

examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www1.va.gov/orpm/>, by following the link for "VA Regulations Published."

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.013, Veterans Prosthetic Appliances; 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; and 64.109, Veterans Compensation for Service-Connected Disability.

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Interim Chief of Staff, Department of Veterans Affairs, approved this document on July 23, 2013, for publication.

#### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: September 16, 2013.

**Robert C. McFetridge,**

*Director, Office of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

### PART 3—ADJUDICATION

#### Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

- 1. The authority citation for part 3, subpart A continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

- 2. Amend § 3.808 as follows:
  - a. Revise the section heading.
  - b. Redesignate paragraph (b)(4) as (b)(5).
  - c. Add a new paragraph (b)(4).
  - d. Revise the authority citation at the end of paragraph (b).

The addition and revisions read as follows:

#### § 3.808 Automobiles or other conveyances and adaptive equipment; certification.

\* \* \* \* \*

(b) \* \* \*

(4) Severe burn injury: Deep partial thickness or full thickness burns resulting in scar formation that cause contractures and limit motion of one or more extremities or the trunk and preclude effective operation of an automobile.

\* \* \* \* \*

(Authority: 38 U.S.C. 3901, 3902)

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[FR Doc. 2013–22764 Filed 9–18–13; 8:45 am]

**BILLING CODE 8320–01–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R01–OAR–2012–0025; A–1–FRL–9732–4]

#### Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Regional Haze

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a revision to the Massachusetts State Implementation Plan (SIP) that addresses regional haze for the first planning period from 2008 through 2018. The revision was submitted by the Massachusetts Department of Environmental Protection (MassDEP) on December 30, 2011, with supplemental final submittals on August 9, 2012 and August 28, 2012. These submittals address the requirements of the Clean Air Act (CAA) and EPA's rules that require States to prevent any future, and remedy any existing, manmade impairment of

visibility in mandatory Class I Areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the "regional haze program"). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas.

**DATES:** This rule is effective on October 21, 2013.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2012–0025. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Anne McWilliams, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail Code OEP05–02), Boston, MA 02109–3912, telephone number (617) 918–1697, fax number (617) 918–0697, email [mcwilliams.anne@epa.gov](mailto:mcwilliams.anne@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Response to Comments
- III. Final Action
- IV. Statutory and Executive Order Reviews

## I. Background and Purpose

On May 24, 2012, EPA published a Notice of Proposed Rulemaking (NPR) for the State of Massachusetts. See 77 FR 30932. The NPR proposed approval of the Massachusetts State Implementation Plan (SIP) that addresses regional haze for the first planning period from 2008 through 2018. In that rulemaking, EPA proposed to approve the MassDEP Regional Haze State Implementation Plan dated December 30, 2011, and also proposed to approve under parallel processing, proposed revisions to the Massachusetts Haze SIP dated February 17, 2012.<sup>1</sup> Specifically, EPA proposed to approve the following adopted elements of Massachusetts' Haze Plan: (1) 310 Code of Massachusetts Regulations (CMR) 7.29 "Emission Standards for Power Plants;" (2) 310 CMR 7.26(50)–(54) "Outdoor Hydronic Heaters;" (3) Amended Emission Control Plan for Mt. Tom Station dated May 15, 2009; (4) Facility Shutdown of Somerset Power, LLC dated June 22, 2011; (5) Modified Emission Control Plan for General Electric Aviation—Lynn dated March 24, 2011; and (6) Modified Emission Control Plan for Wheelabrator Saugus, Inc. dated March 14, 2012. Furthermore, pursuant to MassDEP's May 2, 2012 request for parallel processing, EPA proposed approval of the following SIP elements that were still in the proposed stage: (1) Massachusetts' proposed revisions to 310 CMR 7.00 "Definitions;" (2) Massachusetts' proposed revisions to 310 CMR 7.05 "Fuels All Districts;" (3) proposed Amended Emission Control Plan Approval for Salem Harbor Station dated February 17, 2012; and (4) proposed Amended Emission Control Plan Approval for Brayton Point Station dated February 16, 2012.

On August 9, 2012 and August 28, 2012, MassDEP submitted additional elements and a revised SIP narrative as a supplement to the Massachusetts Regional Haze SIP. EPA has reviewed the August 9, 2012 and August 28, 2012 submittals and has determined that the State's formal SIP submittal does not contain significant changes which occurred after EPA's May 24, 2012 notice of proposed rulemaking.

A detailed explanation of the requirements for regional haze SIPs, as well as EPA's analysis of Massachusetts' Regional Haze SIP submittal, was provided in the NPR and is not restated here.

## II. Response to Comments

EPA received comments from Dominion Energy New England, Inc. (Dominion) and a joint letter from the Sierra Club and Conservation Law Foundation. The Dominion comments were generally supportive of the Massachusetts Alternative to Best Available Retrofit Technology (BART) demonstration and long term strategy and therefore require no response. The following discussion summarizes and responds to the relevant adverse comments submitted by the Sierra Club and Conservation Law Foundation (for brevity, "Sierra Club") on EPA's proposed approval of Massachusetts' Regional Haze SIP.

*Comment A:* The Sierra Club contends that Section 169A of the CAA does not allow EPA to exempt BART-eligible sources<sup>2</sup> from BART, and that EPA's regulation at 40 CFR 51.308(e)(2), which allows states to develop alternative programs in lieu of BART, is contrary to the CAA. The Sierra Club acknowledges that its position has been rejected by two federal court decisions.

*Response A:* As the Sierra Club notes, EPA's interpretation of the CAA was upheld in *Utility Air Regulatory Group v. EPA*, 471 F.3d 1333 (D.C. Cir. 2006). See 77 FR 33642, 33645–46 (June 7, 2012) for a more detailed explanation.

*Comment B.1:* The Sierra Club contends that Massachusetts' proposed Alternative to BART analysis is flawed due to the lack of source-by-source BART determinations. The commenter cited recent source-by-source BART determinations which were more stringent than the benchmark BART limits used in the Massachusetts alternative to BART analysis. The commenter suggested that MassDEP must undertake the five step source-by-source BART determination for each of the subject BART sources to demonstrate that the alternative to BART provides greater reasonable progress than the source-by-source BART. The commenter contends that comparing emissions, based on the category-wide benchmark limits that Massachusetts used, to the emissions from the alternative to BART measures underestimates the reductions achievable through a five factor determination and therefore does not conclusively show that the Massachusetts alternative to BART measures provide greater reasonable

progress than source-by-source BART determinations.

