

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

[MA087-7215a; A-1-FRL-7418-7]

**Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Low Emission Vehicle Program****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts on August 9, 2002 and August 26, 2002. The SIP revision amends the Massachusetts Low Emission Vehicle (LEV) program that is currently contained in the federally-approved SIP by replacing it with a revised version of the LEV program adopted on December 24, 1999. EPA proposed to approve this on October 15, 2002 (67 FR 63583), and received comments from five parties, four of which supported the action fully and one of which outlined some concerns. The regulations adopted by Massachusetts now include the California LEV II motor vehicle emission standards effective in model year 2004, the California LEV I medium-duty standards effective in model year 2003 and the smog index label specification effective in model year 2002. Massachusetts has adopted these revisions to reduce emissions of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) in accordance with the requirements of the Clean Air Act (CAA). In addition, Massachusetts has worked to ensure that its motor vehicle emission program is identical to California's, as required by section 177 of the CAA. EPA is approving the revised version Massachusetts LEV program adopted on December 24, 1999, with the exception of the zero emission vehicle (ZEV) program. This action is being taken under section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This rule will become effective on January 22, 2003.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, 11th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Judge, (617) 918-1045, or [judge.robert@epa.gov](mailto:judge.robert@epa.gov).

**SUPPLEMENTARY INFORMATION:** On October 15, 2002 (67 FR 63583), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts, and received comments that are summarized and responded to below. EPA is now approving a SIP revision submitted by the Commonwealth of Massachusetts on August 9, 2002 and August 26, 2002 which amends the Massachusetts LEV I Program that is currently contained in the federally-approved SIP by replacing it with a revised version of the LEV program. As discussed in the NPR for this action, EPA is not taking action on Massachusetts ZEV program at this time.

Under section 177 of the CAA, States adopting California's motor vehicle emission standards must adopt standards that are identical to California standards. The ZEV program, which California has intended to work in conjunction with the California LEV program, has undergone several modifications through the years in California. In response, Massachusetts has made several changes to their ZEV program in attempts to ensure their program is consistent with California. In fact, the Commonwealth has made changes regarding ZEV requirements since the time it adopted the rule that is currently before EPA. Nevertheless, the Massachusetts revised LEV program is designed to be a comprehensive program which will secure those emission reductions that are necessary for Massachusetts' attainment demonstration for the one-hour ozone NAAQS. For that reason, and since the emission reductions from the California program are controlled by the fleet average hydrocarbon curve and other similar measures, and can be achieved without any specific ZEV sales requirements, we are approving the Massachusetts LEV rules adopted on December 24, 1999 without taking action on or approving the Massachusetts ZEV program at this time. In the case of sections 310 CMR 7.40(2)(a)6, 310 CMR 7.40(2)(c)3, 310 CMR 7.40(10), and 310 CMR 7.40(12), EPA was not requested to take action. For section 310 CMR 7.40(2)(a)5, which establishes ZEV requirements beginning in model year 2003, EPA is not taking any action at this time but intends to do so in the future through the appropriate rulemaking process as the manufacturers' requirements for ZEVs in California, and Massachusetts, become clarified. EPA will conduct full

notice and comment rulemaking on the ZEV portion of the Massachusetts program when those requirements become clarified since those provisions have not been acted on in this rulemaking, or in the October 15, 2002 proposed rulemaking. Other details of EPA's proposed rulemaking were outlined in the **Federal Register** and will not be restated here.

**I. Comments on the Proposed Rulemaking**

As stated above, EPA sought public comment on this action and five parties submitted comments. First, two members of the general public submitted comments by which they expressed support for EPA's action to approve the Massachusetts low emission vehicle program as a means to get cleaner air. Next, the Appalachian Mountain Club (AMC), which comprises some 93,000 members, and the Massachusetts Public Interest Research Group (MASSPIRG) provided comments and were supportive of the Massachusetts LEV program. Both organizations also expressed support for Massachusetts intentions to require ZEVs as a way to advance zero emission vehicle technology. AMC explicitly recognized that EPA was not acting on ZEV provisions in this rulemaking. Lastly, the Alliance of Automobile Manufacturers ("the Alliance") expressed some concerns and sought clarification of the action, particularly as it relates to the ZEV requirements of the Massachusetts program.

The Alliance expressed concern that this action appeared to conflict with another EPA proposed action which was published on October 15, 2002 (67 FR 63586) and that included a reference to approving the California LEV II program that might suggest inclusion of the ZEV program. To be clear, as stated in the NPR for this action, EPA is approving the Massachusetts LEV program adopted on December 24, 1999, with the exception of the ZEV program. The emission reductions associated with the Massachusetts LEV program that EPA is approving are assumed in the Massachusetts demonstration of attainment, and are necessary for attainment. These emission reduction estimates are determined by the MOBILE6 model for mobile source emission inventory estimations, which was peer and publicly reviewed, and represents our best estimate of the emission reductions from the program. At this time, for reasons outlined in the notice of proposed rulemaking for this action, EPA is not taking any action on the Massachusetts ZEV program. All portions of the previously federally-

approved Massachusetts LEV I program, including those related to ZEVs, are being replaced by this action.

Although several parties discussed the ZEV program in their comments, EPA was clear that no action was being considered for the ZEV portions of the Massachusetts LEV program at this time. EPA will take action on the ZEV portions of the Massachusetts program in the future when Massachusetts adopts and submits to EPA a ZEV program consistent with the California ZEV program. Any action in the future on the ZEV portion of the Massachusetts program will be through full notice and comment rulemaking.

The Alliance went on to comment that it did not agree with Massachusetts', nor presumably California's, plans to mandate advanced technology vehicles. Again, EPA is not acting on the ZEV portion of the Massachusetts rule, but believes that Massachusetts does have the right under section 177, to adopt all portions of a California program which is adopted in accordance with the provisions of section 209 of the Clean Air Act.

## II. Final Action

EPA is approving a SIP revision at the request of the Massachusetts DEP which was adopted on December 24, 1999. It was submitted to EPA for approval on August 9, 2002. That submittal was later clarified by Massachusetts on August 26, 2002 to exclude certain sections of their ZEV program from consideration. In addition, for the reasons outlined above, at this time we are not taking action on section 310 CMR 7.40(2)(a)5 which includes ZEV requirements beginning in model year 2003. As such, we are approving all of 310 CMR 7.40, the "Low Emission Vehicle Program" except for 310 CMR 7.40(2)(a)5, 310 CMR 7.40(2)(a)6, 310 CMR 7.40(2)(c)3, 310 CMR 7.40(10), and 310 CMR 7.40(12). The regulations adopted by Massachusetts now include the California LEV II motor vehicle emission standards effective in model year 2004, the California LEV I medium-duty standards effective in model year 2003, and the smog index label specification effective model year 2002. This approval will secure all of the emission reductions of the current California LEV standards for light and medium duty vehicles. EPA is approving Massachusetts' low emission vehicle program requirements into the SIP because EPA has found that the requirements are necessary for Massachusetts to achieve the NAAQS for ozone and to reduce emissions of VOC and NO<sub>x</sub> from new vehicles in

accordance with the requirements of the CAA.

## III. What Are the Administrative Requirements?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the

absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 2003. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 26, 2002.  
**Robert W. Varney,**  
*Regional Administrator, EPA New England.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

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

**Subpart W—Massachusetts**

2. Section 52.1120 is amended by adding paragraph (c)(132) to read as follows:

**§ 52.1120 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*  
 (132) Revisions to the State Implementation Plan regarding the Low Emission Vehicle Program submitted by the Massachusetts Department of Environmental Protection on August 9 and August 26, 2002.

(i) Incorporation by reference.  
 (A) Letter from the Massachusetts Department of Environmental Protection dated August 9, 2002, in which it submitted the Low Emission Vehicle Program adopted on December 24, 1999.

(B) Letter from the Massachusetts Department of Environmental Protection dated August 26, 2002 which clarified

the August 9, 2002 submittal to exclude certain sections of the Low Emission Vehicle Program from consideration.

(C) December 24, 1999 version of 310 CMR 7.40, the “Low Emission Vehicle Program” except for 310 CMR 7.40(2)(a)5, 310 CMR 7.40(2)(a)6, 310 CMR 7.40(2)(c)3, 310 CMR 7.40(10), and 310 CMR 7.40(12).

3. In section 52.1167, Table 52.1167 is amended by adding new entries to existing state citations for 310 CMR 7.40 to read as follows:

**§ 52.1167 EPA-approved Massachusetts State regulations.**

\* \* \* \* \*

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
310 CMR 7.40	Low Emission Vehicle Program.	12/24/99	12/23/02	[Insert FR citation from published date].	132	“Low Emission Vehicle Program” (LEV II) except for 310 CMR 7.40(2)(a)5, 310 CMR 7.40(2)(a)6, 310 CMR 7.40(2)(c)3, 310 CMR 7.40(10), and 310 CMR 7.40(12)
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**Notes.**

1. This table lists regulations adopted as of 1972. It does not depict regulatory requirements which may have been part of the Federal SIP before this date.
2. The regulations effective statewide unless otherwise in comments or title section.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[UT–001–0047; FRL–7422–9]

**Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Utah County PM<sub>10</sub> State Implementation Plan Revisions**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of the State of Utah’s revision to the Utah State Implementation Plan (SIP) that was submitted by the Governor on July 3, 2002, revising the SIP for the Utah County nonattainment area for particulates of 10 microns in size or smaller (PM<sub>10</sub>). The Governor’s submittal, among other things, revises the existing attainment demonstration in the approved PM<sub>10</sub> SIP based on a

short-term emissions inventory, establishes 24-hour emission limits for the major stationary sources in the Utah County PM<sub>10</sub> nonattainment area and establishes motor vehicle emission budgets based on EPA’s most recent mobile source emissions model, Mobile6.

On September 10, 2002 EPA published a notice of proposed rulemaking (NPR) (67 FR 57357). EPA’s comment period concluded on October 10, 2002. During this comment period, EPA received ten letters from various local governments within the Utah County area supporting EPA’s approval of this SIP revision and two letters with specific comments regarding the approval of this action. The comments received and EPA’s responses are addressed below.

In this final rule action, EPA approves the Governor’s July 3, 2002 submittal adopting rule R307–110–10 which incorporates revisions to portions of Utah’s SIP Section IX, Part A and rule R307–110–17 which incorporates revisions to portions of Utah’s SIP Section IX, Part H. This action is being

taken under sections 107, 110, and 189 of the Clean Air Act (Act).

**EFFECTIVE DATE:** This final rule is effective January 22, 2003.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466 and copies of the Incorporation by Reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 1301 Constitution Avenue, NW Room B108, Mail Code 6102T Washington D.C. 20460. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114–4820.

**FOR FURTHER INFORMATION CONTACT:** Libby Faulk, EPA, Region VIII, (303) 312–6083.

**SUPPLEMENTARY INFORMATION:** On September 10, 2002 EPA published a