

**LIBRARY OF CONGRESS****United States Copyright Office****37 CFR Part 201**

[Docket No. 2012–1]

**Copyright Office Fees****AGENCY:** U.S. Copyright Office, Library of Congress.**ACTION:** Notice of proposed rulemaking; Extension of reply comment periods.**SUMMARY:** The United States Copyright Office is extending the deadline for filing reply comments regarding its notice of proposed rulemaking concerning the establishment of a fee schedule for filing cable and satellite statements of account for use of the statutory licenses that provide for the secondary transmission of broadcast programming by cable and satellite companies.**DATES:** Reply comments on the proposed regulation must be received in the Office of the General Counsel of the Copyright Office no later than 5 p.m. Eastern Standard Time (EST) on February 22, 2013.**ADDRESSES:** The Copyright Office strongly prefers that reply comments be submitted electronically. A comment submission page is posted on the Copyright Office Web site at <http://www.copyright.gov/docs/newfees/comments/>. The Web site interface requires submitters to complete a form specifying name and other required information, and to upload comments as an attachment. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations if provided. If electronic submission of comments is not feasible, please contact the U.S. Copyright Office at (202) 707–8380 for special instructions.**FOR FURTHER INFORMATION CONTACT:** Megan Rivet, Budget Analyst, or Melissa Dadant, Senior Advisor for Operations and Special Projects, at (202) 707–8350.**SUPPLEMENTARY INFORMATION:** On December 6, 2012, the U.S. Copyright Office published a notice of proposed

rulemaking (“NPRM”) announcing a revised schedule of fees for filing semi-annual statements of account pursuant to 17 U.S.C. 111, 119, and 122 based upon a new cost study. 77 FR 72,788 (December 6, 2012). Comments to the proposed fees were due on January 7, 2013 and the Office received three comments at that time, including a comment from the National Cable &amp; Telecommunications Association (“NCTA”). The Office previously granted an extension of time to file reply comments to February 15, 2013 in response to NCTA’s motion requesting additional time to consider the Office’s response to a Freedom of Information Act (“FOIA”) request for the cost studies referenced in the Office’s December 6 notice announcing new proposed fees. It appears that more time is necessary to consider this information and the Office is thus extending the time for all stakeholders to file reply comments to 5:00 p.m. EST February 22, 2013.

Dated: February 11, 2013.

**Maria A. Pallante,***Register of Copyrights.*

[FR Doc. 2013–03449 Filed 2–13–13; 8:45 am]

**BILLING CODE 1410–30–P****ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[EPA–R01–OAR–2013–0028; A–1–FRL–9779–9]****Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for the 1997 8-Hour Ozone Standard****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.**SUMMARY:** EPA is proposing approval of State Implementation Plan (SIP) revisions submitted by the State of Massachusetts. These SIP revisions consist of a demonstration that Massachusetts meets the requirements of reasonably available control technology for oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOC) set forth by the Clean Air Act with respect to the 1997 8-hour ozone standard. Additionally, we are proposing approval of updates to two existing regulations limiting emissions of volatile organic compounds. This action is being taken in accordance with the Clean Air Act.**DATES:** Written comments must be received on or before March 18, 2013.**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R01–OAR–2013–0028 by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *Email*: [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov).
3. *Fax*: (617) 918–0047.
4. *Mail*: “Docket Identification Number EPA–R01–OAR–2013–0028,” Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail Code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier*. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (mail Code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R01–OAR–2013–0028. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov), or email, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittals are also available for public inspection during normal business hours, by appointment at the Division of Air Quality Control, Massachusetts Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Bob McConnell, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (Mail Code: OEP05-2), Boston, MA 02109-3912, telephone number (617) 918-1046, fax number (617) 918-0046, email [mcconnell.robert@epa.gov](mailto:mcconnell.robert@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. Additionally, the phrase “the Commonwealth” refers to the state of Massachusetts. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Summary of Massachusetts' SIP Revisions
- III. EPA's Evaluation of Massachusetts' SIP Revisions
  - a. Evaluation of VOC Requirements
  - b. Evaluation of NO<sub>x</sub> Requirements
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

### **I. Background and Purpose**

On January 31, 2008, the State of Massachusetts submitted a formal revision to its SIP. The SIP revision consists of information documenting how Massachusetts complied with the reasonably available control technology (RACT) requirements for the 1997 8-hour ozone standard.<sup>1</sup> Additionally, on June 1, 2010, Massachusetts submitted updates to two regulations that limit volatile organic compound (VOC) emissions, one of which further restricted emissions from pressure-vacuum (PV) valves used by gasoline service stations, and another that updates an existing regulation limiting VOC emissions from solvent cleaning operations. The Commonwealth's submittals requested that they be incorporated into the Massachusetts SIP.

