Drafting Information

The drafters of this notice are Lieutenant (junior grade) Sean Regan, Project Officer for the Captain of the Port, and Lieutenant Commander C. M. Juckniess, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this proposed regulation will begin at approximately 8 p.m. PDT on October 12, 1994, with a fireworks display, and will continue until 9 p.m. PDT unless canceled earlier by the Captain of the Port. This Safety Zone is necessary to ensure the safety of pleasure craft and spectators from possible damage or injury resulting from the hazards associated with the Fleetweek fireworks display. Entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T11–097 is added to read as follows:

§ 165.T11–097 Safety Zone: San Francisco Bay, CA.

(a) *Location.* The following area is a Safety Zone: The waters of San Francisco Bay, California in the vicinity of Treasure Island, encompassed within a 400-yard radius of the point at latitude 37°–48′–58″ N and longitude 122°–22′–16″ W.

(b) *Effective date.* This section will be in effect on October 12, 1994 between 8 p.m. PDT and 9 p.m. PDT, unless canceled earlier by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this Part, entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port.

Dated: September 22, 1994.

D.P. Montoro,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 94–24525 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 165

[COTP San Francisco Bay 94–013]

RIN 2115–AA97

Safety Zone; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The U.S. Navy and the City of San Francisco coordinate an annual "Fleetweek" event on San Francisco Bay featuring, in part, a Parade of Ships and a U.S. Navy Blue Angels Air Show on October 8, 1994. To ensure the safety of Fleetweek participants and spectators, the Coast Guard proposes to establish a Safety Zone on the waters of San Francisco Bay, California, encompassing the entire water area bounded by the following: Commencing at the point 37°–48′40″ N, 122°–28′–38″ W; thence to 37°–49′–10″ N, 122°–28′41″ W; thence to 37°–49′–31″ N, 122°–25′–18″ W; thence to 37°–49′–36″ N, 122°–22′–44″ W; thence to 37°–48′–28″ N, 122°–22′02″ W, thence to 37°–47′–21″ N, 122°–23′–14″ W; and thence returning along the shoreline to the point of origin. Entry into, transit through, or anchoring within this Safety Zone by deep draft vessels, 1600 gross tons or greater, and tug and barge combinations is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This Safety Zone will be in effect on October 8, 1994 between 9 a.m. PDT and 4 p.m. PDT, unless canceled earlier by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (junior grade) Sean Regan, Coast Guard Marine Safety Office San Francisco Bay, California; (510) 437–3073.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since the scope of activities potentially attracting a number of spectator craft and thus requiring a safety zone was not finalized until a date fewer than 30 days prior to the event date.

Drafting Information

The drafters of this notice are Lieutenant (junior grade) Sean Regan, Project Officer for the Captain of the Port, and Lieutenant Commander C.M. Juckniess, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this Safety Zone will begin on October 8, 1994 at 9 a.m. PDT and will conclude at 4 p.m. PDT, unless canceled earlier by the Captain of the Port. This Safety Zone is necessary to ensure the safety of pleasure boaters against injury from collision with deep draft vessels or tug and barge combinations during the Parade of Ships and U.S. Navy Blue Angels Air Show. Entry into this zone by deep draft vessels, 1600 gross tons or greater, or tug and barge combinations is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T11–098 is added to read as follows:

§ 165.I11–098 Safety Zone: San Francisco Bay, CA.

(a) *Location.* The following area is a Safety Zone: The waters of San Francisco Bay, CA, encompassing the entire water area bounded by the following: Commencing at the point 37°–48′–40″ N, 122°–28′–38″ W; thence to 37°–49′–10″ N, 122°–28′–41″ W; thence to 37°–49′–31″ N, 122°–25′–18″ W; thence to 37°–49′–36″ N, 122°–22′–44″ W; thence to 37°–48′–28″ N, 122°–22′–02″ W, thence to 37°–47′–21″ N, 122°–23′–14″ W; and thence returning along the shoreline to the point of origin.

(b) *Effective date.* This section will be in effect on October 8, 1994 between 9 a.m. PDT and 4 p.m. PDT, unless canceled earlier by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in Section 165.23 of this Part, entry into, transit through, or anchoring within this zone by deep draft vessels, 1600 gross tons or greater, or by tug and barge combinations is prohibited unless authorized by the Captain of the Port.

Dated: September 22, 1994.