*Response B.1:* The primary requirement, as specified in CAA section 169A, is for major stationary sources to procure, install, and operate BART. In some cases this requirement is met with an analysis of potential controls considering five factors given in EPA's Regional Haze Rule (RHR). See 40 CFR 51.308(e)(1). EPA has interpreted this requirement to be met if an alternative set of emission limits are established which mandate greater reasonable progress toward visibility improvement than direct application of BART on a source-by-source basis. In promulgating the RHR, EPA stated that to demonstrate that emission reductions of an alternative program would result in greater emission reductions, "the State must estimate the emission reductions that would result from the use of BART-level controls. To do this, the State could undertake a source-specific review of the sources in the State subject to BART, or it could use a modified approach that simplifies the analysis." 64 FR 35742 (July 1, 1999).

In final rulemaking published October 13, 2006, EPA offered further clarification for States for assessing alternative strategies, in particular regarding the benchmark definition of BART to use in judging whether the alternative is better. See 71 FR 60612, 60615–20. In this rulemaking, EPA stated in the preamble that the presumptive BART levels given in the BART guidelines would be a suitable baseline against which to compare alternative strategies where the alternative has been designed to meet a requirement other than BART. See 71 FR at 60618; see also 40 CFR 51.308(e)(2)(i)(C). MassDEP's analysis is fully consistent with EPA's conclusions in this rulemaking.

While EPA recognizes that a case-by-case BART analysis may result in emission limits more stringent than the presumptive limits, the presumptive limits are reasonable and appropriate for use in assessing an alternative emissions reductions scenario such as the Massachusetts plan when comparing it to the BART scenario. See 71 FR 60619 (stating "the presumptions represent a reasonable estimate of a stringent case BART . . . because . . . they would be applied across the board to a wide variety of units with varying impacts on visibility, at power plants of varying size and distance from Class I areas"). In other words, while in some instances case-by-case BART could result in limits more stringent than the presumptive limits, in other instances consideration of all five statutory BART factors could

<sup>1</sup> MassDEP submitted "Proposed Revisions to Massachusetts Regional Haze State Implementation Plan (SIP)" dated February 17, 2012, for parallel processing on May 2, 2012.

<sup>2</sup> 40 CFR 51.301 defines a BART-eligible source as an existing facility which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, has the potential to emit 250 tons per year or more of any air pollutant, and meets one of the 26 listed stationary source categories.

result in limits *less* stringent than the presumptive limits, and EPA's considered conclusion is that the presumptive BART is, overall, "a reasonable estimate of a stringent case BART."<sup>3</sup> Furthermore, Massachusetts went beyond EPA's presumptive level of control and used the more stringent Mid-Atlantic/Northeast Visibility Union (MANE-VU) recommended level of control to develop its benchmark.<sup>4</sup>

The components of Massachusetts' plan were developed to reduce mercury emissions, bring Massachusetts into attainment with the National Ambient Air Quality Standards (NAAQS) for ozone by CAA deadlines, and to meet long term strategy requirements. The Massachusetts plan imposes limitations on sulfur dioxide (SO<sub>2</sub>), oxides of nitrogen (NO<sub>x</sub>), and mercury emissions from coal-fired electrical generating units (EGUs), sulfur in fuel oil limits and NO<sub>x</sub> limits for oil fired EGUs, and enforceable EGU shutdowns. Massachusetts is also now using these controls as an alternative to BART for its EGU BART-eligible sources as permitted pursuant to EPA's RHR (40 CFR 51.308(e)(2)). Therefore, the use of the benchmark limits for the alternative to BART analysis is appropriate. EPA agrees with Massachusetts' analysis that emission reductions from the units subject to MassDEP's alternative plan will result in emission reductions that will provide greater reasonable progress than would BART alone as described more fully in the NPR.

*Comment B.2.a:* The Sierra Club contends that, even based on the framework Massachusetts used, its BART alternative results in fewer emission reductions for SO<sub>2</sub> and NO<sub>x</sub> than would BART. The Sierra Club argues that Massachusetts' analysis compares emission reductions at the full set of sources subject to its BART alternative to the much smaller set of subject-to-BART sources, and this is impermissible under the regulations.

*Response B.2.a:* EPA does not agree with the commenter's interpretation of the regional haze rule. If a State opts to implement or require participation in an emission trading program or other alternative measure rather than to require sources subject to BART to install, operate, and maintain BART, the State must "demonstrat[e] that the emissions trading program or other

alternative measure will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART in the State and covered by the alternative program." 40 CFR

51.308(e)(2)(i). This demonstration must include a list of all BART-eligible sources and all BART source categories covered by the alternative program and an analysis of the best system of continuous emission control technology available. "This analysis must be conducted by making a determination of BART for each source within the State subject to BART and covered by the alternative program as provided for in paragraph (e)(1) of this section, unless the emission trading program or other alternative measure has been designed to meet a requirement other than BART (such as the core requirement to have a long term strategy to achieve the reasonable progress goals established by the States). In this case, the State may determine the best system of continuous emission control technology and associated emission reductions for similar types of sources within a source category based on both source-specific and category wide information as appropriate." 40 CFR 51.308(e)(2)(i)(C). This language indicates that BART determinations are to be made for each source that is both subject to BART and included in the alternative measure as provided for in paragraph (e)(1). Paragraph (e)(1) calls for a BART determination for BART-eligible sources. EPA does not agree that the language implies that source-by-source BART determinations are required for units which do not meet the definition of BART-eligible.<sup>5</sup> Non-BART sources which are included as members of the alternative measure need not be subject to a BART analysis. Put simply, EPA's regulations allow a state to develop an alternative that encompasses (and obtains emissions reductions from) non-BART sources, and to compare that alternative to a BART benchmark consisting only of subject-to-BART sources. Therefore, Massachusetts was correct in only including benchmark emissions from the BART sources in the baseline for comparison to the alternative program.

