

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 210-0247b; FRL-6850-2]

#### Revisions to the California State Implementation Plan, San Diego County Air Pollution Control District and Bay Area Air Quality Management District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the San Diego County Air Pollution Control District (SDCAPCD) and Bay Area Air Quality Management District (BAAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from the wood products coating and the metal container, closure, and coil coating source categories. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by October 18, 2000.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board,  
Stationary Source Division, Rule  
Evaluation Section, 2020 "L" Street,  
Sacramento, CA 95812;  
San Diego County Air Pollution Control  
District, 9150 Chesapeake Drive, San  
Diego, CA 92123; and,  
Bay Area Air Quality Management  
District, 939 Ellis Street, San  
Francisco, CA 94109.

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1226.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: SDCAPCD 67.11 and BAAQMD 8-11. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive

adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 1, 2000.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MA-24-01-7201b; A-1-FRL-6870-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; (Amendment to Massachusetts' SIP [For Ozone and for Carbon Monoxide] for City of Cambridge Vehicle Trip Reduction Program—in the Metropolitan Boston Air Pollution Control District)

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes, and requires the City of Cambridge to implement and operate, the City of Cambridge Vehicle Trip Reduction Program as a substitute for the commercial parking control measures currently in the SIP. EPA takes this action under the Clean Air Act to help minimize ozone and carbon monoxide air pollution in the Boston area.

**DATES:** Comments must be received on or before October 18, 2000. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

**ADDRESSES:** Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114-2023. Copies of the State submittal and EPA's technical support document 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 Bureau of Waste Prevention, Department of Environmental Protection, One Winter Street, 8th floor, Boston, MA.

**FOR FURTHER INFORMATION CONTACT:** Donald O. Cooke, (617) 918-1668 or e-mail [COOKE.DONALD@EPA.GOV](mailto:COOKE.DONALD@EPA.GOV).

**SUPPLEMENTARY INFORMATION:** On January 28, 1998, the Massachusetts Department of Environmental Protection (MA DEP) submitted a revision to its State Implementation Plan (SIP) for Massachusetts' Ozone and Carbon Monoxide, for a City of Cambridge Vehicle Trip Reduction Program (CVTRP) in the Metropolitan Boston Air Pollution Control District. The revision consists of Massachusetts's new state regulation 310 CMR 60.04—"City of Cambridge Vehicle Trip Reduction Program."

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#### 1. Background on parking management in the City of Cambridge, and the CVTRP.

##### A. What is the CVTRP?

The CVTRP requires Cambridge to control air emissions from cars by regulating the availability of off-street commercial parking and by encouraging the use of alternatives to single passenger cars. Under the CVTRP, Cambridge may exceed a maximum "baseline" number of commercial parking spaces only if it adopts vehicle trip reduction measures that offset the vehicle miles traveled (VMT) and emissions associated with the additional spaces. This "performance standard"

gives Cambridge the flexibility to develop and impose different measures, which may include but are not limited to municipal employee trip reduction measures, municipal parking rate increases, bicycles and pedestrian mobility measures, and transportation demand management for expansions and new developments. By December 26, 2000, Cambridge must complete feasibility studies on promotion of clean fuels and low/zero emission vehicles, as well as taxi cab improvements and zoning. Cambridge must monitor its measures and periodically evaluate whether the CVTRP is meeting the performance standard.

#### *B. What Would the CVTRP Replace?*

Since 1973, a series of Federal and Massachusetts regulations have limited commercial parking in the City of Cambridge (Cambridge) as a way of minimizing ozone and carbon monoxide air pollution. This program, known as the Cambridge Parking Freeze or the Freeze, is a Federal and state requirement established in Massachusetts' SIP prior to the 1990 Clean Air Act Amendments, and is identified at Title 40 CFR 52.1128, 52.1134, and 52.1135, and subsequent SIP submittals from the Commonwealth.

The CVTRP replaces or substitutes for portions of the Freeze in the SIP. Only the commercial parking control measures identified in 40 CFR 52.1128 and 52.1135 that affect Cambridge are being considered for substitution at this time. Section 52.1134, which regulates on-street and residential parking in Cambridge, and other portions of these rules affecting parts of Boston and Logan Airport, will not be affected by the proposed CVTRP.

## **2. Issues of concern**

#### *A. What types of parking spaces are covered by the CVTRP?*

The CVTRP defines "commercial parking space" as a parking space available to the general public for a fee, with specific exceptions. These exceptions are for on-street parking, spaces at a "park-and-ride" facility operated in conjunction with the regional transit authority (the "MBTA"), spaces for residents of specific buildings or groups of buildings, and spaces "owned or operated by a commercial entity whose primary purpose is other than the operation of parking facilities, for the exclusive use of lessees, employees, patrons, customers, clients, patients, guests, or residents and not available for use by the general public." 310 CMR 60.04(2). This definition is consistent with the definition in the

Freeze, as it has been implemented and interpreted by EPA, MA DEP, and Cambridge, in light of the intent of the Freeze and the Court of Appeals opinion in *South Terminal Corp. versus EPA*, 504 F.2d 646, 671-72 (1st Cir. 1974).

EPA's intent when it enacted the Freeze in 1973 was to limit commuter parking by capping off-street commercial parking, with exceptions for residential, free customer, and employee parking facilities. 38 FR 30964-30965 (Nov. 8, 1973). When various parties challenged the Freeze and other aspects of EPA's "Transportation Control Plan" for metropolitan Boston, EPA committed to "clarify that residential parking spaces, free customer spaces and employee parking spaces are exempt" from the Freeze; the *South Terminal* Court approved the Freeze "as so interpreted but not otherwise." 504 F.2d at 671-72.

Following the *South Terminal* decision, EPA revised the Freeze to limit the "availability of commercial parking facilities." 40 CFR 52.1135(c). The new regulation defined such facilities as "any lot, garage, ... on or in which motor vehicles are temporarily parked for a fee," with exceptions for on-street and residential parking. *Id.* at § 52.1135(a)(5). The revised rule delegated to the Governor the authority to approve city programs implementing freeze. *Id.* at § 52.1135(e) & (f).

Massachusetts included the Freeze as a part of its state-adopted, Federally-approved SIP twice in the late 1970s and early 1980s. *See* 40 CFR 52.1120(c)(30) & (53). The Governor delegated the implementation of the parking freeze to Cambridge, based on procedures and criteria adopted by the City. The Cambridge procedures and criteria are consistent with the terms of *South Terminal* and the definition of commercial parking facility proposed in today's rule. Like today's proposal, they define "Commercial Parking Facility" to cover off-street parking available to the general public for a fee, with exceptions for spaces at MBTA park-and-ride facilities and residential, customer, and employee parking.

During the state rulemaking on the CVTRP, various parties argued that the exemption of employee and customer parking for a fee is inconsistent with 40 CFR 52.1135 and thus the CVTRP should also cover such parking. In light of the Governor's discretion to authorize Cambridge to write implementing procedures, the deviations from the definition as promulgated by EPA were not significant enough for EPA to require the Freeze portion of the SIP to be revised. Moreover, as described above, the implementing procedures are

consistent with both *South Terminal* and EPA's intent as expressed in its rulemakings. Therefore, the definition of "commercial parking space" proposed for approval by this notice is consistent with MA DEP's and EPA's interpretation of the Freeze and appropriate for the CVTRP.

#### *B. What is the baseline for measuring success of the CVTRP performance standard?*

The CVTRP requires the City of Cambridge to offset VMT associated with the issuance of new commercial parking space permits in Cambridge in excess of the 13,452 spaces allowed by the existing Cambridge Parking Freeze. This total of commercial parking spaces, the "13,452 baseline," is the sum of commercial parking spaces in Cambridge as of October 15, 1973, plus 10,000 spaces the City has available due to its removal of 20,000 on-street spaces from regular and legal use by commuters. *See* 40 CFR 52.1135(a)(6) & (n). The 13,452 baseline reflects MA DEP's estimate of the number of spaces removed from commuter use (removed spaces) and its understanding of the Freeze expressed in the 1978 and 1983 transportation elements of the SIP (TESIPs). EPA previously has approved the removed space estimate and MA DEP's interpretation of the Freeze into the SIP. *See* 40 CFR 52.120(c)(30) & (53). These actions establish the numerical limit on spaces under the Freeze that is the baseline under the CVTRP.

Management of the commercial parking supply in Cambridge remains an integral component of the CVTRP. Cambridge currently has less than 13,452 commercial parking spaces. Cambridge must continue monitoring the number of commercial parking spaces so that trips, VMT, and motor vehicle emissions (generated by these additional spaces) are completely offset once the City exceeds the 13,452 baseline. Offsetting VMT and its associated air pollutants will maintain a level of air emissions less than or equal to those estimated to occur absent replacement and substitution of the Cambridge Parking Freeze.