D. P. Montoro,

Captain, U.S. Coast Guard Captain of the Port.

[FR Doc. 94–24526 Filed 10–3–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN17–3–6325; [FRL–5077–2]

Approval and Promulgation of Implementation Plans; Carbon Monoxide; Oxygenated Gasoline Program; Minnesota

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving a State Implementation Plan (SIP) revision submitted by the State of Minnesota. This revision requires an oxygenated gasoline program in the Minneapolis-St. Paul Metropolitan Statistical Area (MSA). Two areas were originally required to implement an oxygenated gasoline program because of past violations of the carbon monoxide standard, but on April 14, 1994, the Duluth area was redesignated to attainment of the National Ambient Air Quality Standards for carbon monoxide (CO). This SIP revision was submitted to satisfy the requirement for Minnesota of section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (the Act), which requires all CO nonattainment areas with a design value of 9.5 parts per million (ppm) or above based on 1988 and 1989 air quality monitoring data to implement an oxygenated gasoline program. USEPA is approving the oxygenated gasoline program.

EFFECTIVE DATE: This final rule becomes effective on November 3, 1994.

ADDRESSES: Copies of the SIP revision, public comments, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Maggie Greene, at (312) 886–6088 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604.

A copy of this revision to the Minnesota Oxygenated Gasoline SIP is available at the following address: Office of Air and Radiation (OAR), Docket and Information Center, (Air Docket 6102), room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460, (202) 260–7548, and Program Development Section, Air Quality Division, Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, Minnesota 55155–3898.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Air Enforcement Branch (AE–17J), U.S Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

The Minneapolis-St. Paul area and St. Louis County (Duluth) in the State of Minnesota (the control area) were designated nonattainment for CO and classified as moderate with a design value of 11.4 and 9.9 parts per million respectively, based on 1988 and 1989 data. USEPA redesignated the Duluth area to attainment on April 14, 1994 (59 FR 17706) in the **Federal Register**. Under section 211(m) of the Act, Minnesota was required to submit a revised SIP under section 110 and part D of the Act which includes an oxygenated gasoline program for Minneapolis-St. Paul and Duluth-Superior by November 15, 1992. On November 9, 1992, the Minnesota Pollution Control Agency (MPCA) submitted to USEPA a revised SIP including the oxygenated gasoline program containing legislation that was signed by the Governor on April 29, 1992, and became effective on August 1, 1992. The USEPA issued a completeness letter to the State on January 20, 1993. The notice of proposed rulemaking was published in

the January 20, 1994 (59 FR 3047) **Federal Register.**

II. Public Comment/USEPA Response

A thirty-day public comment period was provided to allow interested parties the opportunity to comment on USEPA's proposed action. USEPA received three comments from the American Institute of Certified Public Accountants (CPAs), the Koch Refining Company, and the MPCA. The comments and USEPA's responses are addressed below.

Comment: The American Institute of CPAs objected to the use of the word "Account" when the word should be "Accountant" which is used to denote a CPA. This appeared in the section entitled "Registration Requirements."

Response: USEPA agrees that the sentence should have read, "The USEPA guidelines also require that CARs commission an annual attest engagement, performed by either an internal auditor or independent Certified Public Accountant (CPA)."

Comment: The Koch Refining Company supported the oxygenated gasoline program in Minnesota, but only within the control area and during the control period. On November 12, 1993, the MPCA submitted a contingency plan to require year-round oxygenated fuel beginning in 1995. Koch opposed this contingency plan. While Koch understood that the USEPA's proposed rule did not address the contingency plan and addressed only the oxygenated gasoline program within the control area and during the control period, Koch opposed any use of oxygenated gasoline outside of the control period. Koch will submit additional comments on the contingency plan when that plan is proposed for Federal rulemaking.

Response: USEPA will propose rulemaking on the contingency plan in another **Federal Register** notice. This final action only deals with the oxygenated gasoline program.

Comment: The MPCA noted that the officially designated nonattainment area for CO does not include Superior, Wisconsin, or St. Louis County, but only the City of Duluth, Minnesota. At this time, the State does not plan to enforce the oxygenated gasoline program in Duluth, which has been meeting standards since 1989. Also, it does not plan to enforce in the remaining portion of St. Louis County, which is largely a wilderness area and has never had a modeled or monitored "CO" problem.