*Comment B.2.b:* The Sierra Club argues that Brayton Point Station's baseline SO<sub>2</sub> emissions are lower than Massachusetts assumed.

*Response B.2.b:* Massachusetts conducted its analysis under 40 CFR 51.308(e)(2) by developing two tables for SO<sub>2</sub>. The first table, Table 16 of MassDEP's August 9, 2012 submittal,

subtracted each BART-eligible facility's projected SO<sub>2</sub> emissions if the MANE-VU SO<sub>2</sub> BART emissions rate were achieved from that facility's baseline SO<sub>2</sub> emissions in 2002. The sum of those differences constitutes the expected reductions from installation of benchmark BART. The second table, Table 17 of MassDEP's August 9, 2012 submittal, subtracted each facility's alternative BART expected SO<sub>2</sub> emissions from its emissions for the same baseline year (2002). The sum of those differences constitutes the expected reductions from installation of Massachusetts' BART alternative. The comment essentially argues that Brayton Point's baseline SO<sub>2</sub> emissions are overstated because, as of 2010, Brayton Point achieved greater control than in 2002. However, Massachusetts' use of the 2002 emissions inventory as a baseline is consistent with MANE-VU's regional approach and EPA's national approach. See 40 CFR 51.308(d)(3)(iii); see also 64 FR 35742 (explaining that the "baseline date of the SIP" in this context means "the date of the emissions inventories on which the SIP relies"), 70 FR 39104, 39143 ("The baseline date for regional haze SIPs is 2002. . . .") & *id.* n.84. Furthermore, EPA notes that Massachusetts used the same baseline SO<sub>2</sub> emissions for Tables 16 and 17, so even if the baseline emissions were overstated, they would be overstated by the same amount in both cases, and the overstatement would neither benefit nor prejudice the BART alternative for comparison.

*Comment B.2.c:* The Sierra Club contends that Brayton Point Station's SO<sub>2</sub> and NO<sub>x</sub> emissions under BART would be lower than Massachusetts assumed.

*Response B.2.c:* As noted above in Response B.1, while in some instances case-by-case BART could result in limits *more* stringent than the presumptive limits, in other instances consideration of all five statutory BART factors could result in limits *less* stringent than the presumptive limits, and EPA's considered conclusion is that the presumptive BART is, overall, a reasonable estimate of a stringent case BART. EPA has concluded that "there is no need to develop a precise estimate of the emissions reductions that could be achieved by BART in order simply to compare two programs" and that "the State may establish a BART benchmark based on an analysis that includes simplifying assumptions about BART control levels for sources within a source category." See 70 FR 60618. Massachusetts used the MANE-VU recommended level of control to develop its benchmark.

<sup>3</sup> For this reason, the fact that facilities in other states (with different facts for each of the BART factors) have received BART determinations more stringent than the presumptive BART is not directly relevant here.

<sup>4</sup> The MANE-VU recommended level of BART control can be found in Appendix R of the Massachusetts December 30, 2011 submittal.

<sup>5</sup> See definition stated in footnote #2.

*Comment B.2.d:* The Sierra Club commented that Massachusetts improperly takes credit in its BART alternative for the Salem Harbor Station shutdown by (1) assuming for purposes of the BART benchmark that Salem Harbor Unit 4 would continue to operate past 2014 when in fact it will not (due to a consent decree), and then (2) crediting the emission reductions from the pending shutdown of Units 1 through 4 to Massachusetts's BART alternative, when these reductions will happen regardless of what Massachusetts does, due to the same consent decree.

*Response B.2.d:* The consent decree requires that Salem Harbor "remove from service" Units 1 and 2 by December 31, 2011, and Units 3 and 4 by June 1, 2014.<sup>6</sup> However, the consent decree defines "remove from service" as ceasing to generate electricity to supply the power grid. The consent decree does not prohibit these units from operating for purposes other than generating electricity to supply the power grid. Consequently, the consent decree is not a federally enforceable limit on emissions from these units. The facility requested, and MassDEP granted, a modified emission control plan under Massachusetts regulation 310 CMR 7.29 which caps NO<sub>x</sub> and SO<sub>2</sub> emissions from the various units. This emission control plan, along with the Massachusetts regulation 310 CMR 7.29, will become federally enforceable with this action. MassDEP's permit restrictions apply regardless of the use to which the station owner might wish to put the units.

Furthermore, the consent decree is, by its terms, enforceable by the parties thereto (Conservation Law Foundation, HealthLink, Dominion Energy New England, Inc., and Dominion Energy Salem Harbor, LLC), whereas a state permit restriction incorporated into a federally enforceable SIP is enforceable by Massachusetts, EPA, and citizens, under state law and under the federal Clean Air Act.

The Sierra Club suggests that the absence of specific public plans for an alternative use of Salem Harbor's units (i.e., a use that would be allowed under the consent decree but prohibited under Massachusetts' SIP revision) means that it is unlikely that Salem Harbor will operate regardless of what Massachusetts does in its SIP and therefore the reductions that Massachusetts attributes by its permit restrictions are only hypothetical.

EPA believes Massachusetts' approach was reasonable, for several reasons. First, in Tables 16 and 18, Massachusetts used a reasonable (and consistent) method to derive the BART benchmark emissions, namely, multiplying each BART-eligible unit's 2002 heat input<sup>7</sup> by the MANE-VU recommended BART emission rates. See also Response B.2.b. This streamlined calculation was conducted at all BART-eligible facilities without examining whether the facilities' more recent operating scenarios involve a higher or lower heat input. Thus, it was reasonable and consistent for Massachusetts to include Salem Harbor Unit 4 in Tables 16 and 18 as operating at 2002 heat input levels. The comment essentially argues that, even if Massachusetts had not imposed any permit restrictions, Salem Harbor's likely future actual emissions would be much lower than its full potential to emit, and therefore the BART benchmark calculation should use Salem Harbor Unit 4's likely future actual emissions under anticipated business scenarios (i.e., zero), rather than simply apply the benchmark BART emission rate to its 2002 heat input rate. However, the Sierra Club points to no provision of the Regional Haze Rule requiring states to project likely future actual emissions under anticipated business scenarios, rather than use the approach that Massachusetts used.<sup>8</sup>