MA DEP and EPA hope that the City of Cambridge will be able to analyze and implement pricing mechanisms (i.e., parking pricing and transit subsidies) and ways to reallocate permitted parking in Cambridge in order to encourage alternatives to single occupant vehicles. The regulations provide a framework for the City of Cambridge to accomplish this through the requirement to study zoning and require further work on travel demand management.

*C. Is a Lower Baseline Required by EPA's Freeze Regulations?*

EPA's approvals of the 1978 and 1983 TESIPs as part of the SIP supersedes any previous SIP provisions that may suggest that the Freeze baseline does not include the 10,000 spaces added to the October 15, 1973 total by the removal of 20,000 spaces from regular and legal use by commuters. Moreover, the history of the adoption of the Freeze and additional language in the EPA's Freeze rule support the conclusion that removed spaces are part of the Freeze baseline.

The definition of the Freeze promulgated by EPA in 1975 after the *South Terminal* decision require Cambridge "to maintain at all times after October 15, 1973, the total quantity of commercial parking spaces available for use [on] said date; Provided, That such quantity may be increased by spaces [under] construction . . . prior to October 15, 1973, or as specifically permitted by paragraphs (n), (p) and (q) of this section; provided further that such additional spaces do not result in an increase of more than 10 percent in the total commercial parking spaces available for use on October 15, 1973." Paragraphs (n), (p), and (q) respectively authorize increases for removed spaces, spaces at an MBTA park-and-ride facility, and on-street spaces physically eliminated from all use.

Read in isolation, the definition of the Freeze might suggest that the 10% limit should apply to increases in the Freeze limit authorized by these paragraphs. However, the history, language, and intent of the Freeze rule suggests that the 10 percent limitation on "additional spaces" only applies to spaces under construction in 1973 and does not apply to spaces "specifically permitted by paragraphs (n), (p), and (q)."

Historically, when EPA initially promulgated the Freeze in 1973, the rule only contained the grandfathering exception for spaces under construction and the 10% limitation. Thus, as initially promulgated, the 10% limitation on "additional spaces" applied to spaces under construction as of October 15, 1973.

Paragraphs (n), (p), and (q) contain specific language that facially conflicts with the 10 percent limitation. Under paragraph (n), "the total quantity of commercial parking spaces allowable in Cambridge under this section shall be raised accordingly"; paragraph (q) has similar language. Paragraph (p) said that MBTA park-and-ride facilities could be constructed "without regard to the limitations on number of spaces imposed by this section." This facial

conflict cannot be resolved to say that the three paragraphs are subject to the 10 percent limit without ignoring the clear allowance for unlimited additional spaces at MBTA park-and-ride facilities and reading out the other provisions for increasing the "total quantity . . . allowable . . . under this section." Furthermore, the facial conflict cannot be resolved to say that 10 percent limit in the Freeze applies to removed spaces and eliminated spaces but not park-and-ride facilities because the Freeze definition refers to all three paragraphs in the same clause.

To resolve this facial conflict, it is reasonable to read the 10% limit to apply only to "additional spaces," as that term was originally used, and not to spaces "specifically permitted" under paragraphs (n), (p), and (q). This reading is more consistent with EPA's 1975 explanatory preamble. The preamble explained that EPA added these three paragraphs to provide Cambridge with additional flexibility for local planning and did not say that this flexibility rule was subject to the 10 percent limit. Therefore, the 13,452 baseline is authorized not only by the TESIP rulemakings cited above, but also is consistent with a permissible interpretation of the 1975 regulatory text, which some commenters have cited in challenging EPA and MA DEP's acceptance of the 13,452 baseline.

The interpretation of EPA, shared by MA DEP and Cambridge, is due deference if the text of the Freeze is ambiguous. Furthermore, EPA's approval of the 1978 and 1983 TESIPs into the SIP makes this issue moot. By explicitly including the 13,452 baseline in the CVTRP, MA DEP has removed any ambiguity about what is the total number of commercial spaces in Cambridge.

*D. How Will MA DEP Verify That the CVTRP is Working?*

The CVTRP's monitoring and enforcement provisions must be adequate to determine whether Cambridge is meeting the offset requirement of the program. Under the CVTRP, Cambridge must monitor continuously both the number of commercial spaces within the City and the effectiveness of the program. In addition, Cambridge must periodically prepare a "Monitoring and Demonstration Report" that describes CVTRP implementation and results and submit copies to MA DEP, EPA, and the Boston Metropolitan Planning Organization. Each Report would include a count of total commercial parking spaces, contain estimates of VMT and emissions associated with

parking in excess of the Freeze limit, describe offsetting vehicle trip reduction measures and resources devoted to program implementation, and present the results of particular measures. Because of the uncertainty about how Cambridge will monitor trip reduction measures, EPA commented to the state that the public should have an opportunity to comment on the monitoring plan and Reports.

In response to comments from EPA and others during the rulemaking adopting the CVTRP, the MA DEP and Cambridge agreed that the City's Reports should go through a specific review process that MA DEP added to the rule. As part of this new process, MA DEP may directly make a finding on whether a Report demonstrates that Cambridge is meeting its obligations; alternatively, MA DEP may refer a Report to an advisory "Oversight Committee." By agreement between MA DEP and Cambridge, the Oversight Committee will be composed of three City appointees, three MA DEP appointees, and one joint appointee. When Cambridge is within 75 spaces of the Freeze limit, the City will submit at least one Report directly to the Oversight Committee. If the Oversight Committee advises MA DEP that a Report does not show that Cambridge has met its obligations, then MA DEP must hold a public hearing before making a finding on the Report. If MA DEP either directly finds a Report inadequate or makes such a finding upon advice of the Oversight Committee and after a public hearing, then Cambridge must work with MA DEP to resolve any inadequacy before issuing any additional parking permits. If MA DEP and Cambridge do not resolve their differences, then the City may seek an adjudicatory hearing under Massachusetts administrative law.

*E. What are EPA's concerns about the procedures for verifying that the CVTRP is working?*

EPA continues to have concerns about whether the new review process provides adequate opportunities for public input. The rule's review process gives Cambridge an opportunity to challenge a MA DEP determination that the City's CVTRP measures are inadequate, but the review process does not allow the public to challenge a MA DEP finding that the CVTRP measures are adequate. Furthermore, the rule lacks a provision requiring MA DEP to take public comment before directly acting on a Report. Similarly, the rule does not require the Oversight Committee to take public comment before reviewing or approving a Report,

nor must MA DEP take comment if the Oversight Committee advises that Cambridge has met its obligations.

The new review process also leads to questions regarding whether the rule establishes an adequate enforcement mechanism for making sure that the CVTRP does not result in greater VMT and emissions than the Freeze. New spaces in excess of the 13,452 limit are permitted and built before MA DEP or the Oversight Committee evaluates the effectiveness of the offsetting VMT reduction measure(s). Under the review process, the major consequence of Cambridge failing to offset VMT from permitting more than 13,452 spaces is to prohibit issuance of any new commercial parking space permits until the City resolves the inadequacy. Cambridge has no time limit on when it must resolve the inadequacy. While Cambridge resolves the inadequacy, the prohibition on new permits becomes a new "freeze," but the rule imposes this new freeze at a "freeze plus" level of spaces and emissions.

Under section 110(a)(2) of the Act, EPA may not approve a SIP submittal that lacks adequate monitoring and enforcement provisions. The concerns discussed above would lead EPA not to approve the CVTRP into the SIP were the state seeking significant credit against obligations under the Act. However, the CVTRP is similar to the type of programs EPA has approved as consistent with EPA's "Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs into State Implementation Plans (SIPs)," dated October 24, 1997. This Guidance explains the utility of such programs (VMEPs) and the difficulty in estimating and monitoring the emission reductions derived from them. The Guidance provides that EPA may give a small amount of SIP credit for a VMEP when a state describes the VMEP, projects the VMEP's emission reductions, commits to monitor, evaluate and report on the VMEP's performance, and commits to make up any shortfall in a timely manner if the VMEP does not result in projected emission reductions. The CVTRP, like the Freeze it would replace, is a directionally sound VMEP-type program for which no specific SIP credit is sought or given. See 40 FR 25152 and 25155 (June 12, 1975) (contributions of Freeze not quantified when adopted). EPA's concerns about the monitoring, evaluation, and reporting provisions under the CVTRP rule are less than what EPA would have if MA DEP had sought measurable credit against SIP requirements.

While the CVTRP has no specific requirement for public input into the

evaluation of any Report, statements during the state rulemaking and incentives in the rule for Cambridge, MA DEP, and the Oversight Committee to seek public input decrease EPA's concern over this issue. For example, in MA DEP's response to comments document developed during the state rulemaking, MA DEP committed to having the Oversight Committee consider and resolve specific issues and problems raised on the Report that accompanied the rule proposal. Similarly, the Report approval process gives the Oversight Committee an incentive to conduct public outreach even when the rule does not mandate public comment. If the Oversight Committee recommends approval of a Report, then the rule requires MA DEP to approve the Report unless its disapproval is "based on additional information." The Oversight Committee would have an incentive to take public input to assemble as complete a factual record as possible to leave no basis for MA DEP to overturn its approval decision.

EPA also believes that Cambridge will remedy in a timely manner any inadequacy in its VMT offset measures rather than choose to continue indefinitely at a "freeze plus" level of VMT and emissions. The impetus for Cambridge seeking to substitute the CVTRP for the Freeze is the City's belief that the Freeze creates a cloud on future potential development. A new, automatic prohibition on additional commercial parking reimposed at a "freeze plus" level of VMT and emissions would similarly cloud development. Thus, should Cambridge fail to adequately demonstrate compliance, the automatic reimposition of a freeze would be a strong incentive for the City to impose new CVTRP measures quickly and remedy any shortfall.

EPA believes that Cambridge and MA DEP will seek public input in the review and approval of Reports under section 12 on the CVTRP, and that the City will remedy expeditiously any MA DEP finding that the City has not met its VMT offset requirements. EPA expects that, during the comment period on this rule, the City and MA DEP will confirm these beliefs in comments on the proposal. In the absence of such confirming comments from both MA DEP and Cambridge, EPA would treat the lack of confirmation as significant new information. In that event, EPA would reopen the comment period and would reconsider whether a disapproval or conditional approval of this rule is appropriate.

Cambridge must maintain records documenting assumptions used in preparing the Report and demonstrating compliance. After considering the commitments of MA DEP and the incentives for MA DEP and Cambridge under the CVTRP, EPA believes that the monitoring and enforcement provisions are adequate to ensure that the CVTRP will meet its performance standard. EPA will use its oversight authority to verify that the CVTRP is meeting or exceeding its implementation goals.

*F. How will the CVTRP accomplish the same emission savings as generated by the existing commercial Parking Freeze?*

EPA has determined that the proposed rulemaking will achieve equivalent emissions reductions to those achieved under the Freeze. The rationale for this equivalency determination is that the vehicle trips, VMT or air emissions of any commercial parking spaces added beyond what the freeze allows will be offset through the implementation of the CVTRP.

This action will have a beneficial effect on air quality by continuing emission reductions currently achieved by the Freeze. EPA has assumed that, as a substitution for the Freeze, the CVTRP must meet the requirements of section 193 of the Clean Air Act, known as the savings clause.<sup>1</sup> The savings clause is satisfied because, for every new permitted commercial parking space added to the Cambridge's inventory beyond the 13,452 space baseline, the City will implement vehicle trip reduction measures to offset all air pollutant emissions (volatile organic compounds, nitrogen oxides and carbon monoxide) associated with that new parking space. This is consistent with the intent of the SIP's commercial parking control plan to avoid new VMT and their associated motor vehicle

<sup>1</sup> EPA has assumed that the CVTRP must meet section 193 of the Act, which applies to nonattainment areas. However, EPA notes that it revoked the one-hour ozone standard for Eastern Massachusetts on June 9, 1999, please see 64 FR 30911-30917. Therefore, the Cambridge Parking Freeze Area is not currently a nonattainment area for any National Ambient Air Quality Standard. Nevertheless, the reasonably foreseeable designation of Eastern Massachusetts as nonattainment for the newly-adopted eight-hour ozone standard would make it reasonable for the EPA to see that the rule meets this standard. Also, EPA signed the final rule to rescind the revocation of the one-hour ozone standard on July 5, 2000, please see 65 FR 45184-45274. The one-hour ozone standard will become applicable in Eastern Massachusetts on January 16, 2001. Even if the requirements of section 193 will apply to this proposed revision to the SIP, EPA does not expect the substitution of the CVTRP for the Freeze will interfere with any applicable requirement concerning attainment, which is the alternate standard under section 110(1).

emissions. This action is being taken under section 110 of the Clean Air Act.

The CVTRP would reduce vehicle trips and vehicle miles traveled which result in eliminating motor vehicle emissions of volatile organic compounds (VOCs), nitrogen oxides (NO<sub>x</sub>), and carbon monoxide (CO), thereby allowing for the addition of commercial parking spaces and the added vehicle trips they generate with no net environmental impact. No new emission reduction credit is being added to the SIP at this time as the CVTRP is not required to achieve additional emission reductions, only equivalent reductions which would have been achieved under the Freeze proposed to be replaced. This is consistent with the savings clause of the Clean Air Act, section 193.

#### *G. How Will the CVTRP be Enforced?*

Cambridge must inspect non-residential parking facilities to ensure they are in compliance with appropriate permits and ensure non-commercial spaces are not available for commercial parking. Cambridge must take enforcement action against violators and forward a copy of all inspections reports to MA DEP. MA DEP may enforce the CVTRP under applicable state law, and EPA may initiate enforcement once it approves the CVTRP into the Massachusetts SIP. As an approved SIP element, the requirements of this regulation are also directly enforceable as an emission standard or limit pursuant to sections 113 and 304(a) of the Federal Clean Air Act. The public could commence a civil action for failure to implement or achieve, in accordance with the provisions of section 304 of the Clean Air Act.

#### *H. What are the penalties if the City fails to completely offset emissions associated with parking above the baseline?*

Among the penalties allowed under the CAA, the failure of the City of Cambridge to achieve the performance standard and other requirements of the CVTRP Regulation could result in a finding of non-conformity under section 176(c) of the Clean Air Act, the Commonwealth's Transportation Conformity Regulations (310 CMR 60.03), and EPA's Transportation Conformity Rule 40 CFR part 93, subpart A.

EPA will have the ability to evaluate Reports and CVTRP implementation. Cambridge cannot claim credit for a program already in the Massachusetts SIP unless Cambridge's implementation of or contribution to such a program achieves results in excess of the goals

for the program in the SIP. Failure of Cambridge's monitoring plan and Report to adequately demonstrate maintenance of a level of motor vehicle air emissions less than or equal to those estimated to occur absent replacement and substitution of the Cambridge Commercial Parking Freeze will require the City to resolve such inadequacies and to halt issuance of any new commercial parking spaces in excess of the baseline.

#### *I. How Can the Public Comment?*

EPA is proposing to approve the Massachusetts SIP revision for the Cambridge Vehicle Trip Reduction Program, which was submitted on January 28, 1998. EPA is soliciting public comments on the issues discussed in this document 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 Regional office listed in the *Addresses* section of this document.

#### **3. Overview of the CVTRP**

The City of Cambridge Vehicle Trip Reduction Program regulation consist of fourteen subsections summarized as follows:

(1) Purpose: Authorizes the City of Cambridge to implement the CVTRP as a replacement and substitution to the Cambridge commercial parking freeze.

(2) Definitions: Includes the definition of (a) *Oversight Committee*—a panel jointly appointed by the MA DEP and City of Cambridge; (b) *Vehicle trip reduction programs*—are programs designed to reduce vehicle miles of travel or vehicle trips by influencing travel behavior and demand or by reducing air emissions from mobile sources by utilizing clean fuels; and, (c) *Commercial parking space*—means a parking space available for use by the general public at any time for a fee and shall not include: (i) parking spaces which are owned or operated by a commercial entity whose primary business is other than the operation of parking facilities, for the exclusive use of its lessees, employees, patrons, customers, clients, patients, guests or residents and not available for use by the general public; (ii) parking spaces restricted for the use of the residents of a specific residential building or group of buildings; (iii) spaces located on public streets; or (iv) spaces located at a park-and-ride facility operated in conjunction with the Massachusetts Bay Transportation Authority (MBTA).

(3) Applicability: Within the geographic boundaries of the City of Cambridge.

(4) Terms of Vehicle Trip Reduction Program: The City of Cambridge shall implement a CVTRP that offsets VMT associated with the issuance of new commercial parking space permits in Cambridge in excess of the 13,452 spaces allowed by the Cambridge Parking Freeze, to maintain a level of air emissions less than or equal to those estimated to occur absent replacement and substitution of the Cambridge Parking Freeze.

(5) Vehicle Trip Reduction Program: may include, but not limited to; (a) municipal employee trip reduction measures; (b) increase of municipal parking rates; (c) bicycle and pedestrian mobility measures; and (d) transportation demand management for expansions and new development.