Response: This issue is moot. The State of Minnesota requested that USEPA redesignate Duluth to attainment for CO. Minnesota submitted a draft request to USEPA on October 2, 1992, and a final request before November 1, 1992. USEPA requested additional information several months later, and the State responded to this request by sending the information in early December 1993. The USEPA redesignated the Duluth area to attainment for CO on April 14, 1994 (59 FR 17706) in the **Federal Register.**

Additional Information: During the public comment period, USEPA contacted the MPCA and requested that it withdraw from the Oxygenated SIP, the MPCA Board resolution of October 27, 1992, which was a part of the program plan. The resolution allowed the State to unilaterally take action to eliminate the oxygenated gasoline program upon submission by the State of a request for redesignation. This concept goes against USEPA redesignation procedures and cannot be approved as part of the State's plan. In a letter dated August 12, 1994, the State withdrew the October 27, 1992, MPCA Board Resolution from the requested SIP revision.

III. Rulemaking Action

In this action, USEPA is approving in final the SIP revision submitted by the State of Minnesota. The State of Minnesota has submitted and implemented an oxygenated gasoline program for the existing CO nonattainment area substantially in accordance with the requirements of the Act. The USEPA is, therefore, approving this submittal.

Nothing in this action should be construed as permitting, allowing or establishing precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

USEPA received no significant public comments on the proposed action. As a direct result, the Regional Administrator reclassified this action from Table 2 to a Table 3 action under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for 2 years. The USEPA submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. OMB exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements. I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307 (b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 1994. 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 each 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

Environmenal protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 8, 1994.

Valdas V. Adamkus,

Regional Administrator.

Part 52, 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. 7401–7671q.

Subpart Y—[Amended]

2. Section 52.1220 is amended by adding paragraph (c)(34) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(34) On November 9, 1992, the State of Minnesota submitted the Oxygenated Gasoline Program. This submittal satisfies the requirements of section 211(m) of the Clean Air Act, as amended.

(i) Incorporation by reference.

(A) Minnesota Laws Chapter 2509, sections 1 through 31, except for sections 29 (b) and (c), enacted by the Legislature and signed into Law on April 29, 1992.

(ii) Additional material.

(A) Letter dated August 12, 1994, from the Minnesota Pollution Control Agency (MPCA), to the United States Environmental Protection Agency that withdraws the MPCA Board resolution dated October 27, 1992, and any reference to it, from the oxygenated gasoline State Implementation Plan revision request of 1992.

[FR Doc. 94–24420 Filed 10–3–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MA–24–1–6557; A–1–FRL–5074–8]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts—Amendment to Massachusetts' SIP (for Ozone and for Carbon Monoxide) for Transit Systems Improvements and High Occupancy Vehicle Facilities in the Metropolitan Boston Air Pollution Control District)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the Commonwealth of Massachusetts' Executive Office of Transportation and Construction to construct and operate specified transit facilities and high occupancy vehicle (HOV) lanes established therein. Implementation of the defined transportation projects will help reduce the use of automobiles, provide for additional transit facilities in the Metropolitan Boston Region, and improve traffic operations on the region's roadways, resulting in improved air quality. This action should have a beneficial effect on air quality because it is intended to reduce vehicle miles traveled (VMT) in the Boston Metropolitan Area. The emissions to be reduced include hydrocarbons (ground-level ozone precursors) and carbon monoxide (CO).

This action is being taken under sections 110 (a) and (l) of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on November 3, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., (LE–131), Washington, DC 20460; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, (617) 565–3227.

SUPPLEMENTARY INFORMATION: On January 19, 1994 (59 FR 2795), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed approval of a revision to Massachusetts' SIP for Transit Systems Improvements and HOV Facilities in the Metropolitan Boston Air Pollution Control District. The formal SIP revision was submitted by Massachusetts on December 9, 1991.

This new regulation commits the Massachusetts Executive Office of Transportation and Construction (MA EOTC) to pursue implementation, monitoring, and enforcement of transit system improvements and HOV facilities listed in Table 1, that were identified as transportation and air quality mitigation measures in a 1990 Final Supplemental Environmental Impact Statement for the CA/THT project. EPA determined five of the proposed transportation control measures (TCMs) were necessary to help achieve an air quality benefit from the CA/THT. The Massachusetts regulation amends 310 CMR 7.00 by adding two new sections; 310 CMR 7.36—"Transit System Improvements," and 310 CMR 7.37—"High Occupancy Vehicle Lanes."

