

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[MA-085a; A-1-FRL-7268-7]

**Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Rate-of-Progress Emission Reduction Plans for the Boston-Lawrence-Worcester Serious Area****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes 15 percent and post-1996 rate-of-progress plans for the Massachusetts portion of the Boston-Lawrence-Worcester serious ozone nonattainment area. The intended effect of this action is to approve this SIP revision in accordance with the requirements of the Clean Air Act.

**DATES:** This direct final rule will be effective October 28, 2002, unless EPA receives adverse comments by September 27, 2002. If EPA receives adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**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, EPA New England Regional Office, 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, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA, and at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Robert McConnell, (617) 918-1046.

**SUPPLEMENTARY INFORMATION:** On April 10, 2002, the Commonwealth of Massachusetts submitted a formal revision to its SIP. The SIP revision consists of 15 percent and post-1996 rate-of-progress (ROP) emission reduction plans for the Massachusetts portion of the Boston-Lawrence-Worcester serious ozone nonattainment

area. Massachusetts submitted a minor amendment to the ROP plans on July 26, 2002. We previously approved ROP plans that the State of New Hampshire submitted for the portions of this nonattainment area within its borders.

This Supplementary Information section is organized as follows:

1. What action is EPA taking today?
2. Why was Massachusetts required to reduce its emissions of ozone forming pollutants?
3. What are the sources of these pollutants?
4. What harmful effects can these pollutants produce?
5. Should I be concerned if I live near an industry that emits a significant amount of these pollutants?
6. Why didn't EPA approve Massachusetts' prior versions of these plans?
7. Massachusetts was supposed to achieve a portion of these emission reductions by 1996, and the remainder by 1999. Did that happen?
8. How much do the Commonwealth's plans reduce air pollution emissions?
9. How will Massachusetts achieve these emission reductions?
10. Why is EPA approving a plan that only covers the eastern part of the Commonwealth?
11. Have these emission reductions improved air quality in Massachusetts?
12. Has Massachusetts met its contingency measure obligation?
13. Are conformity budgets contained in these plans?

**1. What action is EPA taking today?**

EPA is approving ROP emission reduction plans submitted by Massachusetts for its portion of the Boston-Lawrence-Worcester serious ozone nonattainment area as revisions to Massachusetts' SIP. This area is referred to as the Eastern Massachusetts area in the remainder of this notice. The ROP plans document how Massachusetts complied with the provisions of Sections 182 (b)(1) and (c)(2)(B) of the Federal Clean Air Act (the Act). 42 U.S.C. 7511a (b)(1) and (c)(2)(B). These sections of the Act require states containing certain ozone nonattainment areas to develop strategies to reduce emissions of the pollutants that react to form ground level ozone.

**2. Why was Massachusetts required to reduce its emissions of ozone forming pollutants?**

Massachusetts was required to develop plans to reduce ozone precursor emissions because it contains a serious ozone nonattainment area. A final rule published by EPA on November 6, 1991 (56 FR 56694) designated ten counties in the eastern part of Massachusetts a serious ozone nonattainment area. Sections 182 (b)(1) and (c)(2)(B) of the Act require that serious ozone

nonattainment areas develop ROP plans to reduce ozone forming pollutant emissions in the nonattainment area.

As stated above, two provisions of the Act make achieving these emission reductions necessary. Under section 182(b)(1), Massachusetts needed to develop a plan to reduce volatile organic compound (VOC) emissions by 15 percent by 1996. These plans are referred to as "15 percent ROP" plans. Requirements in section 182(c)(2)(B) and (C) of the Act instruct Massachusetts to achieve additional emission reductions. These additional reductions must lower ozone precursor emissions (VOC or nitrogen oxides) by 9 percent by 1999. These plans are referred to as "post 1996 ROP" plans.

**3. What are the sources of these pollutants?**

VOCs are emitted from a variety of sources, including motor vehicles, a variety of consumer and commercial products such as paints and solvents, chemical plants, gasoline stations, and other industrial sources. Nitrogen oxides (NO<sub>x</sub>) is emitted from motor vehicles, power plants, and other sources that burn fossil fuels.

**4. What harmful effects can these pollutants produce?**

VOCs and NO<sub>x</sub> react in the atmosphere to form ozone, the prime ingredient of smog in our cities and many rural areas of the country. Though it occurs naturally at elevated levels high in our atmosphere, at ground level it is the prime ingredient of smog. When inhaled, even at very low levels, ozone can:

- Cause acute respiratory problems;
- Aggravate asthma;
- Cause significant temporary decreases in lung capacity in some healthy adults;
- Cause inflammation of lung tissue;
- Lead to hospital admissions and emergency room visits; and
- Impair the body's immune system defenses.

**5. Should I be concerned if I live near an industry that emits a significant amount of these pollutants?**

Industrial facilities that emit large amounts of these pollutants are monitored by the Commonwealth's environmental agency, the Department of Environmental Protection (DEP). Many facilities are required to emit air pollutants through tall stacks to ensure that high concentrations of pollutants do not exist at ground level. Permits issued to these facilities include information on which pollutants are being released, how much may be

released, and what steps the source's owner or operator is taking to reduce pollution. The Massachusetts DEP makes permit applications and permits readily available to the public for review. You can contact the Massachusetts DEP for more information about air pollution emitted by industrial facilities in your neighborhood.

#### **6. Why didn't EPA approve Massachusetts' prior versions of these plans?**

EPA proposed to approve a prior version of the Massachusetts 15 percent plan submitted to EPA in 1997, subject to certain conditions (see 62 FR 37527, July 14, 1997). EPA did not grant final approval because Massachusetts did not meet the conditions EPA listed in that proposal. Specifically, Massachusetts did not meet its commitment to begin an automobile emission "inspection and maintenance" (I/M) program. EPA did not propose action on Massachusetts' post 1996 ROP plan in the July 14, 1997 notice.

On April 10, 2002, Massachusetts submitted revisions to its 15 percent and post 1996 ROP plans (the "revised ROP plans") and submitted minor amendments on July 26, 2002.

#### **7. Massachusetts was supposed to achieve a portion of these emission reductions by 1996, and the remainder by 1999. Did that happen?**

Massachusetts did not reduce its hydrocarbon emissions by 15 percent by November 15, 1996, or reduce ozone precursor emissions an additional 9 percent by November 15, 1999. However, the DEP has shown that all of the emission reductions required of 15 percent and post-1996 plans occurred by mid-summer of 2001. EPA believes it can approve both of these plans for the reasons provided below.

Subsequent to EPA's July 14, 1997 proposed action, ROP plans for the Eastern Massachusetts serious area became unnecessary because EPA determined, in accordance with a May 10, 1995 policy,<sup>1</sup> that the area met the one-hour National Ambient Air Quality Standard (NAAQS) for ozone, and that such planning requirements were unnecessary in light of the clean air in

the area. EPA based that determination on three years of complete, quality assured ambient air monitoring data for the years 1996–98 which demonstrated that the one-hour ozone NAAQS had been attained in this area. On the basis of that determination, EPA also determined that certain ROP and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Act were no longer applicable to the Eastern Massachusetts area for so long as the area continued to attain the one hour ozone NAAQS. However, ozone monitoring data for the years 1999 to 2001 indicate that the Eastern Massachusetts area violated the one hour ozone standard over that three year time period. Therefore, EPA no longer has a basis for deferring the planning requirements that attainment of the one-hour ozone NAAQS had rendered unnecessary.

In its April 10, 2002 submittal, Massachusetts is not able to demonstrate a 15 percent VOC emission reduction occurred in the Eastern Massachusetts area by the November 15, 1996 milestone date, or that an additional 9 percent reduction in ozone precursor emissions occurred by the November 15, 1999 milestone due to delayed implementation of its I/M program. However, the Commonwealth was not required to make this showing during the years it monitored attainment of the one-hour ozone standard. It is not possible to require Massachusetts to make this demonstration, as those dates have passed. Therefore, taking into account the individual circumstances surrounding this SIP submission and guidance within the May 10, 1995 policy memorandum, we notified Massachusetts that we would approve Massachusetts' ROP plans if the DEP could show that ozone precursor emissions were lowered by 24 percent compared to 1990 levels by 2001, instead of by the original 1999 milestone date. At least 15 percent of the 24 percent reduction must come from the VOC inventory.

Once a statutory deadline has passed and has not been replaced by a later one, the deadline then becomes "as soon as possible." *Delaney v. EPA*, 898 F.2d 687, 691 (9th Cir. 1990), cert. den. 498 U.S. 998 (1990). EPA has interpreted this requirement to be "as soon as practicable." The state's revised ROP plans for Eastern Massachusetts, submitted on April 10, 2002, and amended on July 26, 2002, demonstrate that a 24% reduction in ozone precursor emissions occurred by 2001. This means that the overall environmental benefit represented by the 15 percent and post-

1996 ROP requirements occurred, and in fact occurred while the Eastern Massachusetts area still monitored attainment of the one-hour standard. EPA believes that this demonstration meets the as soon as practicable test. Therefore, we are now approving the 15 percent and post-1996 plans.