(6) Feasibility Studies: By December 26, 2000, the City of Cambridge shall complete the following studies; (a) promotion of clean fuels and low/zero emission vehicles; (b) taxi cab improvements; (c) zoning (revisions of zoning ordinance to promote reduction of VMT and traffic congestion and to increase commuting alternatives to the single-occupant vehicle.

(7) Travel Demand Management: The City of Cambridge shall work and coordinate with the Commonwealth and the MA DEP to explore additional ways to manage travel demand and demand for parking in Cambridge, and ways in which Cambridge can facilitate the transfer of parking space permits and/or parking spaces.

(8) City Enforcement Programs: The CVTRP regulation contains an enforcement section which requires Cambridge to inspect non-residential parking facilities to ensure that they are in compliance with appropriate permits. Cambridge must take enforcement action against violators. In addition, the regulation identifies the prohibition against idling by buses, trucks, taxis, and automobiles which Cambridge may take enforcement action in accordance with MA DEP's idling regulation, (310 CMR 7.11(1)(b) Air Pollution control regulations, U Transportation Media). A copy of all inspections reports shall be forwarded to MA DEP.

(9) Coordination Activities: Cambridge may pursue improved coordination with the MBTA regarding improvements to public transit and local para-transit.

(10) Monitoring and Demonstration Plan: The City shall continuously monitor the number of commercial parking spaces within the City and monitor the effectiveness of the CVTRP

in achieving a combination of reductions in VMT, vehicle trips and vehicle air emission to satisfy the performance standard that a level of air emissions less than or equal to those estimated to occur absent replacement and substitution of the Cambridge commercial parking freeze.

(11) Recordkeeping and Reporting: The CVTRP regulation requires the City of Cambridge to submit status reports to MA DEP, EPA Region 1 Office and the chairman of the Boston Metropolitan Planning Organization, on its progress in implementing the regulation. The status reports are required to be submitted every year for three years beginning one year after the regulation is approved by EPA as a SIP revision, and then every other year. The City of Cambridge shall maintain records that document the assumptions used in the Report to determine emission reductions from the CVTRP and to demonstrate compliance with in meeting the performance standard and other requirements of 310 CMR 60.04.

(12) Monitoring and Demonstration Report Review: The Report serves as the City of Cambridge's demonstration that the vehicle trip reduction programs are achieving the required reductions in vehicle trips, VMT and air emissions to maintain a level of air emissions less than or equal to those estimated to occur absent replacement and substitution of the Cambridge Commercial Parking Freeze. The MA DEP shall independently or in combination with the Oversight Committee determine the Monitoring and Demonstration Report to be adequate or inadequate. Should the Oversight Committee determine that the City has failed to meet its obligation, a public hearing shall be held and MA DEP shall consider the public comments in MA DEP's determination. Cambridge must resolve any failure to achieve and maintain a level of air emissions less than or equal to those estimated to occur absent replacement and substitution of the Cambridge Commercial Parking Freeze prior to issuing any additional commercial parking space permits over and above the baseline.

(13) Enforcement Program: MA DEP may enforce 310 CMR under applicable state law, and EPA may initiate enforcement action once the CVTRP is approved into the Massachusetts SIP. As an approved SIP element the requirements of this regulation are also directly enforceable as an emission standard or limit pursuant to sections 113 and 304(a) of the Federal Clean Air Act. The public could commence a civil action for failure to implement or achieve, in accordance with the

provisions of section 304 of the Clean Air Act.

(14) Responsibilities Under the Clean Air Act: Programs already included in Massachusetts SIP may not be included in the CVTRP except to the extent Cambridge's implementation of or contribution to such program achieves results in excess of the goals established in the SIP for such program. Cambridge's failure to comply with the performance standard established in the CVTRP regulation may result in a finding of non-conformity under section 176(c) of the Clean Air Act.

## II. Proposed Action

EPA is proposing to approve the SIP amendment for Ozone and Carbon Monoxide for the Cambridge Vehicle Trip Reduction Program in the Metropolitan Boston Air Pollution Control District. This proposed revision would replace the City of Cambridge's commercial parking freeze (40 CFR 52.1128 and 52.1135) with a city-wide Cambridge Vehicle Trip Reduction Program (CVTRP).

## III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power

and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: September 7, 2000.

**Mindy S. Lubber,**

*Acting Regional Administrator, EPA—New England.*

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