Second, in Massachusetts' analysis of its alternative program in Tables 17 and 19, the Commonwealth conservatively assumed that all units covered by the alternative program would operate at their 2002 heat input rate, and took credit only for legally enforceable restrictions on potential to emit. The Sierra Club focuses on the reductions at Salem Harbor Units 1–4 in Tables 17 and 19, arguing that Massachusetts is taking credit for reductions that would have happened anyway and therefore that Tables 17 and 19 overstate the additional reductions achieved through the alternative program. However, Massachusetts' underlying assumption that any facility without an operational restriction would operate at 2002 levels is in fact conservative and likely substantially overstates emissions (i.e.,

understates reductions) for several facilities in Tables 17 and 19. Many of the still active units listed in Tables 17 and 19 are in fact now operating well below 2002 heat input levels. For example, according to 2011 data,<sup>9</sup> the annual heat input was 18,244,945 MMBtu for Brayton Point Unit 3 and 500,264 MMBtu for Canal Station Unit 1. The 2002 benchmark annual heat inputs for these units were 36,339,809 MMBtu and 27,295,648 MMBtu, respectively.<sup>10</sup> In other words, the logic under which Massachusetts *did* count Salem Harbor's reductions in Tables 17 and 19 (because Massachusetts attributes the reductions to a legally enforceable emission control plan) is the same logic under which Massachusetts *did not* count likely actual reductions at other facilities in those tables. This methodology is reasonable and internally consistent.

Finally, the Sierra Club argues that, if the facility owner planned to use the Salem Harbor units for a purpose not prohibited by the consent decree, it would be required to apply for new permits "because the permits issued to the units to operate as electric generating units would no longer be valid." While there are certainly scenarios in which re-use of the units (as coal generating units but not for supplying electricity to the grid) could require new permit applications, the comment identifies no provisions of the pre-existing permits (or of Massachusetts or federal law) indicating that this would be necessary in all cases. Therefore, it was reasonable for Massachusetts to assume that its permit restriction would achieve reductions that would not be legally required to occur otherwise.

*Comment B.3:* The Sierra Club commented that Massachusetts has not demonstrated that the SO<sub>2</sub> and NO<sub>x</sub> emissions reductions relied on it its BART alternative are properly surplus for purposes of BART. The Sierra Club stated that in order to claim credit under the BART requirements of the Regional Haze Rule for emission reductions attributable to a BART alternative, Massachusetts must demonstrate that "the emission reductions resulting from the . . . alternative measures will be surplus to those reductions resulting from measures adopted to meet requirements of the [Clean Air Act] as of the baseline date of the SIP." The Sierra Club claims that Massachusetts

<sup>7</sup> The heat input is a proxy for the quantity of fuel used.

<sup>8</sup> If anything, the Regional Haze Rule focuses on facilities' potential to emit. See, e.g., 40 CFR 51.301 (definition of "existing stationary facility"); accord 40 CFR part 51 Appendix Y, § I.A Step 3 (explaining that potential to emit is developed "considering all federally enforceable and State enforceable permit limits"). Using potential to emit, rather than 2002 heat input rate, would result in higher BART benchmark emissions in Tables 16 and 18.

<sup>9</sup> For 2011 EGU emission data, see EPA's Air Markets Program Web page at <http://ampd.epa.gov/ampd/>.

<sup>10</sup> See Tables 16 and 18 of the Massachusetts Regional Haze State Implementation Plan dated August 9, 2012.

<sup>6</sup> The consent decree is available at [http://www.clf.org/wp-content/uploads/2012/02/Signed-Consent-Decree-12\\_11.pdf](http://www.clf.org/wp-content/uploads/2012/02/Signed-Consent-Decree-12_11.pdf).

has not identified what portion, if any, of the emission reductions exceeded those necessary to comply with the purposes for which the regulations were designed.

*Response B.3:* As part of the alternative to BART demonstration, 40 CFR 51.308(e)(2)(iv) requires a “demonstration that the emission reductions resulting from the emission trading program or other alternative measures will be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP.” In promulgating the RHR in 1999, EPA explained that the “baseline date of the SIP” in this context means “the date of the emissions inventories on which the SIP relies.” 64 FR 35742; see also 70 FR 39104, 39143 (“The baseline date for regional haze SIPs is 2002. . . .”) & *id.* n.84.

Any measure, including a measure to meet a requirement of the CAA, adopted after 2002 is accordingly “surplus” under 40 CFR 51.308(e)(2)(iv). Massachusetts is using regulation 310 CMR 7.29 in conjunction with the sulfur in fuel oil standard and emission control plans as an alternative to BART for its EGU BART-eligible sources as permitted by the RHR and as discussed in the NPR. EPA agrees with Massachusetts’ analysis that emission reductions from the alternative program will result in emission reductions that are surplus to the baseline date of the SIP. As discussed in the NPR, Massachusetts’ use of the 310 CMR 7.29 (with a compliance year of 2008) as an alternative to BART for EGUs, in addition to the newly adopted revised sulfur in fuel oil requirements and revised emission control plans, are in accordance with and satisfies the requirements in 40 CFR 51.308(e)(2) for BART alternatives, including the requirement that the emission reductions be surplus to the baseline date of the SIP. The NPR also discusses how Massachusetts estimated the emission reductions required by the alternative plan. EPA is not restating that analysis here. Finally, the Sierra Club has not identified any specific elements of Massachusetts’ alternative program that it believes are *not* surplus to reductions from measures adopted to meet CAA requirements.

*Comment B.4:* The Sierra Club commented that Massachusetts has not demonstrated that the distribution of the emissions under its BART alternative is substantially similar to that under BART or conducted dispersion modeling to show the BART alternative results in greater reasonable progress toward achieving natural baseline visibility

conditions in affected Class I areas. Under EPA’s RHR, it is insufficient to simply compare the total emissions reductions from source-specific BART and a State’s BART alternative; the State must take into consideration the location of these emission reductions. Where the distribution of emissions under BART and the alternative are substantially different, the State proposing to rely on a BART-alternative must conduct dispersion modeling to show the difference in visibility under each program for each impacted Class I area on the worst and best 20 percent days. The Sierra Club commented that the mere fact that all the subject-to-BART units are a subset of the alternative BART units, does not demonstrate that similar geographic distribution. The Sierra Club contends that to assess the emission distribution, “the State would have to compare the magnitude of emission reductions at units common to both schemes and evaluate whether the additional units covered by the BART alternative are proximate to subject to BART sources.” The Sierra Club further states that Massachusetts would also need to consider, for example, whether differences in stack heights among the sources would result in different geographic distribution. The Sierra Club states that neither Massachusetts nor EPA has presented any further analysis, and therefore neither has demonstrated that the BART alternative produces a similar distribution of emission reductions to BART.