#### **8. How much do the Commonwealth's plans reduce air pollution emissions?**

By 2001, the Commonwealth's plans indicate that VOC emissions in the Eastern Massachusetts area will decrease by 32 percent, and NO<sub>x</sub> emissions will decrease by 13 percent compared to 1990 emission levels as a result of federal and state control programs.

DEP's April 10, 2002 submittal illustrates how Massachusetts met the post-1996 ROP requirements of section 182(c)(2)(B) of the Act, and the 15 percent ROP requirements of section 182(b) of the Act. Both sets of reductions were calculated from a 1990 baseline, and the plans describe how any growth in emissions was offset. Under section 182(c)(2)(C) of the Act, NO<sub>x</sub> reductions can also be used to meet the post-1996 ROP emission reduction obligation; the Act only allows for VOC reductions in 15 percent ROP plans.

The manner in which states are to determine the required level of emission reductions is described in EPA guidance documents entitled, "Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15 Percent ROP Plans," (EPA-452/R-92-005), and "Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration" (EPA 452-93-015). The calculation procedures to determine both the 15 percent and post-1996 ROP emission reduction obligations are similar. Table 1 below contains a summary of DEP's calculations for the Eastern Massachusetts area.

As shown below in Table 1, DEP's April 10, 2002 submittal demonstrates more than a 24 percent reduction in ozone precursor emissions occurred by mid-summer, 2001. In other words, Massachusetts shows that their projected, controlled 2001 emission levels for VOC and NO<sub>x</sub> are lower than the 1999 target emission levels calculated for these pollutants. The 1999 target levels represent the amount of emissions that can be emitted after accounting for the required 24 percent reduction in ozone precursor emissions, and other required emission reductions that the Act does not allow be credited towards the ROP emission reduction obligation, such as reductions from the pre-1990 Federal Motor Vehicle Control

<sup>1</sup> Policy guidance contained in a May 10, 1995 memorandum from John Seitz, Director of EPA's Office of Air Quality Planning and Standards, recommends that ROP and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are no longer applicable to an area once it has air quality data indicating that the one hour ozone standard has been attained. This finding will remain effective for so long as the area continues to attain the one hour ozone NAAQS.

Program (FMVCP), revisions to deficient reasonably available control technology (RACT) regulations, and corrections to deficient automobile I/M programs.

One step in the above demonstration consists of a projection of emissions from the base year to a future year. A prior version of these plans submitted to EPA on March 31, 1997 contains emission projections that were obtained by applying growth factors to the baseline 1990 emissions to obtain estimated 1999 emission levels. The Commonwealth's current submittal contains an improved projection of emissions that uses actual 1999 emissions data. The 1999 emissions data, in addition to being much more current than the 1990 estimates, also contain improvements to area and non-road mobile source estimation

methodologies, the most significant of which is use of the EPA's draft non-road model. Although this model is not a final model, Massachusetts DEP believes, and we agree, that it provides a more accurate evaluation of air pollution emissions from non-road engines than the alternative emission estimation procedure available to DEP, which consists of estimates prepared in 1991 by an EPA contractor. The Commonwealth projected its 1999 emissions to 2001 through application of growth factors.

We commented during the public hearing process that the DEP needed to ensure that it calculated its 1999 emission estimates with the same emission factors that were used to determine 1990 baseline emissions. Since the 15 percent and 9 percent ROP

emission reduction obligations are calculated off of the 1990 baseline, use of consistent emission factors in the baseline and projected emission inventories ensures that emission reductions due to changed emission estimation procedures are not reflected in the plan.

Massachusetts' April 10, 2002 submittal and July 26, 2002 amendment contain several revisions to the 1990 baseline area and non-road emission estimates made to ensure that consistent emission factors were used to develop the 1990 and 1999 inventories. DEP then revised its target level calculations using the new 1990 baseline as shown below in Table 1. We approve the revisions made by the Commonwealth to its 1990 baseline emissions.

TABLE 1

Description	VOC Emissions (tpsd)	NO <sub>x</sub> Emissions (tpsd)
Step 1—Calculate 1990 Base Year Inventory .....	1223.5	891.3
Step 2—Develop Rate-of-Progress Inventory by subtracting biogenics and non-reactives ...	816.1	891.3
Step 3—Develop Adjusted Base Year Inventory by subtracting non-creditable FMVCP rdxns:		
1996 target calculation .....	$816.1 - 26.2 = 789.9$	
1999 target calculation .....	$816.1 - 41.4 = 774.7$	$891.3 - 46.3 = 844.9$
Step 4—Calculate Required Reduction (15% VOC for 1996 target; State will use 7% VOC and 2% NO <sub>x</sub> for 1996 to 1999 ROP):		
1996 target calculation .....	$15\% * 789.9 = 118.5$	
1999 target calculation .....	$7\% * 774.7 = 54.2$	$2\% * 844.9 = 16.9$
Step 5—Calculate Total Expected Reductions (sum of FMVCP reductions, required percent reductions, and for VOC in the 1996 target, 6.3 tpsd in RACT corrections and 7.2 tpsd in I/M corrections. The VOC FMVCP between 1996 and 1999 is 15.2 tpsd):		
1996 target calculation .....	$118.5 + 26.2 + 6.3 + 7.2 = 158.1$	
1999 target calculation .....	$54.2 + 15.2 = 69.5$	$16.9 + 46.3 = 63.2$
Step 6—Set Target Levels (Target = 1990 ROP inventory – total reductions)		
1996 target calculation .....	$816.1 - 158.1 = 658.0$	
1999 target calculation .....	$658.0 - 69.5 = 588.5$	$891.3 - 63.2 = 828.0$
Step 7—Projected, Controlled 2001 Emissions .....	551.9	774.7

The Massachusetts ROP plans demonstrate that the VOC and NO<sub>x</sub> emission reductions from the control strategy will achieve sufficient emission reductions to lower 2001 emission levels below the target levels calculated for each pollutant.

### 9. How will Massachusetts achieve these emission reductions?

The Commonwealth's post-1996 control strategy matches the control strategy described in the EPA's July 14, 1997 proposed approval of the Massachusetts 15 percent plan, and also includes emission reductions from the Commonwealth's NO<sub>x</sub> RACT and Ozone Transport Commission (OTC) NO<sub>x</sub> Memorandum of Understanding (MOU) rule, and emission reductions from federal measures limiting emissions from non-road engines promulgated

between 1996 and 1999. Reductions from the NO<sub>x</sub> rules and from the federal non-road standards are described further below.

#### NO<sub>x</sub> RACT

Massachusetts has adopted a NO<sub>x</sub> RACT regulation, the citation for which is 310 Code of Massachusetts Regulations 7.19. The regulation applies to facilities with potential emissions of 50 tons per year or greater. Facilities covered by the rule needed to comply by May 31, 1995. Massachusetts submitted the rule to EPA on July 15, 1994, as a revision to the State's SIP. EPA approved the State's NO<sub>x</sub> RACT rule on September 2, 1999 (64 FR 48095).

#### OTC NO<sub>x</sub> MOU Rule

The DEP submitted a rule entitled "310 CMR 7.27: NO<sub>x</sub> Allowance Program" to EPA to meet the requirements of the ozone transport commission's NO<sub>x</sub> MOU. We approved the rule into the state's SIP on June 2, 1999 (64 FR 29567). By 2001, the Commonwealth's NO<sub>x</sub> RACT and NO<sub>x</sub> MOU rules will reduce point source emissions by 130 tpsd in the Eastern Massachusetts area.

#### Federal Non-Road Standards

In the July 3, 1995 **Federal Register** (60 FR 34581), EPA promulgated the first phase of the regulations to control emissions from new non-road spark-ignition engines. The regulation is found at 40 CFR part 90, and is titled,

“Control of Emissions From Non-road Spark-Ignition Engines.”

The first phase of the new non-road standards will cause a substantial reduction of VOC emissions by 2001. Massachusetts used the EPA's Non-road model to estimate the reductions that will accrue by 2001. Although this is a draft model, it provides a better estimate of emissions than the previous emission estimation methodology available for this sector. The previous methodology was based on the document, “Non-road Engine and Vehicle Emission Study Report” (Publication nos. EPA-21A-2001; EPA460/3-91-002). The sale of reformulated gasoline in Massachusetts also reduces non-road emissions. The combined effect of reformulated gasoline and the new non-road standards will lower non-road VOC emissions by 18 tpsd in the Eastern Massachusetts area.

#### **10. Why is EPA approving a plan that only covers the eastern part of the Commonwealth?**

EPA is only approving ROP plans for the Eastern Massachusetts serious area because we previously approved the ROP plans for the Western Massachusetts serious area in a final rule published in the **Federal Register** on November 15, 2000 (65 FR 68896).

#### **11. Have these emission reductions improved air quality in Massachusetts?**

Ozone levels have decreased in the Eastern Massachusetts area during the 1990's, due in part to emission reductions achieved by these plans. Pollution control measures implemented by states upwind of Massachusetts have also helped ozone levels decline in this area of the Commonwealth.

#### **12. Has Massachusetts met its contingency measure obligation?**

Ozone nonattainment areas classified as serious or above must submit to the EPA, pursuant to section 182(c)(9) of the Act, contingency measures to be implemented if an area misses an ozone SIP milestone. The Massachusetts ROP plan demonstrates that surplus emission reductions beyond those required to meet ROP requirements exist which cover the 3 percent contingency requirement of the Act.

#### **13. Are conformity budgets contained in these plans?**

Section 176(c) of the Act, and 40 CFR 51.452(b) of the federal transportation conformity rule require states to establish motor vehicle emissions budgets in any control strategy SIP that is submitted for attainment and

maintenance of the NAAQS.

Massachusetts will use these budgets to determine whether proposed projects that attract traffic will “conform” to the emissions assumptions in the SIP.

Massachusetts' revised ROP plans contain motor vehicle emission budgets for the year 2001. However, the Massachusetts DEP submitted an ozone attainment demonstration plan to EPA in 1998 that contains mobile source emission budgets for Eastern Massachusetts for 2003. Since the year 2003 budgets are more restrictive, cover a time frame later than the ROP plans (which include the current transportation analyses milestone years), and are based on the attainment plan, these 2003 VOC and NO<sub>x</sub> budgets take precedence over motor vehicle emission budgets for earlier years. The specific 2003 budgets for the Eastern Massachusetts area are 117.1 tpsd for VOC, and 243.3 tpsd for NO<sub>x</sub>.

#### **II. Final Action**

EPA is approving 15 percent and post-1996 rate-of-progress plans for the Massachusetts portion of the Boston-Lawrence-Worcester serious ozone nonattainment area.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective October 28, 2002 without further notice unless the Agency receives relevant adverse comments by September 27, 2002.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. EPA will then address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If we receive no such comments, the public is advised that this rule will be effective on October 28, 2002 and we will take no further action on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### **III. 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. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), 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. 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.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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 October 28, 2002. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: August 13, 2002.

**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 52.1129 is amended by adding paragraph (c) to read as follows:

##### § 52.1129 Control Strategy: Ozone.

\* \* \* \* \*

(c) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on April 10, 2002 and amended on July 26, 2002. The revisions are for the purpose of satisfying the rate of progress requirements of sections 182(b)(1) and 182(c)(2)(B) of the Clean Air Act for the Massachusetts portion of the Boston-Lawrence-Worcester serious ozone nonattainment area.

[FR Doc. 02-21940 Filed 8-27-02; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 60

[SIP Nos. MT-001-0042a, MT-001-0044a, MT-001-0045a; FRL-7261-1]

#### Clean Air Act Approval and Promulgation of Air Quality Implementation Plans for the State of Montana; Revisions to the Administrative Rules of Montana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule and notice of delegation of authority.

**SUMMARY:** EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the Governor of Montana on April 30, 2001, May 21, 2001 and December 20, 2001. The April 30, 2001 and December 20, 2001 submittals revise the State's Administrative Rules of Montana (ARM) by updating Incorporation by Reference rules. The May 21, 2001 submittal repeals the State's Sulfur Oxide—Primary Copper rule. EPA is also announcing that on February 1, 2002, we updated the delegation of authority for the implementation and enforcement of the New Source Performance Standards (NSPS) to the State. Finally, the Governor's April 30, 2001 submittal contains other SIP revisions which have been or will be addressed separately. The intended effect of this action is to make these revisions federally

enforceable. The EPA is taking this action under section 110 of the Clean Air Act (CAA).

**DATES:** This rule is effective on October 28, 2002, without further notice, unless EPA receives adverse comment by September 27, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of the State documents relevant to this action are available for public inspection at the Montana Department of Environmental Quality, Air and Waste Management Bureau, 1520 E. 6th Avenue, Helena, Montana 59620.

**FOR FURTHER INFORMATION CONTACT:** Laurel Dygowski, EPA, Region 8, (303) 312-6144.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we" or "our" is used means EPA.

#### I. Analysis of the State's Submittal

##### A. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan admitted by a State must be adopted after reasonable notice and public hearing. Section 110(1) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a