

**Confidentiality**

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

**Public Disclosure**

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- by 11-inch page. Contact our librarian at the above address or telephone (202) 927-2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and any comments we receive on this proposal on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copy of this notice, visit <http://www.ttb.gov/alcology/rules/index.htm>. Select the "View Comments" link under this notice number to view the posted comments.

**Regulatory Flexibility Act**

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

**Executive Order 12866**

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

**Drafting Information**

Nancy Sutton of the Regulations and Procedures Division drafted this notice.

**List of Subjects in 27 CFR Part 9**

Wine.

**Proposed Regulatory Amendment**

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

**PART 9—AMERICAN VITICULTURAL AREAS**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

2. Section 9.59 is amended by revising paragraph (c)(13), redesignating paragraphs (c)(14) through (c)(19) as (c)(16) through (c)(21), and adding new paragraphs (c)(14) and (c)(15) to read as follows:

**§ 9.59 Arroyo Seco.**

\* \* \* \* \*

(c) *Boundary.* \* \* \*

\* \* \* \* \*

(13) Then east-northeasterly along Clark Road for approximately 1,000 feet to its intersection with an unnamed light-duty road to the south.

(14) Then in a straight south-southeasterly line for approximately 1.9 miles to the line's intersection with the southeast corner of section 33, T18S, R6E (this line coincides with the unnamed light duty road for approximately 0.4 miles and later with the eastern boundaries of sections 32 and 33, T18S, R6E, which mark the western boundary of the historical Arroyo Seco Land Grant).

(15) Then straight west along the southern boundary of section 33, T18S, R6E, to its southwest corner.

\* \* \* \* \*

3. Section 9.139 is amended by revising paragraphs (c)(9) and (c)(10), redesignating paragraphs (c)(11) through (c)(21) as (c)(12) through (c)(22), and adding new paragraph (c)(11) to read as follows:

**§ 9.139 Santa Lucia Highlands.**

\* \* \* \* \*

(c) *Boundary.* \* \* \*

\* \* \* \* \*

(9) Then east-northeasterly along Clark Road for approximately 1,000 feet to its intersection with an unnamed light-duty road to the south.

(10) Then in a straight south-southeasterly line for approximately 1.9 miles to the line's intersection with the southeast corner of section 33, T18S, R6E (this line coincides with the unnamed light duty road for about 0.4 miles and later with the eastern boundaries of sections 32 and 33, T18S, R6E, which mark the western boundary of the historical Arroyo Seco Land Grant).

(11) Then straight west along the southern boundaries of sections 33, 32, and 31, T18S, R6E, to the southwest corner of section 31.

\* \* \* \* \*

Signed: January 10, 2005.

**John J. Manfreda,**  
*Administrator.*

[FR Doc. 05-1192 Filed 1-21-05; 8:45 am]

**BILLING CODE 4810-31-P**

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

[R01-OAR-2004-ME-0004; A-1-FRL-7862-9]

**Approval and Promulgation of Air Quality Implementation Plans; ME; Low Emission Vehicle Program**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine on February 25, 2004 and December 9, 2004 which includes the Maine Low Emission Vehicle (LEV) Program. The regulations adopted by Maine include the California LEV I light-duty motor vehicle emission standards beginning with model year 2001, California LEV II light-duty 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. The Maine LEV regulation submitted does not include any zero emission vehicle (ZEV) requirements. Maine 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, they have worked to ensure that their program is identical to California's, as required by section 177 of the CAA. The intended effect of this action is to propose approval of the Maine LEV program. This action is being taken under section 110 of the Clean Air Act.

**DATES:** Written comments must be received on or before February 23, 2005.

**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. Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions described in part (I)(B)(1)(i) through (iv) of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:**

Robert C. Judge, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114-2023, (617) 918-1045, [judge.robert@epa.gov](mailto:judge.robert@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. How Can I Get Copies of This Document and Other Related Information?*

1. The *Regional Office* has established an official public rulemaking file available for inspection at the *Regional Office*. EPA has established an official public rulemaking file for this action under Regional Material EDocket Number R01-OAR-2004-ME-0004. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal Holidays.

2. *Electronic Access.* An electronic version of the public docket is available through EPA's Regional Material EDocket (RME) system, a part of EPA's electronic docket and comment system. You may access RME at <http://docket.epa.gov/rmepub/index.jsp> to review associated documents and submit comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number.

You may also access this **Federal Register** document electronically through the Regulations.gov web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether

submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

3. *Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency.* Bureau of Air Management, Department of Environmental Protection, State House, Station No. 17, Augusta, ME 04333.

*B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking R01-OAR-2004-ME-0004" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD-ROM you submit, and in any cover letter accompanying the disk or CD-ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in Regional Material EDocket. If EPA cannot read your comment due to technical difficulties

and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *Regional Material EDocket (RME).* Your use of EPA's Regional Material EDocket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to RME at <http://docket.epa.gov/rmepub/index.jsp>, and follow the online instructions for submitting comments. Once in the RME system, select "quick search," and then key in RME Docket ID Number R01-OAR-2004-ME-0004. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to [conroy.dave@epa.gov](mailto:conroy.dave@epa.gov), please include the text "Public comment on proposed rulemaking R01-OAR-2004-ME-0004" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

iii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at <http://www.regulations.gov>, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iv. *Disk or CD-ROM.* You may submit comments on a disk or CD-ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114-2023. Please include the text "Public comment on proposed

rulemaking R01–OAR–2004–ME–0004” in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal Holidays.

*C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

*D. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

*Organization of this document.* The following outline is provided to aid in locating information in this preamble.

- A. What Is the Background for This Action?
- B. What Is the California LEV Program?
- C. What Are the Relevant EPA and CAA Requirements?
- D. What Is the History of the Maine Low Emission Vehicle Program?
- E. What Level of Emission Reductions Will This Program Achieve?

## II. Rulemaking Information

### *A. What Is the Background for This Action?*

Under the Clean Air Act Amendments of 1990, Maine had 4 separate 1-hour ozone nonattainment areas: the Portland area, the Lewiston-Auburn area, the Knox and Lincoln Counties area, and the Hancock and Waldo Counties area. Effective June 15, 2004, there are now two 8-hour ozone nonattainment areas in Maine; the Portland area (not identical to previous 1-hour ozone area) and portions of Hancock, Knox, Lincoln and Waldo counties.

To bring these areas into attainment, the State has adopted and implemented a broad range of ozone control measures including stage II vapor recovery at larger gas stations in the Portland area, numerous stationary and area source VOC and NO<sub>x</sub> controls, a vehicle testing (I/M) program in Cumberland county, and a low Reid vapor pressure (RVP) gasoline control program in southern Maine. In addition, the State has required that beginning with the 2001 model year, all new light duty vehicles sold in the State meet California LEV emission standards. Maine has submitted a SIP revision requesting EPA approval of this LEV program.

### *B. What Is the California LEV Program?*

The California Air Resources Board (CARB) adopted California’s second generation low emission vehicle regulations (LEV II) following a November 1998 hearing. These regulations are a continuation of the low emission vehicle (LEV I) regulations originally adopted in 1990 which were effective through the 2003 model year. The LEV II regulations increase the

scope of the LEV I regulations by lowering the emission standards for all light and medium-duty vehicles (including sport utility vehicles) beginning with the 2004 model year. There are several tiers of increasingly stringent LEV II emission standards to which a manufacturer may certify: Low-emission vehicle (LEV); ultra-low-emission vehicle (ULEV); super-ultra low-emission vehicle (SULEV); partial zero-emission vehicle (PZEV); and zero-emission vehicle (ZEV). In addition to stringent emission standards, the LEV II regulations provide flexibility to manufacturers by allowing them to choose the standards to which each vehicle is certified provided the overall fleet meets the specified phase-in requirements according to a fleet average hydrocarbon requirement that is progressively lower with each model year. The LEV II fleet average requirements commence in 2004 and apply through 2010 and beyond. In addition to the LEV II requirements, minimum percentages of passenger cars and the lightest light-duty trucks marketed in California by a large or intermediate volume manufacturer must be ZEVs. The program also includes a “smog index” label for each vehicle sold, the intent of which is to inform consumers about the amount of pollution coming from that vehicle relative to other new vehicles.

Subsequent to the adoption of the LEV II program, the U.S. EPA adopted its own substantially more stringent emission standards known as the Tier 2 regulations. In December 2000, CARB modified the LEV II program to take advantage of some elements of the federal Tier 2 program to ensure that only the cleanest vehicle models will continue to be sold in California.

### *C. What Are the Relevant EPA and CAA Requirements?*

Section 209(a) of the CAA prohibits states from adopting or enforcing standards relating to the control of emissions from new motor vehicles or new motor vehicle engines. However, section 209(b) of the CAA allows the State of California to adopt its own motor vehicle emissions standards if a waiver is granted by the U.S. Environmental Protection Agency (EPA.) EPA must approve a waiver if, in California’s determination, it finds that its standards will be “\* \* \* in the aggregate, at least as protective of public health and welfare as such Federal standards \* \* \*” However, no waiver will be granted if the EPA Administrator finds the determination of California to be “arbitrary and capricious,” California “does not need such State standards to

meet compelling and extraordinary conditions,” or California’s standards and accompanying enforcement procedures are not consistent with section 202(a) of the Clean Air Act.

Section 177 of the Clean Air Act authorizes other states to adopt and enforce California motor vehicle emission standards relating to the control of emissions if the standards are identical to California’s for which a waiver has been granted and California and the state adopt such standards at least two years prior to the commencement of the model year to which the standards will apply.

#### *D. What Is the History of the Maine Low Emission Vehicle Program?*

On February 17, 1993, Maine had adopted a version of this LEV regulation which was to be effective with model year 1996. This regulation, Chapter 127 of the Maine Department of Environmental Protection rules, was entitled “New Motor Vehicle Emission Standards.” State legislation was enacted prior to the required sale of these vehicles which prevented the rule from going into effect in Maine until certain triggers were met. These triggers were related to other Northeast States also adopting the California LEV (CA LEV) program. Vehicle manufacturers were subsequently notified in December, 1997 that these triggers had been met, and the LEV rule would be effective with the 2001 model year. Maine has made several modifications to this program to make it consistent with how California has modified its LEV program over time. Section 177 of the CAA provides that states may adopt California vehicle standards provided that the standards are identical to California’s. As such, as California makes modifications to its program, states that have adopted California standards are compelled to make similar changes. The current version of the Maine program is intended to be identical to the current California program with the notable exception that the Maine program does not include ZEV requirements.<sup>1</sup>

#### *E. What Level of Emission Reductions Will This Program Achieve?*

Maine does not deny registration to new vehicles which apply for registration in the State based on whether or not they are certified as compliant with the CA LEV program.

Other States which implement the program ensure that only California certified vehicles are allowed to be registered. The level of credit in EPA’s MOBILE6 model assumes that only CA LEV vehicles are in States with CA LEV programs dependent upon the model year the program begins. For example, EPA currently estimates that the CA LEV II program will provide about 1 percent additional reductions in mobile source VOC and 2 percent in air toxics over the federal Tier 2 program in 2020 with the program beginning in 2004. As currently structured, Maine’s LEV program does not ensure that only these CA LEV certified vehicles are registered in Maine. However, Maine does require that Maine car dealers only sell (or offer for sale) California certified vehicles and ensures that this requirement is met by regularly checking new car dealer vehicle inventories. In addition, in a letter dated December 9, 2004, Maine has committed to regularly reviewing manufacturer’s certificates of origin (MCO) to determine that the vehicles being registered in Maine are California certified, and to follow-up with new vehicles that are not CA LEV certified. Previous reviews of these MCOs have indicated a very high rate of compliance (99+ percent) for a sample of approximately 1000 vehicles. Nevertheless, Maine is aware that in some cases, vehicles that are not available under the California program, have been bought new elsewhere and are now registered in Maine. In light of this, Maine is requesting that they receive 90 percent of the credit associated with the LEV program. EPA believes this amount of credit is reasonable and is proposing to approve that request. By this proposal, we are seeking comment on the appropriateness of this level of credit for a State which does not deny registration to new motor vehicles that do not comply with the California LEV program. In proposing this level of credit, we considered and recognize the uniqueness of Maine’s situation and its proximity to other States which require CA LEV vehicles, in addition to Maine’s commitment to continue to enforce the program as described above.

As discussed earlier in this notice, States adopting the California LEV program must adopt a program which is identical to California’s. The zero emission vehicle program has undergone several modifications through the years in California. And Maine had made several changes to their LEV program in attempts to ensure their program is consistent with California. However, in the version of

the rule before EPA for approval action, Maine did not include any requirements for ZEVs to be sold. (As stated above, the State is now making further changes regarding these ZEV requirements.) Nevertheless, the Maine LEV program is designed to be a comprehensive program which will secure emission reductions. For that reason, and since the emission reductions from the California program are controlled by the fleet average hydrocarbon curve and can be achieved without any specific ZEV sales mandates, we are proposing to approve the emissions reductions associated with the LEV program and the Maine rules adopted on December 21, 2000, and effective December 31, 2000.

### **III. Proposed Action**

EPA is proposing to approve a SIP revision at the request of the Maine DEP. This version of the rule entitled “Chapter 127: New Motor Vehicle Emission Standards” was adopted by Maine with an effective date of December 31, 2000. It was submitted to EPA for approval on February 25, 2004. That submittal was later clarified on December 9, 2004 to justify the level of emission reductions expected from this program. This proposed approval would justify the State achieving 90 percent of the credit achieved by States that implement the CA LEV program through a registration based enforcement system. The regulation adopted by Maine includes the LEV I light-duty program beginning with model year 2001 in Maine, the California LEV II light-duty 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. EPA is proposing to approve the Maine low emission vehicle program requirements into the SIP because EPA has found that the requirements are consistent with the CAA.

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

### **IV. 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

<sup>1</sup> Maine has recently begun the process to adopt the ZEV requirements of the California LEV program. In this proposed rulemaking, EPA is acting on the version of the Maine rules submitted on February 25, 2004, which does not include ZEV requirements.

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of

the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

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

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 12, 2005.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

[FR Doc. 05-1246 Filed 1-21-05; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 385, 390 and 395

**[Docket No. FMCSA-2004-19608; formerly FMCSA-1997-2350]**

**RIN-2126-AA90**

#### Hours of Service of Drivers

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** FMCSA is reviewing and reconsidering the regulations on hours of service of drivers published on April 28, 2003 (68 FR 22456) and amended on September 30, 2003 (68 FR 56208). The regulations were vacated by the U.S. Court of Appeals for the District of Columbia Circuit on July 16, 2004 (*Public Citizen et al. v. Federal Motor Carrier Safety Administration*, 374 F.3d 1209). Congress subsequently provided that the 2003 regulations will remain in effect until the effective date of a new final rule addressing the issues raised by the court or September 30, 2005, whichever occurs first (Section 7(f) of the Surface Transportation Extension Act of 2004, Part V). FMCSA is reconsidering the 2003 regulations to determine what changes may be necessary to be consistent with the holdings and *dicta* of the *Public Citizen* decision. In order to allow effective public participation in the process before the statutory deadline, FMCSA is

publishing this NPRM concurrently with its ongoing research and analysis of the issues raised by the court. To facilitate discussion, the agency is putting forward the 2003 rule as the "proposal" on which public comments are sought. This NPRM, however, asks the public to comment on what changes to that rule, if any, are necessary to respond to the concerns raised by the court, and to provide data or studies that would support changes to, or continued use of, the 2003 rule. The NPRM includes specific information on a variety of topics and specific questions for comment. FMCSA is not considering changes to the hours-of-service regulations applicable to drivers and operators of *passenger-carrying* commercial motor vehicles (CMVs).

**DATES:** Comments must be received by March 10, 2005.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number FMCSA-2004-19608 by any of the following methods. Do not submit the same comments by more than one method. However, in order to allow effective public participation in this rulemaking before the statutory deadline, we encourage use of the web site that is listed first below. It will provide the most efficient and timely method of receiving and processing your comments.

- Web site: <http://dms.dot.gov>: Follow the instructions for submitting comments on the DOT electronic site.
- Fax: 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**Instructions:** All submissions must include the agency name and docket number (FMCSA-2004-19608) or Regulatory Identification Number (RIN) for this rulemaking (RIN-2126-AA90). Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading for further information. If addressing a specific request for comments in this NPRM, please clearly identify the related "request number(s)" for each topic addressed in your comments. Further