*Response B.4:* The RHR states that “[i]f the distribution of emissions is not substantially different than under BART, and the alternative measure results in greater emission reductions, then the alternative measure may be deemed to achieve greater reasonable progress.” 40 CFR 51.308(e)(3). EPA discussed in the NPR how Massachusetts’ alternative to BART was acceptable and met the requirements for a BART alternative program in 40 CFR 51.308(e)(2). EPA finds that the distribution of emission reductions in Massachusetts sources included in the alternative program are comparable to, and not substantially different from, emission reductions under BART at subject units. See 77 FR 30943. The emission reductions from the alternative to BART are discussed in detail in the NPR. Massachusetts’ alternative program covers all of the BART-subject EGU sources and also includes additional EGUs which are too old to be BART-subject sources.

All of the emission reductions, with the exception of Mount Tom, are from EGUs located in eastern Massachusetts

and, in many cases, at the same physical location as the BART-eligible EGUs. For example, as compared to the BART benchmark, the BART alternative achieves fewer reductions from Brayton Point Station, but greater reductions from Somerset Power, which is located in the same municipality as Brayton Point. Similarly, as compared to the BART benchmark, the BART alternative achieves fewer reductions from Canal Station (on the south shore of Massachusetts, about 60 miles south of Boston) and Mystic Station (just a few miles north of Boston), but much greater reductions from Salem Harbor (on the north shore of Massachusetts, about 20 miles north of Boston). As for Mount Tom Unit 1, it is located in Holyoke, Massachusetts, approximately 80 miles west of Boston. The contribution of the Mount Tom emission reductions to the Massachusetts alternative to BART is 6% of the SO<sub>2</sub> reduction and 9% of the NO<sub>x</sub> reduction. While this does create a minor variation in the geographic distribution of emission reductions, this does not lead to a substantial difference in geographic distribution of the emission reduction, particularly since the distances between the units involved are generally much less than the distances from any of the units to the relevant Class I areas.

Moreover, to the extent that there are any differences in geographic distribution, they may be beneficial for regional haze purposes. As noted above, the principal difference in distribution is that the BART benchmark relies more heavily on reductions at Brayton Point and Canal Station (both in Massachusetts’s southeast corner), whereas the alternative to BART relies more heavily on reductions at Salem Harbor (slightly closer to Maine and New Hampshire, with their five Class I areas) and Mount Tom (slightly closer to the Lye Brook Wilderness in Vermont and the Brigantine Wilderness Area in New Jersey). While neither Massachusetts nor EPA has modeled the impact of these slight geographic differences, the fact that the reductions occur slightly closer to the Class I areas makes it unlikely that the alternative would result in less visibility benefits to those areas.

Therefore, EPA finds that Massachusetts was reasonable in the determination that the geographic distribution of the emission reductions from the alternative plan is not substantially different from the emission reduction distribution projected under BART.

*Comment C:* The Sierra Club commented that Massachusetts has not demonstrated that the State will achieve

the reasonable progress goals established by MANE-VU for 2018. Specifically, the Sierra Club noted that Massachusetts is not projected to achieve the 90% SO<sub>2</sub> reduction target by 2018 at major EGUs and instead projects emission reductions of between 67 and 87% from the affected units. The Sierra Club contends that even though Brayton Point Units 1 and 2 are achieving 90% control, Massachusetts must require as an enforceable operating condition the continuous operation of the spray dry absorbers. In addition, Massachusetts should require at least 96% control for the dry scrubber to be installed on Brayton Point Unit 3. Finally, Sierra Club states that Massachusetts should require Mount Tom to continuously operate its installed dry scrubber.

**Response C:** Through the consultation process, Massachusetts agreed to pursue the MANE-VU “Ask” (Ask) as part of the long term strategy to ensure reasonable progress toward the goal of natural visibility conditions in Class I areas impacted by emissions from Massachusetts. The Ask consists of the implementation of BART, the adoption of the low sulfur in fuel oil strategy, and a 90% percent reduction in SO<sub>2</sub> emissions from the greatest impacting EGUs or comparable SO<sub>2</sub> reductions. Emission reductions resulting from these strategies were incorporated into the projected 2018 emissions inventory. The 2018 emission inventory was used to model the expected visibility improvement at the end of the first planning period. Based on the inventories developed for the MANE-VU states and the resulting modeling, the MANE-VU Class I States determined that the control strategies for the first planning period were sufficient to meet the reasonable progress goals for the Class I areas. As stated in the NPR, the 2018 modeling inventory for Massachusetts EGUs, based on the implementation of the Ask, is 45,941 tons SO<sub>2</sub>. Massachusetts targeted EGUs’ 2011 SO<sub>2</sub> emissions were only 22,165 tons SO<sub>2</sub> in 2011, and under the most conservative (worst case) long term strategy projected emission inventory, Massachusetts EGUs are limited to 26,811 tons SO<sub>2</sub> in 2018 (and more likely 10,505 tons, which is below the level that would be achieved by the 90% target). The long term strategy limit is 19,130 tons SO<sub>2</sub> less than the inventory used to model visibility improvement in 2018. Since the long term strategy program is outcome-based, rather than technology-based, Massachusetts may develop a program that will achieve emissions reductions that are adequate for Class I states’

reasonable progress goals even if it does not rely on the particular reductions that were used to develop the assumptions upon which those reasonable progress goals were based. It is worth noting that the MANE-VU Ask does not itself establish federal regulatory requirements. States’ obligations are defined by the Regional Haze Rule, not the Ask.

Finally, since future emission projections are somewhat uncertain, the RHR requires States to submit a 5-year progress report. At the time of this progress report, MassDEP will determine if the controls approved into the Regional Haze SIP are sufficient to achieve reasonable progress at the impacted Class I areas for the first planning period.

### III. Final Action

EPA is approving the Massachusetts Regional Haze State Implementation Plan, submitted on December 30, 2011 with supplemental submittals on August 9, 2012 and August 28, 2012, as meeting the applicable implementing regulations found in 40 CFR 51.308. Included as part of the Regional Haze Plan are the following Appendices, which EPA is approving and incorporating by reference into the SIP: (1) Appendix BB. Modified Emission Control Plan for General Electric Aviation—Lynn dated March 24, 2011; (2) Appendix CC. Massachusetts 310 CMR 7.26(50)-(54) “Outdoor Hydronic Heaters;” (3) Appendix DD. Massachusetts 310 CMR 7.29 “Emission Standards for Power Plants,” the sections relating to NO<sub>x</sub> and SO<sub>2</sub>; (4) Appendix EE. Amended Emission Control Plan for Mt. Tom Station dated May 15, 2009; (5) Appendix FF. Amended Emission Control Plan Approval for Salem Harbor Station dated March 27, 2012; (6) Appendix GG. Amended Emission Control Plan Approval for Brayton Point Station dated April 12, 2012; (7) Appendix HH. Facility Shutdown of Somerset Power, LLC dated June 22, 2011; (8) Appendix II. Massachusetts 310 CMR 7.00 “Definitions;” and 310 CMR 7.05 “Fuels All Districts;” and (9) Appendix JJ. Modified Emission Control Plan for Wheelabrator Saugus, Inc. dated March 14, 2012.

### IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve

State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 November 18, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 12, 2012.

**H. Curtis Spalding,**

*Regional Administrator, EPA Region 1.*

**Editorial Note:** This document was received at the Office of the Federal Register September 13, 2013.

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

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 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)(139) to read as follows:

##### § 52.1120 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(139) Revisions to the State Implementation Plan regarding Regional Haze submitted by the Massachusetts

Department of Environmental Protection on December 30, 2011, August 9, 2012, and August 28, 2012.

(i) Incorporation by reference.

(A) Massachusetts Regulation 310 CMR 7.00, "Definitions," amended definition of SULFUR IN FUEL, effective August 3, 2012.

(B) Massachusetts Regulation 310 CMR 7.05, "U Fuels All Districts," effective August 3, 2012, with the following exceptions which are not applicable to the Massachusetts Alternative to BART:

(1) 310 CMR 7.05(1)(a)(3);

(2) 310 CMR 7.05(2) through (4); and

(3) 310 CMR 7.05(7) through (9).

(C) Massachusetts Regulation 310 CMR 7.29, "Emissions Standards for Power Plants," effective on January 25, 2008 (which includes previous sections effective on June 29, 2007), with the following exceptions which are not applicable to the Massachusetts Alternative to BART:

(1) In 310 CMR 7.29(1), the reference to mercury (Hg), carbon monoxide (CO), carbon dioxide (CO<sub>2</sub>), and fine particulate matter (PM<sub>2.5</sub>) in the first sentence and the phrase "... and CO<sub>2</sub> and establishing a cap on CO<sub>2</sub> and Hg emissions from affected facilities. CO<sub>2</sub> emissions standards set forth in 310 CMR 7.29(5)(a)5.a. and b. shall not apply to emissions that occur after December 31, 2008" in the second sentence;

(2) In 310 CMR 7.29(2), the definitions of Alternate Hg Designated Representative, Automated Acquisition and Handling System or DAHS, Mercury (Hg) Designated Representative, Mercury Continuous Emission Monitoring System or Mercury CEMS, Mercury Monitoring System, Sorbent Trap Monitoring System, and Total Mercury;

(3) 310 CMR 7.29(5)(a)(3) through (5)(a)(6);

(4) In 310 CMR 7.29(5)(b)(1), reference to compliance with the mercury emissions standard in the second sentence;

(5) 310 CMR 7.29(6)(a)(3) through (6)(a)(4);

(6) 310 CMR 7.29(6)(b)(10);

(7) 310 CMR 7.29(6)(h)(2);

(8) The third and fourth sentences in 310 CMR 7.29(7)(a);

(9) In 310 CMR 7.29(7)(b)(1), the reference to CO<sub>2</sub> and mercury;

(10) In 310 CMR 7.29(7)(b)(1)(a), the reference to CO<sub>2</sub> and mercury;

(11) 310 CMR 7.29(7)(b)(1)(b) through 7.29(7)(b)(1)(d);

(12) In 310 CMR 7.29(7)(b)(3), the reference to CO<sub>2</sub> and mercury;

(13) In 310 CMR 7.29(7)(b)(4)(b), the reference to CO<sub>2</sub> and mercury; and

(14) 310 CMR 7.29(7)(e) through 7.29(7)(i).

(D) Massachusetts Regulation 310 CMR 7.26, "Industry Performance Standards, Outdoor Hydronic Heaters" paragraphs (50) through (54) and related footnotes effective December 26, 2008.

(1) 310 CMR 7.26(50) Outdoor Hydronic Heaters—Applicability;

(2) 310 CMR 7.26(51) Definitions;

(3) 310 CMR 7.26(52) Requirements for Operators;

(4) 310 CMR 7.26(53) Requirements for Sellers; and

(5) 310 CMR 7.26(54) Requirements for Manufacturers.

(E) The sulfur dioxide (SO<sub>2</sub>), oxides of nitrogen (NO<sub>x</sub>), and PM<sub>2.5</sub> provisions of the Massachusetts Department of Environmental Protection Emission Control Plan "Saugus—Metropolitan, Boston/Northeast Region, 310 CMR 7.08(2)—Municipal Waste Combustors, Application No. MBR-98-ECP-006, Transmittal No. W003302, Emission Control Plan Modified Final Approval" dated March 14, 2012 to Mr. Jairaj Gosine, Wheelabrator Saugus, Inc. and signed by Cosmo Buttaro and James E. Belsky, with the following exceptions which are not applicable to the Massachusetts Alternative to BART.