TABLE 1

Project type and assigned completion date	Project description
HOV Project 12/31/91	HOV Lane: I–93 Southbound HOV Lane, North Of The Southbound Bank Of The Charles River, Shall Be Extended Toward Route 128 To The Northernmost Point Appropriate. No Addition Of New Lanes.
HOV Project 12/31/91	HOV Lane: The Final Design Of The Charles River Crossing On The Southbound Side Of I–93 Extending Down To The Exit Ramp To Nashua Street Shall Include A HOV Lane On The Southbound Side Of I–93. HOV Lane Shall Be Available With Opening Of CA/THT Project.
Transit Project 12/31/92	Lynn Central Square Station & Parking Garage.
Transit Project 12/31/92	North Station High Platform & High Tracks.
Transit Project 12/31/92	Lynn Transit Station Bus Terminal.
HOV Project 05/31/92	HOV Lane: Northbound & Southbound on I–93 Beginning At The Intersection Of I–93 With I–90 & Extending To A Point Immediately North On The Intersection Of I–93 & Route 3. [If The Threshold Standards Are Violated For Three Consecutive Months. Earlier Implementation If EOTC Determines.
Transit Project 12/31/94	South Station Bus Terminal.
Transit Project 12/31/94	South Station Track Number 12.
Transit Project 12/31/94	Ipswich Commuter Rail Line Extension To Newburyport.
Transit Project 12/31/96	Old Colony Commuter Rail Line Extension.
Transit Project 12/31/96	Framingham Commuter Rail Link Extension To Worcester.

TABLE 1—Continued

Project type and assigned completion date	Project description
Transit Project 12/31/96	Park & Ride & Commuter Rail Parking Spaces Outside Of The Boston Core [10,000].
Transit Project 12/31/97	Green Line Arborway Restoration.
Transit Project 12/31/98	Blue Line Platform Lengthening & Modernization.
Transit Project 12/31/99	Park & Ride & Commuter Rail Station Parking Spaces Outside Of The Boston Core In Addition To Those Completed by Dec. 31, 1996 [10,000].
Transit Project 12/31/01	South Boston Piers Electric Bus Service.
Transit Project 12/31/11	Green Line Extension To Ball Square/Tufts University.
Transit Project 12/31/11	Blue Line Connection From Bowdoin Station To The Red Line At Charles Station.

Other specific requirements of the Commonwealth's State Implementation Plan (SIP) Amendment for Ozone and for Carbon Monoxide, for Transit System Improvements and High Occupancy Vehicle Facilities, and the rationale for EPA's proposed action, are explained in the NPR and will not be restated here.

Three public comments were received on the NPR. On February 16, 1994, a private citizen from Michigan submitted comments regarding Massachusetts' car and truck vehicle registrations, and the effect on the Massachusetts Inspection and Maintenance (I/M) program. EPA has found this comment not germane to approval of the Transit and HOV Facilities rules as a SIP Amendment. On February 18, 1994, The Conservation Law Foundation (CLF) submitted comments generally supporting approval of the Transit System Improvement and HOV rules into the SIP. Finally, on February 18, 1994, the Massachusetts Department of Environmental Protection (MA DEP) submitted comments requesting that EPA consider delaying final action on the HOV/Transit SIP rules.

The region has responded fully to CLF and MA DEP comments in a memorandum attached to the Technical Support Document (TSD) available in the docket for this action. A brief summary of these comments and EPA's responses appears below.

The Conservation Law Foundation generally supported approval of the Transit System Improvement and HOV rules into the SIP, but also requested clarification of several aspects of EPA's proposed approval. In support of the transit system improvement rule, CLF noted that several of the transit measures provided for in the rule are mitigation measures responding to the potential air quality impacts of the Central Artery/Third Harbor Tunnel. EPA agrees that completion of these measures, including the "Old Colony" rail line, are important transportation control measures that should help reduce VMT growth on the Central Artery. What follows is EPA's response to CLF's particular concerns.

1. Specific Requirements of These Rules Will Be Enforceable in a Citizens Suit

CLF is concerned that by characterizing these rules as "directionally sound," EPA is suggesting that they are not enforceable by citizens. EPA intended no such conclusion. The proposal expressed EPA's concern that the substitution provisions in these rules allow MA DEP to authorize different projects to substitute for those enumerated in the rules.[1] EPA believes that there is no reliable way to predict the reductions Massachusetts might achieve with these rules since their requirements might change in ways that are difficult to quantify in advance. Therefore, EPA is not prepared to give Massachusetts emissions reduction credit in the SIP for projects until they are substantially complete and a SIP revision requesting credit is submitted.

Withholding SIP credit for these projects, however, does not mean the requirements of these rules are not enforceable by MA DEP, EPA, or citizens under the Clean Air Act. Each rule contains the kind of specific objective requirements and compliance schedules that courts have required in a SIP as a basis for a citizen suit to enforce transportation control measures (TCMs). See e.g. *Wilder* v. *Thomas*, 854 F.2d 605, 615–616 (2d. Cir. 1988). As CLF points out for example, the transit rule identifies specific mass transit improvements to be implemented by certain dates and the HOV rule establishes a series of specific steps to establish and operate HOV lanes depending on traffic conditions. 310 CMR 7.36(2) and 7.37(2)–(7).[2] EPA's concerns relate to the planning implications of a rule with specific requirements that can be revised without case-by-case EPA approval. This concern does not affect citizens' ability to enforce those specific requirements as they may appear in these SIP rules at the time of the enforcement action.

2. When Is a Project "Substantially Complete"?

In response to the uncertainty about which projects will actually be implemented under this rule, EPA proposed to grant emissions reductions credits in the SIP for projects once they are substantially complete. EPA invited comment on how to define the substantial completion of a transit project, especially in the case of projects that do not require significant construction. CLF commented that projects should be credited under the SIP either (1) When funds have been irrevocably committed to them and all government approvals are obtained, or (2) when operation begins, whichever is earlier. CLF went on to say that any actual emissions reductions should not begin to accrue until operation has commenced. CLF believes this standard should apply to both construction and non-construction projects.

EPA appreciates CLF's efforts to devise an approach that would grant the Commonwealth SIP credit for funded projects as soon as possible. EPA is concerned, however, that given the length of the construction schedules involved with some transit projects and the vagaries of the transportation funding process, it will be difficult to determine what constitutes an irrevocable commitment of funds. EPA believes that it will be easier to determine objectively when a construction project is substantially

[1] The Transit System Improvement Rule section 7.36(4)(a) provides that other "transit improvement projects" may substitute for projects listed in section 7.36(2). Whereas the HOV rule allows an "alternative project" to substitute in section 7.37(8)(a). In theory, MA DEP could go so far as to substitute a non-transit project for an HOV lane under the HOV rule, although it may be difficult to make the demonstration that a non-transit project achieves the equivalent mix of CO, NMHC, and NO_x emissions reductions as a transit project as required under section 7.36(8)(a)1.

[2] EPA cites these provisions as examples of specific enforceable requirements in these rules, not an exclusive or exhaustive list of enforceable requirements.

complete. As for non-construction projects, EPA believes the second element of CLF's test is an appropriate clarification of the "ready to implement" concept EPA proposed. Massachusetts can apply for SIP credit for non-construction projects when operation begins.[3]

3. Are Completion Deadlines Expeditious?

Finally, CLF asserts that Massachusetts must submit SIP revisions committing the Commonwealth to firm completion deadlines for these projects to obtain SIP credit as soon as possible. CLF reads *Delaney* v. *EPA*, 898 F.2d 687 (9th Cir. 1990) as creating a presumption that omitting any TCMs listed in section 108(f) of the Act delays attainment in violation of the requirement that all nonattainment areas attain as expeditiously as practicable.

EPA believes that these rules contain deadlines for action on transit projects and HOV lanes. It is true that the Transit System Improvement rule 310 CMR 7.36(3) provides for delays in the deadlines listed in section 7.36(2) for up to three years, but it is also clear that at the end of those three years, either the project must be completed or there must be a proposed substitute. While it might be more desirable to have a fixed completion deadline without the "escape valve" for project delays in section 7.36(3), EPA cannot conclude that the possible three year delay authorized by this section causes these rules to violate any obligation to implement TCMs as expeditiously as practicable. Massachusetts has assembled an impressive roster of transportation measures, many of which must be implemented by the attainment year of 1999, even allowing for the possible three year delay.[4]