Sections 172(c)(1) and 182(b)(2) of the Clean Air Act (CAA) require states to implement RACT in areas classified as moderate (and higher) non-attainment for ozone, while section 184(b)(1)(B) of the Act requires RACT in states located in the ozone transport region (OTR). Specifically, these areas are required to implement RACT for all major VOC and NO<sub>x</sub> emissions sources and for all sources covered by a Control Techniques Guideline (CTG). A CTG is a document issued by EPA which establishes a “presumptive norm” for RACT for a specific VOC source category. A related set of documents, Alternative Control Techniques (ACT) documents, exists primarily for NO<sub>x</sub> control requirements. States must submit rules or negative declarations for CTG source categories, but not for sources in ACT categories. However, RACT must be imposed on major sources of NO<sub>x</sub>, and some of those major sources may be within a sector covered by an ACT document.

In 1997, EPA revised the health-based National Ambient Air Quality Standards (NAAQS) for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors and individuals with

a pre-existing respiratory disease such as asthma. On April 30, 2004 (69 FR 23858), EPA designated areas attainment or nonattainment with respect to the 1997 8-hour ozone standard. The entire state of Massachusetts was designated nonattainment and classified as moderate, as two nonattainment areas. See 40 CFR 81.322.

On November 29, 2005, EPA published a final rule in the **Federal Register** that outlined the obligations that areas found to be in nonattainment of the 1997 8-hour ozone standard needed to address (see 70 FR 71612). This rule, referred to as the “Phase 2 Implementation rule,” contained, among other things, a description of EPA's expectations for states with RACT obligations. The Phase 2 Implementation rule indicated that states could meet RACT through the establishment of new or more stringent requirements that meet RACT control levels, through a certification that previously adopted RACT controls in their SIP approved by EPA under the 1-hour ozone NAAQS represent adequate RACT control levels for 8-hour attainment purposes, or with a combination of these two approaches. In addition, a State must submit a negative declaration in instances where there are no CTG sources.

### **II. Summary of Massachusetts' SIP Revisions**

On January 31, 2008, Massachusetts submitted a demonstration that its regulatory framework for stationary sources meets the criteria for RACT as defined in EPA's Phase 2 Implementation rule. The Commonwealth held a public hearing on the RACT program on January 18, 2008. Massachusetts' RACT submittal notes that its prior statewide designation as nonattainment for the 1-hour ozone standard resulted in the adoption of stringent controls for major sources of VOC and NO<sub>x</sub>, including RACT level controls. Therefore, as allowed for within EPA's Phase 2 Implementation rule, much of the Commonwealth's submittal consists of a review of RACT controls adopted under the 1-hour ozone standard and an indication of whether those previously adopted controls still represent RACT under the 1997 ozone standard. Additionally, Massachusetts notes that as a member state of the Ozone Transport Commission (OTC) it works with that organization to identify and adopt, as deemed appropriate, regulations on additional VOC and NO<sub>x</sub> categories beyond those for which EPA has issued CTGs or ACT documents.

<sup>1</sup>The Commonwealth's submittal was made to address RACT for the 1997 8-hour ozone standard and does not address the 2008 8-hour ozone standard of 0.075 parts per million.

With regard to VOC controls, the Commonwealth's submittal identifies the specific control measures that have been previously adopted to control emissions from VOC sources, reaffirms negative declarations for some CTG categories, and describes updates being considered to strengthen three VOC control regulations to ensure that they will continue to represent RACT under the 1997 ozone standard. A table named "Table RACT-1" within Massachusetts' submittal contains a summary of the state's response to each of the CTG categories that EPA issued through 2006.<sup>2</sup> The table identifies the specific state rule, where relevant, that is in place, and the date that EPA approved the rule into the Massachusetts SIP. A table labeled "Table RACT-2" within the Commonwealth's submittal identifies the major VOC sources in the state that are not covered by an ACT or CTG document. The state has issued source-specific orders containing control requirements for the facilities listed in Table RACT-2 of the state's submittal, and all of these have been previously approved into the Massachusetts SIP.

The Commonwealth's submittal notes that no sources exist in the state for some CTG categories. Specifically, Table RACT-1 of Massachusetts' submittal makes negative declarations for the following CTG sectors:

1. Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds;
2. Leaks from Petroleum Refinery Equipment;
3. Manufacture of Synthetic Pharmaceutical Products;
4. Manufacture of Pneumatic Rubber Tires;
5. Large Petroleum Dry Cleaners;
6. Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins;
7. Natural Gas/Gasoline Process Leaks;
8. Synthetic Organic Chemical Manufacturing Air Oxidation Processes; and
9. Ship Building and Repair.