(1) In Table 2, the EU1 and EU2 Unit Load Restriction/Operating Practices;

(2) In Table 2, the EU1 and EU2 Emission Limit/Standard for Opacity, HCl, Dioxin/Furon, Cd, Pb, CO, Hg, NH<sub>3</sub>, and associated footnotes;

(3) In Table 2, EU3 Fugitive Ash requirement and associated footnote.

(4) In Table 2, Footnote 1 which is a State Only Requirement.

(F) The Massachusetts Department of Environmental Protection Emission Control Plan "Lynn—Metropolitan, Boston/Northeast Region, 310 CMR 7.19, Application No. MBR-94-COM-008, Transmittal No. X235617, Modified Emission Control Plan Final Approval" dated March 24, 2011 to Ms. Jolanta Wojas, General Electric Aviation and signed by Marc Altobelli and James E. Belsky. Note, this document contains two section V; V. RECORD KEEPING AND REPORTING REQUIREMENTS and V. GENERAL REQUIREMENTS/PROVISIONS.

(G) The Massachusetts Department of Environmental Protection Emission Control Plan, "Holyoke Western Region 310 CMR 7.29 Power Plant Emission Standards, Application No. 1-E-01-072, Transmittal No. W025214, Amended Emission Control Plan" dated May 15, 2009 to Mr. John S. Murry, Mt. Tom Generating Company, LLC and signed by Marc Simpson, with the following exceptions which are not



applicable to the Massachusetts Alternative to BART:

(1) In Table 2, the EU 1 Emission Limit/Standard for Hg, CO, CO<sub>2</sub>, and PM<sub>2.5</sub> and related footnotes;

(2) In Table 3, the EU1 Monitoring/Testing Requirements for CO<sub>2</sub>, CO, PM<sub>2.5</sub>, and Hg;

(3) In Table 4, the EU 1 Record Keeping Requirements for CO<sub>2</sub>, CO, PM<sub>2.5</sub>, and Hg;

(4) In Table 5, the EU1 Reporting Requirements for Hg;

(5) In Table 5, the Facility Reporting requirements

(6) In Table 6, the Compliance Paths for Hg and CO<sub>2</sub> and related footnote;

(7) In Section 4, Special Conditions for ECP, Item 4, applicable to CO<sub>2</sub>;

(8) Section 6, Modification to the ECP;

(9) Section 7, Massachusetts Environmental Policy Act; and

(10) Section 8, Appeal of Approval.

(H) The Massachusetts Department of Environmental Protection Emission Control Plan “Salem—Metropolitan Boston/Northeast Region, 310 CMR 7.29 Power Plant Emission Standards, Application No. NE-12-003, Transmittal No. X241756, Final Amended Emission Control Plan Approval” dated March 27, 2012 to Mr. Lamont W. Beaudette, Dominion Energy Salem Harbor, LLC and signed by Edward J. Braczyk, Cosmo Buttarro, and James E. Belsky with the following exceptions which are not applicable to the Massachusetts Alternative to BART:

(1) In Table 2, the EU 1, EU 2, and EU 3 Emission Limit/Standard for Hg and related footnotes;

(2) In Table 2, the EU 1, EU 2, EU 3, and EU 4 Emission Limit/Standard for CO, CO<sub>2</sub>, PM<sub>2.5</sub> and related footnotes;

(3) In Table 3, the EU 1, EU 2, EU 3, and EU 4 Monitoring/Testing Requirements for CO<sub>2</sub>, CO, and PM<sub>2.5</sub>;

(4) In Table 3, the EU 1, EU 2, and EU 3 Monitoring/Testing Requirements for Hg;

(5) In Table 4, the EU 1, EU 2, EU 3, and EU 4 Record Keeping Requirements for CO<sub>2</sub>, CO, and PM<sub>2.5</sub>;

(6) In Table 4, the EU 1, EU 2, and EU 3 Record Keeping Requirements for Hg;

(7) In Table 5, the EU 1, EU 2, EU 3, and EU 4 Reporting Requirements for CO<sub>2</sub>;

(8) In Table 5, the EU 1, EU 2, and EU 3 Reporting Requirements for Hg;

(9) In Section 3, Compliance Schedule, the 3rd paragraph text which reads “In order to meet the regulatory Hg limits which are effective on October 1, 2012, the facility owner/operator has proposed using a combination strategy involving fuel mix optimization (for SO<sub>2</sub> compliance but this action will benefit Hg compliance as well) and installation of a Calcium Bromide injection system. In order to meet the 310 CMR 7.29 CO<sub>2</sub> emission targets, the Dominion Energy Salem Harbor, LLC facility owner/operator procured offset credits from both its Dominion Energy Brayton Point facility and third party contacts and paid into the Greenhouse Gas Expendable Trust;”

(10) Section 6, Modification to the ECP;

(11) Section 7, Massachusetts Environmental Policy Act; and

(12) Section 8, Appeal of Approval.

(I) Massachusetts Department of Environmental Protection Emission Control Plan “Amended Emission Control Plan Final Approval Application for: BWP AQ 25, 310 CMR 7.29 Power Plant Emission Standards, Transmittal Number X241755, Application Number SE-12-003, Source Number: 1200061” dated April 12, 2012 to Peter Balkus, Dominion Energy Brayton Point, LLC and signed by John K. Winkler, with the following exceptions which are not applicable to the Massachusetts Alternative to BART:

(1) In Table 2, the EU 1, EU 2, and EU 3 Emission Limit/Standard for Hg;

(2) In Table 2, the EU 1, EU 2, EU 3, EU 4 Emission Limit/Standard for CO, CO<sub>2</sub>, PM<sub>2.5</sub> and related footnotes;

(3) In Table 3, the EU 1, EU 2, EU 3, and EU 4 Monitoring/Testing Requirements for CO<sub>2</sub>, Hg, CO, and PM<sub>2.5</sub>;

(4) In Table 3, the EU 1, EU 2, and EU 3 Monitoring/Testing Requirements for Hg;

(5) In Table 4, the EU 1, EU 2, EU 3, and EU 4 Record Keeping Requirements for CO<sub>2</sub>, Hg, CO, and PM<sub>2.5</sub>;

(6) In Table 4, the EU 1, EU 2, and EU 3 Record Keeping Requirements for Hg;

(7) In Table 5, the EU 1, EU 2, and EU 3 Reporting Requirements for Hg and CEMS monitoring and certification;

(8) In Table 5, the Facility Reporting Requirements;

(9) In Table 6, the Compliance Path for CO<sub>2</sub>, and Hg;

(10) In Section 4, Special Conditions for ECP, the CO<sub>2</sub> requirement in Item 2;

(11) Section 6, Modification to the ECP;

(12) Section 7, Massachusetts Environmental Policy Act; and

(13) Section 8, Appeal of Approval.

(J) Massachusetts Department of Environmental Protection letter “Facility Shutdown, FMF Facility No. 316744” dated June 22, 2011 to Jeff Araujo, Somerset Power LLC and signed by John K. Winkler.

(ii) Additional materials.

(A) “Massachusetts Regional Haze State Implementation Plan” dated August 9, 2012.

■ 3. In § 52.1167, Table 52.1167 is amended by adding new entries to existing state citations for 310 CMR 7.00, 310 CMR 7.05, 310 CMR 7.08, and 310 CMR 7.19 in order of “Date approved by EPA”; and by adding new state citations for 310 CMR 7.26 and 310 CMR 7.29 in order of “State citation” to read as follows:

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

\* \* \* \* \*



TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

[See notes at end of table]

State citation	Title/Subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.00 ..	Definitions .....	8/9/12	9/19/13	[Insert <b>Federal Register</b> page number where the document begins].	137	Approving the definition of “Sulfur in Fuel.”
310 CMR 7.05 ..	U Fuels All Districts.	8/9/12	9/19/13	[Insert <b>Federal Register</b> page number where the document begins].	137	Approves the sulfur content of fuel oil. The following sections were not submitted as part of the SIP: (1)(a)(3), (2), (3), (4), (7), (8), (9).
310 CMR 7.08(2).	MWC NO <sub>x</sub> requirements.	8/9/12	9/19/13	[Insert <b>Federal Register</b> page number where the document begins].	137	Facility specific MWC Emission Control Plan for Wheelabrator Saugus revises the NO <sub>x</sub> limits to 185 ppm by volume at 7% O <sub>2</sub> dry basis (30-day rolling average).
310 CMR 7.19 ..	NO <sub>x</sub> RACT .....	12/30/11	9/19/13	[Insert <b>Federal Register</b> page number where the document begins].	137	Facility specific NO <sub>x</sub> RACT for General Electric Aviation Boiler No. 3 to cap annual SO <sub>2</sub> and NO <sub>x</sub> emissions at 249.0 tons each.
310 CMR 7.26 ..	Industry Performance Standards.	12/30/11	9/19/13	[Insert <b>Federal Register</b> page number where the document begins].	137	Only approving the Outdoor Hydronic Heaters (50)–(54).
310 CMR 7.29 ..	Emissions Standards for Power Plants.	8/9/2012	9/19/13	[Insert <b>Federal Register</b> page number where the document begins].	137	Only approving the SO <sub>2</sub> and NO <sub>x</sub> requirements.
310 CMR 7.29 ..	Emission Standards for Power Plants.	8/9/2012	9/19/13	[Insert <b>Federal Register</b> page number where the document begins].	137	Facility specific Emission Control Plan requirement for Brayton Point Station Unit 1, 2, 3, and 4 which disallows the use of 310 CMR 7.29 SO <sub>2</sub> Early Reduction Credits or Federal Acid Rain allowances for compliance with 310 CMR 7.29 after June 1, 2014.
310 CMR 7.29 ..	Emission Standards for Power Plants.	8/9/2012	9/19/13	[Insert <b>Federal Register</b> page number where the document begins].	137	Facility specific Emission Control Plan requirement for Mt. Tom Station which disallows the use of 310 CMR 7.29 SO <sub>2</sub> Early Reduction Credits or Federal Acid Rain allowances for compliance with 310 CMR 7.29 after October 1, 2009.

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS—Continued

[See notes at end of table]

State citation	Title/Subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.29 ..	Emission Standards for Power Plants.	8/9/2012	9/19/13	[Insert <b>Federal Register</b> page number where the document begins].	137	Facility specific Emission Control Plan for Salem Harbor Station Units 1, 2, 3, and 4 which limits NO <sub>x</sub> emissions from Unit 1 to 276 tons per rolling 12 month period starting 1/1/2012, limits NO <sub>x</sub> emissions for Unit 2 to 50 tons per rolling 12 month period starting 1/1/2012, limits SO <sub>2</sub> emissions from Unit 2 to 300 tons per rolling 12 month period starting 1/1/2012, shuts down units 3 and 4 effective 6/1/2014.
*	*	*	*	*	*	*

**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 are effective statewide unless otherwise stated in comments or title section.

[FR Doc. 2013-22692 Filed 9-18-13; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[EPA-R08-OAR-2012-0475; FRL-9901-06-Region 8]****Approval and Promulgation of Air Quality Implementation Plans; State of Colorado Second Ten-Year PM<sub>10</sub> Maintenance Plan for Aspen****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking final action approving State Implementation Plan (SIP) revisions submitted by the State of Colorado. On May 25, 2011, the Governor of Colorado's designee submitted to EPA a revised maintenance plan for the Aspen area for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM<sub>10</sub>), which was adopted by the State on December 16, 2010. As required by Clean Air Act (CAA) section 175A(b), this revised maintenance plan addresses maintenance of the PM<sub>10</sub> standard for a second 10-year period beyond the area's original redesignation to attainment for the PM<sub>10</sub> NAAQS. In addition, EPA is approving the revised maintenance plan's 2023 transportation conformity motor vehicle emissions budget for

PM<sub>10</sub>. This action is being taken under sections 110 and 175A of the CAA.

**DATES:** This rule is effective on November 18, 2013 without further notice, unless EPA receives adverse comment by October 21, 2013. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2012-0475, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Email: [ostigaard.crystal@epa.gov](mailto:ostigaard.crystal@epa.gov).
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

• **Hand Delivery:** Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

• **Mail:** Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R08-OAR-2012-0475. EPA's policy is that all comments received will be included in the public docket without change and may be

made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov>