGU definition and IC engine control assumptions, EPA must now recalculate the final 2007 baseline, 2007 budget, and compliance supplement allocation for each state subject to the NO_X SIP Call, including MA. Those recalculated budgets are expected to be published in the next few months. However, this means that MA may be required to revisit its NO_X SIP Call program due to potential forthcoming changes to the NO_X SIP Call requirements. At such time as EPA publishes new emission budget requirements, MA and other NO_X SIP Call subject states will be informed as to what, if any, changes are needed.

Additionally, as described above, the March 2, 2000 technical corrections changed the 2007 baselines and budgets for the highway and non-EGU sub-inventories in CT, MA, and RI. Therefore, when those states make the changes needed due to the remanded portions of the NO_X SIP Call, they will need to adopt changes to the highway and non-EGU 2007 baselines and budgets as well.

III. Proposed Action

EPA has reviewed MA's November 19, 1999, SIP submittal using the NO_X SIP Call rulemaking notices and checklist. EPA has reviewed MA's

control measures and projected reductions and finds them approvable. Therefore, EPA is proposing to approve 310 CMR 7.28 and MA's NO_X SIP Call narrative into the MA SIP at this time.

MA's November 19, 1999, submittal also contained amendments to 310 CMR 7.19 and 310 CMR 7.27. These amendments consisted of minor changes to the regulations to ensure consistent requirements and a smooth transition to the program under 310 CMR 7.28 in 2003. EPA has reviewed the amendments and is proposing to approve them into the MA SIP at this time.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

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. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Regional 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 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will 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 (62 FR 19885, April 23, 1997), because it is not economically significant.

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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: June 21, 2000.

Mindy S. Lubber,

Regional Administrator, EPA—New England.

[FR Doc. 00–17187 Filed 7–11–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI041–6989b, FRL–6731–6]

Approval and Promulgation of Implementation Plans; Rhode Island; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In October 1999, the State of Rhode Island (RI) submitted a State Implementation Plan (SIP) to reduce air emissions of nitrogen oxides (NO_X). The submittal responds to the EPA's regulation entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' The submittal includes a narrative and a regulation that establish a statewide NO_X budget and a NO_X allowance trading program for large electricity generating and industrial sources beginning in 2003.

The Environmental Protection Agency (EPA) is proposing approval of the RI's October 1999 SIP submittal including, RI's NO_X control regulation, Regulation No. 41, ''Nitrogen Oxides Allowance Program,'' and the SIP narrative materials, ''NO_X State Implementation Plan (SIP) Call Narrative,'' that includes a statewide emissions budget for the ozone season, i.e., May 1 to October 1, of 2007 and each year after. EPA is proposing to approve Rhode Island's submittal for its strengthening effect pursuant to section 110 of the Clean Air Act (CAA).

DATES: EPA must receive written comments on or before August 11, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, 02114, and at the Division of Air and Hazardous Materials, Rhode Island Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.