Massachusetts' review of its control program for sources of VOC concludes that, with the adoption of revised rules for solvent cleaning, Stage II vehicle refueling, and cutback asphalt, all required VOC sources in the state are subject to RACT.

As required, the Commonwealth's submittal addresses NO<sub>x</sub> emissions as well as VOC emissions. In their

submittal, the Commonwealth explains that in order to address the 1990 CAA NO<sub>x</sub> RACT requirement, Massachusetts adopted 310 CMR 7.19, "Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO<sub>x</sub>)." This rule established NO<sub>x</sub> RACT for large, medium and small boilers; stationary combustion turbines; stationary reciprocating internal combustion engines; and glass melting furnaces. In addition, they describe that 310 CMR 7.19(12) provided for single source NO<sub>x</sub> RACT determinations for major "miscellaneous" NO<sub>x</sub> sources with a potential to emit 50 tons or more per year of NO<sub>x</sub>. Massachusetts explains that they have reviewed 310 CMR 7.19 and, in general, have determined that the NO<sub>x</sub> controls required by 310 CMR 7.19 continue to constitute NO<sub>x</sub> RACT under the 1997 8-hour ozone standard for each of the source categories covered by that rule, as well as for major sources of NO<sub>x</sub> for which single-source RACT determinations were made pursuant to 310 CMR 7.19(12). Additionally, the Commonwealth certifies in Tables RACT-1 and RACT-2 that current Massachusetts NO<sub>x</sub> RACT constitutes 8-hour NO<sub>x</sub> RACT under the 1997 ozone standard for the NO<sub>x</sub> categories listed and for the facilities for which single-source RACT determinations were made.

Within their submittal, the Commonwealth notes that certain NO<sub>x</sub> emitting sectors are controlled by additional sections of Massachusetts' air pollution control regulations. First, Massachusetts notes that electric generation units (EGUs) and large industrial boilers, in addition to requirements contained within 310 CMR 7.19, are also covered by 310 CMR 7.28, "NO<sub>x</sub> Allowance Trading Program," and 310 CMR 7.32, "Massachusetts Clean Air Interstate Rule (Mass CAIR)." In addition, Massachusetts notes that a subset of the largest fossil fuel-fired EGUs in Massachusetts are also subject to NO<sub>x</sub> emission limitations under 310 CMR 7.29, "Emissions Standards for Power Plants," adopted in 2001. Lastly, the Commonwealth notes that municipal waste combustors, in addition to requirements contained within 310 CMR 7.19, are also covered by 310 CMR 7.08, "Incinerators."

Massachusetts' review of its control program for major sources of VOC and NO<sub>x</sub> thus concludes that, with the adoption of revised rules for solvent cleaning, Stage II vehicle refueling, and cutback asphalt, all major sources in the state are subject to RACT under the 1997 ozone standard.

### III. EPA's Evaluation of Massachusetts' SIP Revisions

EPA has reviewed Massachusetts' determination that it has adopted VOC and NO<sub>x</sub> control regulations for stationary sources that constitute RACT, and determined that the set of regulations cited by the Commonwealth constitute RACT for purposes of the 1997 8-hour ozone standard. Additionally, we are proposing to approve updates to two VOC RACT regulations submitted by Massachusetts on June 1, 2010.

#### a. Evaluation of VOC Requirements

Massachusetts' submittal documents the set of VOC control regulations that have been adopted to ensure that RACT level controls are required in the state. These requirements include: 310 CMR 7.18, "Volatile and Halogenated Organic Compounds;" and 310 CMR 7.24, "Organic Material Storage and Distribution." Table RACT-1 of the Commonwealth's submittal indicates that Massachusetts has either adopted a regulation that has been incorporated into the SIP to address EPA's pre-2006 CTGs, or submitted a negative declaration in instances where no facilities exist in the state for certain CTGs identified in the submittal. Massachusetts' review of these VOC RACT regulations revealed that several could be strengthened in order to continue to meet RACT, and we address the disposition of those updates further below.

Additionally, Massachusetts has adopted numerous single source RACT orders for major sources of VOC that are not covered by one of EPA's CTGs, and these orders have been submitted to EPA and incorporated into the SIP. They are identified within the Commonwealth's submittal in Table RACT-2. Also, as noted above, Massachusetts adopted, and we are proposing to approve into the Massachusetts SIP, updates to two existing VOC RACT rules, namely the state's existing solvent metal cleaning and Stage II motor vehicle refueling regulations.

The Commonwealth's submittal documents a substantial downward trend in VOC emissions from stationary sources, a portion of which is attributable to RACT controls implemented by Massachusetts. Data collected by Massachusetts from its annual survey of industrial point source emitters reveals that between 1996 and 2002, VOC emissions from industrial point sources declined by 63%. This decline in emissions was brought about,

<sup>2</sup> This rulemaking does not address Massachusetts' response to the CTGs that EPA issued in 2006, 2007, and 2008.

in part, by the RACT program implemented by Massachusetts.

We are proposing approval of updates to the following two VOC RACT regulations described below, which Massachusetts has strengthened such that they continue to represent RACT under the 1997 ozone standard. Although Massachusetts's RACT certification submittal indicates that three existing VOC rules were to be updated in such fashion, only two were updated. Massachusetts updated its existing rules limiting emissions from solvent cleaning (metal degreasing) and emissions from storage tanks at gasoline service stations, but did not update its existing cutback asphalt regulation. These three regulations are discussed individually, as follows.

#### Solvent Degreasing Rule

Massachusetts updated its previously SIP-approved (58 FR 34911) solvent cleaning rule primarily to include a new requirement limiting the vapor pressure for cold cleaning solvents, as recommended within the Ozone Transport Commission's (OTC's) 2001 model rule for this activity. The requirement applies to cold cleaning degreasers that hold more than one liter of solvent. The Commonwealth's proposed revision includes exemptions for cold cleaning degreasers used in special and extreme metal cleaning, for devices located in a permanent total enclosure with an overall VOC control efficiency of at least 90 percent, and for facilities that receive an approval from the Department of Environmental Protection (DEP) to use a non-compliant solvent due to unsafe operating conditions. We note that with the new vapor pressure limit, the revised rule is more stringent than the previously SIP-approved version of the rule. In particular, Massachusetts estimated that the revised rule would reduce VOC emissions by 7 tons per summer day in 2009 compared to the previously regulated levels.<sup>3</sup> Therefore, the revised rule meets the requirements of section 193 of the CAA, which provides that "[n]o control requirement in effect \* \* \* before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant." For

similar reasons, the revisions meets the requirements of section 110(l) of the CAA, which prohibits EPA from approving a SIP revision "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress \* \* \* or any other applicable requirement of [the Clean Air Act]." Additionally, we note that the limited number of exemptions from the new vapor pressure requirement is acceptable given that this requirement is above and beyond the RACT recommendation within the EPA's CTG<sup>4</sup> for this source category.

#### Stage II Rule

The Commonwealth updated its previously adopted, SIP-approved (65 FR 78974) Stage II Vapor Recovery regulation, 310 CMR 7.24(6), primarily to require the use of PV vent caps on vapor balance systems installed on underground gasoline storage tanks to further reduce evaporative emissions from vehicle refueling. A number of additional updates were also made to the rule, including the following items.

The Commonwealth revised definitions for the terms "isolate," "minor modification," "routine maintenance," and "substantial modification," and also proposed new language clarifying requirements that ensure timely repair of Stage II systems. Massachusetts incorporated requirements that compel compliance testing companies to notify the DEP of any facilities that fail a compliance test, and also revised existing requirements for compliance testing companies.

Experience gained from operation of the Stage II program revealed that the compliance benefit attributed to the 120 day in-use compliance testing and certification requirement for vacuum assist systems could be achieved by the weekly visual and annual compliance testing requirement, and so the Commonwealth eliminated the 120 day in-use compliance testing requirement. Additionally, Massachusetts' revisions include an allowance for a facility to commence operation immediately upon passing applicable testing requirements.

When Massachusetts initially adopted its Stage II rule in 1989, it adopted a more stringent applicability level than subsequently required by the CAA amendments of 1990<sup>5</sup> that resulted in essentially all dispensing of gasoline to

be subject to the regulation. Because of this, very small levels of gasoline dispensing activity such as that which occurs at salvage yards was covered by the regulation. Therefore, the Commonwealth's revised rule exempts motor vehicle salvage yards that dispense recovered fuel on-site to employee vehicles. By including this exemption, Massachusetts believes that the air quality protections afforded by the rule will not be adversely affected. Given the minimal amount of gasoline that will receive this exemption in comparison to the statewide use of motor vehicle fuel, we agree with the Commonwealth's conclusion.

The Commonwealth's revisions to the Stage II regulation include several provisions relating to requirements put in place by the California Air Resources Board (CARB). These include an allowance for the installation of CARB approved above ground storage tanks, references to CARB Stage II approval letters, and an update to the list of CARB approved Stage II systems to incorporate recently adopted CARB Executive Orders.

Massachusetts also made a number of minor revisions to existing recordkeeping and testing requirements applicable to Stage II system operators. We note that, with the addition of the new PV vent valve requirements, the revised rule is more stringent than the previously SIP-approved rule, even after accounting for the new exemption for motor vehicle salvage yards that dispense recovered fuel on-site to employee vehicles. Therefore, the revision meets the requirements of section 110(l) of the CAA.

The Commonwealth submitted its updated Stage II vapor recovery and solvent cleaning rules to EPA on June 1, 2010, and we are proposing approval of them within this action.

#### Cutback Asphalt Rule

The Commonwealth's January 31, 2008 submittal indicated that updates were also intended for 310 CMR 7.18(9), the existing cutback asphalt paving rule. However, on January 18, 2013, Massachusetts submitted a letter withdrawing portions of the January 31, 2008 submittal, including the commitment to revise the cutback asphalt rule. The Commonwealth noted in its January 18, 2013 withdrawal letter that on May 29, 2012 (77 FR 31496), EPA issued a final determination that Eastern Massachusetts had attained the 1997 8-hour ozone standard, and on June 19, 2012 (77 FR 36404) issued a similar determination for the Western Massachusetts nonattainment area. Therefore, the Commonwealth indicated

<sup>3</sup> See "Background Information and Technical Support Document for Proposed Amendments To 310 CMR 7.00 et seq., 310 CMR 7.18, Volatile and Halogenated Organic Compounds, Solvent Metal Degreasing," Massachusetts Department of Environmental Protection, October 17, 2008, available in the docket for this rulemaking.

<sup>4</sup> See "Control of Volatile Organic Emissions from Solvent Metal Cleaning," EPA-450/2-77-022; 1977/11.

<sup>5</sup> Section 182(b)(3) of the CAA requires Stage II controls at gasoline dispensing facilities which dispense 10,000 gallons or more per month or 50,000 gallons per month in the case of independent small business marketers.

that it now believes that its existing SIP-approved (58 FR 3495) cutback asphalt regulation continues to represent RACT. Given the circumstances cited above, we concur with this conclusion.

#### b. Evaluation of NO<sub>x</sub> Requirements

Massachusetts' submittal documents the set of NO<sub>x</sub> control regulations that have been adopted to ensure that RACT level controls are required in the state. These requirements include the following sections of title 310 of the Code of Massachusetts Regulations:

- 7.08, "Incinerators;"
- 7.19, "Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO<sub>x</sub>);"
- 7.28, "NO<sub>x</sub> Allowance Trading Program;"
- 7.29, "Emission Standards for Power Plants;" and,
- 7.32, "Massachusetts Clean Air Interstate Rule (Mass CAIR)."

Table RACT-1 of the Commonwealth's submittal indicates the regulation that the Commonwealth has adopted, where appropriate, to address EPA's ACTs for NO<sub>x</sub> source categories. We note that we have not updated any of the ACT documents noted within Table RACT-1.

Massachusetts' submittal addresses NO<sub>x</sub> RACT for all major sources in the Commonwealth. For the following sectors for which EPA has published ACT guidelines, Massachusetts's submittal indicates that there are no major sources of NO<sub>x</sub> within the Commonwealth: nitric and adipic acid plants; cement plants; and iron and steel manufacturing facilities. Major NO<sub>x</sub> sources do exist in Massachusetts for the ACT categories noted within Table RACT-1, and this Table identifies the NO<sub>x</sub> RACT regulations the Commonwealth has adopted to address them. These ACT categories include combustion turbines, process heaters, internal combustion engines, industrial-commercial-institutional boilers, and glass manufacturing facilities. Massachusetts' RACT submittal certifies that these regulations represent RACT for purposes of EPA's 1997 8-hour ozone standard. Additionally, Massachusetts has adopted three single source RACT orders for major sources of NO<sub>x</sub> that are not covered by one of EPA's ACTs, and these orders, identified in Table RACT-2, have been submitted to EPA and incorporated into the SIP. See 40 CFR 52.1167. Table RACT-1 also lists regulations adopted by the Commonwealth to further control NO<sub>x</sub> emissions from electric utility boilers and municipal waste combustors (MWCs), and we discuss these two sectors separately below.

#### Municipal Waste Combustors

MWCs represent one of the largest NO<sub>x</sub> emitting sectors in the Commonwealth, and EPA previously approved RACT requirements for these units within 310 CMR 7.19(9), which became effective in 1995. See 64 FR 48095. More recently, in 2000, the Commonwealth tightened emission limits for eleven of the seventeen MWC units in the Commonwealth via a strengthening of 310 CMR 7.08(2), Incinerators. Massachusetts submitted the updated rule to us, and we approved it as part of the Commonwealth's plan for controlling MWC emissions from existing large MWC plants under Section 111(d) of the CAA on October 9, 2002 (67 FR 62894). Massachusetts noted that the update to section 7.08(2) established emission limits that were equivalent to those within 40 CFR 60 Subpart Cb, which refers to EPA's emission guideline entitled, "Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors that are Constructed on or Before September 20, 1994." The Commonwealth's RACT certification further noted that one unit in Massachusetts is subject to the New Source Performance Standard located at 40 CFR 60 Subpart Eb. In light of the above, we find that the controls on 12 of the 17 units as specified above, in addition to the initial baseline adoption of RACT for MWCs in 1995 pursuant to CMR 7.19(9), demonstrates that the Commonwealth has required an overall RACT level of control for these units.

#### Electric Utility Boilers

EPA's Phase 2 Ozone Implementation Rule mentioned above addressed various statutory requirements, including the requirement for RACT level controls for sources located within nonattainment areas generally, and controls for NO<sub>x</sub> emissions from EGUs in particular. EPA indicated its determination that the regional NO<sub>x</sub> emissions reductions that result from either the NO<sub>x</sub> SIP Call or the CAIR would meet the NO<sub>x</sub> RACT requirement for EGUs located in states included within the respective NO<sub>x</sub> SIP Call or the CAIR geographic regions. Thus, EPA concluded that: "[t]he State need not perform a NO<sub>x</sub> RACT analysis for sources subject to the State's emission cap-and-trade program where the cap-and-trade program has been adopted by the State and approved by EPA as meeting the NO<sub>x</sub> SIP Call requirements or, in States achieving the CAIR reductions solely from electric generating units (EGUs), the CAIR NO<sub>x</sub>

requirements."<sup>6</sup> Based in part on this existing EPA rule at that time, the Commonwealth certified that the NO<sub>x</sub> sources regulated by its NO<sub>x</sub> SIP Call and CAIR rules meet the 8-hour ozone RACT requirements for purposes of the 1997 ozone standard.

However, in November 2008, several parties challenged EPA's Phase 2 Ozone Implementation Rule. In particular, they challenged EPA's determination that compliance with the NO<sub>x</sub> SIP Call and/or the CAIR could satisfy NO<sub>x</sub> RACT requirements for EGUs in nonattainment areas and EPA's determination that compliance with the CAIR could satisfy NO<sub>x</sub> RACT for EGUs in ozone nonattainment areas. As a result of this litigation, the Court decided that the provisions in the Phase 2 Ozone Implementation Rule indicating that a state need not perform (or submit) a NO<sub>x</sub> RACT analysis for EGU sources subject to a cap-and-trade program that meets the requirements of the NO<sub>x</sub> SIP Call are inconsistent with the statutory requirements of section 172(c)(1).<sup>7</sup> The Court specifically held that the Phase 2 Ozone Implementation Rule allowing use of the NO<sub>x</sub> SIP call to constitute RACT without any locally applicable analysis regarding the equivalence of NO<sub>x</sub> SIP Call and RACT reductions: "is inconsistent with the Clean Air Act \* \* \* in allowing participation in a regional cap-and-trade program to satisfy an area-specific statutory mandate." The Court emphasized that: "the RACT requirement calls for reductions in emissions from sources in the area; reductions from sources outside the nonattainment area do not satisfy the requirement \* \* \*

Accordingly, participation in the NO<sub>x</sub> SIP call would constitute RACT only if participation entailed at least RACT-level reductions in emissions from sources within the nonattainment area." In view of its decision in *North Carolina v. EPA*, in which the Court had previously remanded the CAIR, the court deferred consideration of the litigant's challenge to the Phase 2 Ozone Implementation Rule insofar as they related to the CAIR program. In light of the above, as well as a 2007 petition for reconsideration that EPA granted on this issue as it pertains to CAIR,<sup>8</sup> we do not consider the NO<sub>x</sub> SIP call or CAIR to equal NO<sub>x</sub> RACT. Rather, consistent

<sup>6</sup> See Phase 2 Ozone Implementation Rule, 70 FR 71617.

<sup>7</sup> See *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009).

<sup>8</sup> See Earthjustice Petition for Reconsideration of the Clean Air Fine Particle Rule, June 25, 2007. See also April 25, 2011 letter from Lisa P. Jackson to Paul Cort, Earthjustice, responding to the June 25, 2007 petition for reconsideration.

with the above ruling, we have prepared a locally applicable analysis of whether electric utility boilers in the Commonwealth are subject to a RACT level of controls.

Electric utility boilers are subject to the Commonwealth's initial NO<sub>x</sub> RACT regulation, 310 CMR 7.19, which was adopted in the mid-1990s. We previously determined that the emission limits within 310 CMR 7.19 required a RACT level of control on these units for purposes of our 1-hour ozone standard. See 64 FR 48095. Massachusetts subsequently acted to further reduce NO<sub>x</sub> emissions from these units by participation in several NO<sub>x</sub> budget trading programs, and also by enactment of 310 CMR 7.29, "Emission Standards for Power Plants."

Regarding NO<sub>x</sub> budget trading programs, between 1999 and 2002, Massachusetts participated in the OTC's NO<sub>x</sub> Budget Program. Massachusetts implemented this program by adopting 310 CMR 7.27, "NO<sub>x</sub> Allowance Program," and submitted this regulation to EPA which we incorporated into the Massachusetts SIP on December 27, 2000 (65 FR 81743). In 2003, the sources covered by the NO<sub>x</sub> Allowance Program were transitioned to the Federal NO<sub>x</sub> budget program (also referred to as the "NO<sub>x</sub> SIP call") which Massachusetts implemented by adopting 310 CMR 7.28, "NO<sub>x</sub> Allowance Trading Program." Massachusetts submitted this regulation to EPA, and we approved it into the Massachusetts SIP on December

3, 2007 (72 FR 67854). The Federal NO<sub>x</sub> budget program achieved significant additional NO<sub>x</sub> reductions within Massachusetts from the sources subject to its requirements. In particular, emissions from units within Massachusetts subject to the Federal NO<sub>x</sub> budget program reduced ozone season NO<sub>x</sub> emissions from 9,265 tons in 2003 to 3,232 tons by 2008, representing a 65% reduction in emissions. Massachusetts then acted to further reduce NO<sub>x</sub> emissions from these units by adopting 310 CMR 7.32, "Massachusetts Clean Air Interstate Rule (Mass CAIR)." Massachusetts submitted this program to EPA, and we approved it into the SIP on December 3, 2007 (72 FR 67854). By 2011, ozone season NO<sub>x</sub> emissions from units within the Commonwealth subject to the CAIR rule decreased by an additional 46%, falling from 3,232 tons in 2008 to 1,760 tons in 2011. The substantial decrease in NO<sub>x</sub> emissions from sources in the Commonwealth subject to the Federal NO<sub>x</sub> budget and CAIR programs was brought about, in part, by the installation of various types of NO<sub>x</sub> emission control equipment of the variety listed in Table 1, below. Although the CAIR program was subject to a number of court challenges, a recent decision by the U.S. Court of Appeals for the District of Columbia issued on August 21, 2012 which vacated the Cross State Air Pollution Rule (CSAPR) provided that until the CSAPR litigation is resolved, the CAIR program remains

in effect. (*EME Homer City Generation, L.P., v. EPA*, No. 11-1302. (D.C. Cir. 2012)).

Regarding 310 CMR 7.29, "Emission Standards for Power Plants," the Commonwealth adopted this regulation in 2001, and submitted it to EPA for incorporation into the SIP within a submittal made on December 30, 2011, to address regional haze requirements. We approved the state's submittal, including 310 CMR 7.29, within a final rulemaking signed by the Regional Administrator on September 12, 2012 and forwarded for publication in the **Federal Register**. A copy of the signed approval of the Commonwealth's regional haze SIP is available in the docket for this action. This rule covers the largest fossil fuel-fired EGUs in Massachusetts and required individual emissions units to install additional add-on controls to comply with output-based NO<sub>x</sub> emission limits between 2000 and 2008. As of 2009, six operating facilities were subject to this regulation containing 13 EGUs. Annual NO<sub>x</sub> emissions for these six facilities dropped from 30,352 tons in 2000 to 7,009 tons in 2009, a drop of 77%. The NO<sub>x</sub> controls installed on each unit at these facilities, as listed in their Title V Operating Permit, is contained in Table 1, below. Within Table 1, the following abbreviations are used: LNB for low NO burners; OFA for over-fire air; FGR for flue gas recirculation; SCR for selective catalytic reduction; and SNCR for selective non-catalytic reduction.

TABLE 1—NO<sub>x</sub> CONTROLS AT FACILITIES GOVERNED BY 310 CMR 7.29

Facility	Unit	NO <sub>x</sub> controls installed	Operating status
Brayton Point .....	1	LNB, OFA, SCR .....	Operating.
Brayton Point .....	2	LNB, OFA .....	Operating.
Brayton Point .....	3	LNB, OFA, SCR .....	Operating.
Brayton Point .....	4	LNB .....	Operating.
Canal Station .....	1	LNB, OFA, FGR, SCR .....	Operating.
Canal Station .....	2	LNB, OFA, FGR, combustion tuning, SNCR .....	Operating.
Mount Tom .....	1	LNB, OFA, SCR .....	Operating.
Mystic .....	7	None <sup>9</sup> .....	Operating.
Salem Harbor .....	1	LNB, SNCR .....	Retired 1/15/12.
Salem Harbor .....	2	SNCR .....	Retired 1/15/12.
Salem Harbor .....	3	LNB, OFA, SNCR .....	Operating.
Salem Harbor .....	4	LNB .....	Operating.
Somerset .....	8	OFA, Natural Gas Reburn System, SNCR .....	Retired 1/2/10.

As previously mentioned, Massachusetts adopted a set of regulations to address NO<sub>x</sub> RACT for the 1-hour ozone standard, and we approved those requirements into the Commonwealth's SIP. Since then, Massachusetts has acted to further

reduce NO<sub>x</sub> emissions from the two largest NO<sub>x</sub> emitting sectors in the state, namely municipal waste combustors and electric utility boilers. In light of the above regulatory actions and NO<sub>x</sub> control equipment installations and the resulting decrease in NO<sub>x</sub> emissions

within Massachusetts, in addition to the initial baseline adoption of RACT in CMR 7.19, EPA is proposing approval of Massachusetts' January 31, 2008 SIP certification that the state has adopted air pollution control strategies that represent NO<sub>x</sub> RACT for purposes of

<sup>9</sup>RACT requirements for Unit 7 are located at 310 CMR 7.19(4)(a)(3)(a)(i), which requires a NO<sub>x</sub> emission limit of 0.25 lbs/mmBtu when burning oil,

and pursuant to 310 CMR 7.19(4)(a)(3)(a)(ii) which requires a NO<sub>x</sub> emission limit of 0.20 lbs/mmBtu when burning gas. Between 2010 and 2012, the unit

was well within these limits, emitting NO<sub>x</sub> within a range of 0.06 to 0.08 lbs/mmBtu.

compliance with our 1997 8-hour ozone standard. Our decision is also based, in part, on the fact that both nonattainment areas within the Commonwealth have attained our 1997 8-hour ozone standard by their attainment date of June 15, 2010 as noted in Section IV, Proposed Action.

#### IV. Proposed Action

EPA is proposing approval of Massachusetts' January 31, 2008 SIP submittal that demonstrates that the state has adopted air pollution control strategies that represent RACT for purposes of compliance with the 1997 8-hour ozone standard. Additionally, we are proposing approval of two revised regulations submitted by Massachusetts on June 1, 2010: 310 CMR 7.18(8), "Solvent Metal Degreasing;" and 310 CMR 7.24(6), "Dispensing of Motor Vehicle Fuel."

EPA has evaluated the VOC and NO<sub>x</sub> stationary source control regulations which Massachusetts contends meets RACT for the 1997 8-hour ozone standard, and determined that a level of control consistent with RACT has been implemented in the state for purposes of the 1997 ozone standard. We do not anticipate any difficulties with enforcing the state's standards, as EPA has previously approved the rules Massachusetts cites as the means by which RACT is implemented. We have determined that these regulatory elements and the resulting reduction in VOC and NO<sub>x</sub> emissions from major sources demonstrate that a RACT level of control for both pollutants has been implemented in the state. EPA has previously determined that Massachusetts' two 8-hour ozone nonattainment areas attained the 1997 ozone standard by their attainment date, based on quality-assured air monitoring data. This determination was published on May 29, 2012 (77 FR 31496) for the Eastern Massachusetts nonattainment area, and on June 19, 2012 (77 FR 36404) for the Western Massachusetts nonattainment area. The improvements in air quality represented by these clean data determinations were brought about, in part, by the RACT program implemented by Massachusetts.

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

#### 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 proposed 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 proposed 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 (Pub. L. 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.

#### 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.

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

Dated: February 5, 2013.

**Ira W. Leighton,**

*Acting Regional Administrator, EPA Region 1.*

[FR Doc. 2013-03472 Filed 2-13-13; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R09-OAR-2013-0064; FRL-9777-7]

#### Revision of Air Quality Implementation Plan; California; Sacramento Metropolitan Air Quality Management District; Stationary Source Permits

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to fully approve two permitting rules submitted by California as a revision to the Sacramento Metropolitan Air Quality Management District (SMAQMD or District) portion of the California State Implementation Plan (SIP). These rules were adopted by the SMAQMD to regulate the construction and modification of stationary sources of air pollution within Sacramento County. EPA is proposing to approve this SIP revision based on the Agency's conclusion that the rules are consistent with applicable Clean Air Act (CAA) requirements, policies and guidance. Final approval of these rules would make the rules federally enforceable and correct program deficiencies identified in a previous EPA rulemaking on July 20, 2011.

**DATES:** Any comments must arrive by March 18, 2013.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2013-0064, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *Email:* [R9airpermits@epa.gov](mailto:R9airpermits@epa.gov).