The Massachusetts DEP's comment advised EPA that the Commonwealth of Massachusetts may be developing changes to the transit improvement and HOV rules that could be submitted to EPA in calendar 1994. DEP suggested that it might be prudent for EPA to delay final action on these rules until EPA receives MA DEP's revisions. MA DEP did not, however, ask to withdraw the rules from EPA's consideration as a SIP revision. While EPA appreciates DEP's desire to avoid iterative SIP actions on these rules, EPA has an obligation to process SIP revisions consistent with section 110(k) of the Act to the extent practicable, including the requirement to act on the SIP submission within a year of deeming it complete. Furthermore, MA DEP has not clearly withdrawn this SIP action. At most their comment appears to be a suggestion to EPA about how to avoid repetitive rulemakings. EPA cannot suspend its statutory obligation to act on SIP submittals without a clear expression from a state that it is withdrawing the package. Suspending final action on these rules in anticipation of rule changes that EPA has not yet seen in draft would only aggravate any delays in processing these rules as a SIP revision to accommodate what is now a speculative rule change.

Final Action

EPA is approving the Transit Systems Improvements and High Occupancy Vehicle Facilities in the Metropolitan Boston Air Pollution Control District as a revision to the Massachusetts SIP.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976), 42 U.S.C. 7410(a)(2).

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.

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 December 5, 1994. 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

[3] Note that the limitations EPA is putting on the SIP credit for these rules is *not* based on any view that TCMs are not fully creditable in a SIP demonstration pursuant to a binding SIP rule. Rather, it is the substitution process in these rules that causes EPA to require substantial completion of projects before giving SIP credit. If these rules had no substitution process, thereby committing to specific TCMs by specific dates, EPA could calculate SIP credit for these measures now.

[4] For example, section 7.36(2)(c)1. requires the Old Colony Commuter Rail Line Extension, one of the most significant transportation measures in 7.36, to be "complete and open to full public use" by December 31, 1996. Even the worst case scenario of a full three year delay would have the Old Colony in full use only 46 days after the attainment deadline for the Commonwealth, November 15, 1999.

Dated: September 7, 1994.

Patricia Meaney,

Acting Deputy Regional Administrator, Region I.

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. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(101) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(101) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on December 9, 1991.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated December 9, 1991 submitting a revision to the Massachusetts State Implementation Plan.

(B) Massachusetts Regulation 310 CMR 7.36, entitled "Transit System Improvements", Massachusetts Regulation 310 CMR 7.37, entitled "High Occupancy Vehicle Facilities", and amendments to 310 CMR 7.00, entitled "Definitions," effective in the Commonwealth of Massachusetts on December 6, 1991.

For the State of Massachusetts:

§ 52.1167 [Amended]

3. In § 52.1167, Table 52.1167 is amended by adding new entries to existing state citations for amendments to 310 CMR 7.00, entitled "Definitions"; and by adding new state citations for Massachusetts Regulation 310 CMR 7.36, entitled "Transit System Improvements" and Massachusetts Regulation 310 CMR 7.37, entitled "High Occupancy Vehicle Facilities" to read as follows:

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	FEDERAL REGISTER citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.00.	Definitions	12/9/91	October 4, 1994	[Insert *FR* citation from published date].	101	Definitions of baseline roadway conditions, high occupancy vehicle, high occupancy vehicle lane, peak hour, performance standard, and roadway threshold standard.
*	*	*	*	*	*	*
310 CMR 7.36.	Transit system improvements regulations.	12/9/91	October 4, 1994	[Insert *FR* citation from published date].	101	Transit system improvement regulation for Boston metropolitan area.
*	*	*	*	*	*	*
310 CMR 7.37.	High occupancy vehicle lanes regulation.	12/9/91	October 4, 1994	[Insert *FR* citation from published date].	101	High occupancy vehicle lanes regulation for Boston metropolitan area.
*	*	*	*	*	*	*

[FR Doc. 94–24421 Filed 10–3–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[CA 13–8–6570; FRL–5073–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Sacramento Metropolitan Air Quality Management District, South Coast Air Quality Management District, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on December 17, 1993 and April 7, 1994. The revisions concern rules from the following local agencies: The Sacramento Metropolitan Air Quality Management District (SMAQMD), the South Coast Air Quality Management District (SCAQMD), and the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from municipal landfills, graphic arts operations, barbecue charcoal ignition, and municipal sewage treatment plants. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on November 3, 1994.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket 6102, 401 "M" Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule