

new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

*G. Submission to Congress and the Comptroller General*

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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the U.S. Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*H. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 24, 1998.

**Dennis Grams,**  
*P.E., Regional Administrator, Region VII.*

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

**PART 52—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401–7671q.

**Subpart AA—Missouri**

2. Section 52.1320 is amended by adding new paragraph (c)(111) to read as follows:

**52.1320 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(111) A revision submitted by the Governor's designee on July 30, 1998, that reduces air emissions from batch-type charcoal kilns throughout the state of Missouri.

(i) Incorporation by reference:

(A) New Missouri rule 10 CSR 10–6.330, Restriction of Emissions from Batch-Type Charcoal Kilns, effective July 30, 1998.

[FR Doc. 98–32419 Filed 12–7–98; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[RI–6987a; A–1–FRL–6192–7]

**Approval and Promulgation of Air Quality Implementation Plans; Interim Final Determination of Correction of Deficiencies in 15 Percent Rate-of-Progress and Contingency Plans; Rhode Island**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving, by direct final rule, State Implementation Plan (SIP) revisions submitted by the State of Rhode Island to address ground level ozone air pollution in the State. The revisions consist of the State's 15 percent rate-of-progress (ROP) plan and contingency plan, and minor revisions to the Rhode Island 1990 emission inventory of ozone precursors. The intended effect of this action is to approve these plans in accordance with the Clean Air Act, 42 U.S.C. 7401 *et seq.* (the Act). In recognition of this approval of Rhode Island's 15 percent and contingency plans, EPA is making an interim final determination, by this action, that the State has corrected the deficiencies prompting the original disapproval of these plans. The interim final determination will act to defer the application of the offset sanction which would have been implemented on November 19, 1998, and defers the future application of the highway sanction. The interim final action is being taken under Section 110 of the Act.

**DATES:** This direct final rule approving the Rhode Island 15 percent and

contingency plans, and minor revisions to the State's 1990 base year inventory, is effective on February 8, 1999 without further notice, unless EPA receives relevant adverse comment by January 7, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

The interim final determination is effective upon publication. However, EPA will take comment on this determination as well as EPA's direct final rule approving the State's submittal. Written comments on this interim final determination must be received on or before January 7, 1999. EPA will publish a final notice taking into consideration any relevant adverse comments received on EPA's interim final action.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and at the Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

**FOR FURTHER INFORMATION CONTACT:** Robert F. McConnell, (617) 918–1046.

**SUPPLEMENTARY INFORMATION:** On September 21, 1998, the State of Rhode Island submitted formal revisions to its State Implementation Plan (SIP). The SIP revisions consist of the State's 15 percent ROP and contingency plans, and minor revisions to the Rhode Island 1990 inventory of ozone precursor emissions. The 15 percent plan is designed to meet the requirement in section 182(b)(1) of the Act that certain ozone nonattainment areas achieve a 15 percent reduction in volatile organic compound emissions from a 1990 baseline.

EPA published a limited approval, limited disapproval of 15 percent ROP and contingency plans submitted by Rhode Island in 1994 in the April 17, 1997 **Federal Register** (62 FR 18712). The limited disapproval was issued primarily due to the State's failure to implement the enhanced automobile inspection and maintenance (I/M) program identified within these plans. The failure of Rhode Island to implement its I/M program resulted in

emission reduction shortfalls in the State's 15 percent ROP and contingency plans.

EPA published a direct final rule approving the Rhode Island 1990 emission inventory of ozone precursors in the October 30, 1996 **Federal Register** (61 FR 55943).

**I. Summary of SIP Revision**

The final rule issuing a limited approval, limited disapproval of the Rhode Island 15 percent ROP and contingency plans which was published in the **Federal Register** on April 17, 1997, approved the State's calculation of the required emission reductions, and also approved the emission reduction credit claimed from a number of source categories. Additionally, the final rule approved the calculation of the required emission reductions to satisfy the contingency measure obligation, and also approved portions of the emission reduction credits claimed from two control measures contained in the contingency plan.

The 15 percent ROP and contingency plans submitted by Rhode Island on September 21, 1998, (hereafter referred to as the revised 15 percent plan and revised contingency plan) continue to rely upon the portions of these plans which were approved by EPA in the April 17, 1997 final rule, with the exceptions noted below. Additionally, minor revisions were made to the State's 1990 base year emission inventory of ozone precursors.

**Revisions to Base Year Inventory**

Rhode Island's September 21, 1998 SIP submittal contained the following revisions to the State's 1990 base year emission inventory:

1. VOC emissions from one point source emitter were revised upward based on revised information provided by the company, and a source whose VOC emissions should have been included in the original point source inventory but were not, were added to the State's 1990 point source inventory. The net effect of these changes is a 0.66 ton per summer day (tpsd) increase in base year VOC point source emissions.

2. Non-road mobile source VOC emissions were revised upward by 0.3 tpsd to correct rounding errors discovered in the original base year emission estimate.

3. Area source combustion calculations were revised to account for a corrected gallons per barrel factor, using the correct figure of 42 gallons per barrel rather than 55 gallons. These calculations were also revised to reflect updated 1990 data obtained from the Department of Energy regarding the

amount of fuel consumed by sources in this category. The net effect of these changes was to increase VOC emissions by 0.03 tpsd, and NO<sub>x</sub> emissions by 0.14 tpsd.

The Rhode Island 1990 base year emission inventory was approved by a direct final rule published in the October 30, 1996 **Federal Register** (61 FR 55897). Table 1 contains the VOC emission estimates approved in the October 30, 1996 final rule, and the revised estimates being approved in today's final rule.

TABLE 1.—1990 VOC EMISSION ESTIMATES  
[Tons per summer day]

Emission category	10/30/96 final rule	Today's final rule
Area .....	60.50	60.53
Point .....	25.90	26.56
On-road Mobile .....	65.60	65.60
Off-road Mobile .....	32.10	32.40
Biogenics .....	72.90	72.90
Total .....	257.00	257.99

Additionally, the area source NO<sub>x</sub> emission estimate is revised upward by 0.14 tpsd for the reason explained above. The area source NO<sub>x</sub> emission estimate approved in the October 30, 1996 final rule of 3.80 tpsd is therefore revised upward to 3.94 tpsd. The original NO<sub>x</sub> total emission estimate of 100.80 tpsd is revised upward to 100.94 tpsd. The EPA approves these revisions to the Rhode Island 1990 base year emission inventory.

**Revisions to Derivation of Required Emission Reductions**

The minor revisions to the State's 1990 base year inventory impact the derivation of the 1996 VOC emissions target level and derivation of required emission reductions which were approved in the April 17, 1997 final rule. Additionally, the State's September 21, 1998 submittal included the following revisions which also acted to change the original target level and derivation of required emission reductions approved in the April 17, 1997 final rule:

1. The State recalculated the non-creditable emission reductions which accrue from the Federal Motor Vehicle Control Program (FMVCP), and the Federal Gasoline Reid Vapor Pressure (RVP) Control Program, using the newer Mobile 5b emission estimation model. Mobile 5a was used in the original plan submitted by the State. The newer Mobile 5b model more accurately depicts emissions from motor vehicles by accounting for emission reductions

from onboard refueling vapor recovery systems, detergent gasoline, and reductions from phase II of the federal reformulated gasoline program. The Mobile 5b model is also a better tool for use in analyzing emission reductions from innovative I/M programs. Rhode Island has also applied guidance issued by EPA on August 13, 1996, and December 23, 1996, that explained how State's should incorporate into 15 percent plans emission reductions achieved from I/M programs by November 15, 1999.

2. Emissions of acetone were excluded in deriving the adjusted base year inventory, as acetone has been found by EPA to be photochemically non-reactive. The State's previous submittal contained a similar adjustment for perchloroethylene emissions, which is also contained in the State's September 21, 1998 submittal. The exclusion of these emissions is made during the derivation of the adjusted base year emission inventory.

3. The State improved the estimate of 1996 projected emissions that was contained in the original 15 percent ROP and contingency plans. The timing of the State's September 21, 1998 revised submittal allowed that submittal to contain actual emission estimates for many source categories, including all industrial point sources and a portion of the area source categories. In instances where actual emissions data for 1996 was not available, the State used 1995 actual emissions data in conjunction with a growth adjustment to reflect 1996 emission levels, or alternatively used updated growth factors from the Bureau of Economic Analysis to project 1990 emission estimates to 1996 uncontrolled levels. The original plans, which were submitted to EPA in 1994, had relied upon projections of emission levels using growth factors for all source categories. The use of actual emission data to replace projected emission levels, coupled with the use of newer growth factors, has improved the State's estimates of 1996 emission levels. The application of these revised data to the State's ROP plan resulted in fewer emission reductions being needed through the application of new controls, as the growth assumptions used in the original plan had forecast more emissions growth than actually occurred according to the revised 15 percent plan.

Table 2 provides a summary of the target level calculation as approved in the April 17, 1997 final rule and the revisions to the target level calculation contained in the State's September 21, 1998 SIP revision.

TABLE 2.—CALCULATION OF REQUIRED REDUCTION  
[Tons per summer day of VOC]

Calculation step	4/17/97 final rule	Today's final rule
1990 Anthropogenic Emission Inventory	184.1	185.1
Non-creditable reductions .....	15.7	16.0
1990 Adjusted Inventory <sup>1</sup> .....	168.4	166.5
15% of Adjusted Inventory .....	25.3	25.0
1996 Target .....	143.1	141.5
1996 Projected, uncontrolled emissions .....	181.7	167.7
Required Reduction ..	38.6	26.2

<sup>1</sup> The Adjusted Inventory is derived by subtracting the non-creditable reductions from the FMVCP and RVP programs, and emissions of photochemically non-reactive compounds, from the 1990 Anthropogenic Emission Inventory.

The EPA approves these revisions to the Rhode Island 15 percent ROP plan.

#### Measures Achieving Emission Controls

Rhode Island's revised 15 percent ROP plan continues to rely upon emission reductions from the following measures that were approved by EPA's April 17, 1997 final rule, with some adjustments to the emission reduction credits claimed:

1. Surface coating operations;
2. Printing operations;
3. Marine vessel loading;
4. Plant closures (0.79 tons per day approved out of 0.84 claimed);
5. Cutback asphalt;
6. Auto refinishing;
7. Stage II gasoline vapor recovery at service stations;
8. Reformulated gasoline in on-road and off-road engines; and
9. Tier I motor vehicle controls.

Additionally, the updated growth analysis contained within the revised plan resulted in fewer emission reductions being needed to meet the 1996 emissions target level, and generally reduced the emission level of 1996 controlled emissions from the four source categories discussed below.

#### Point Source Controls

The revised Rhode Island 15 percent plan contains actual 1996 emission data reported to the State by industrial sources pursuant to the State's emission statement reporting regulation. This data provides the State with an accurate means by which to determine the effectiveness of control regulations on these facilities. The State found that VOC emissions from industrial sources totaled 16.10 tpsd, which is 9.57 tpsd

lower than what was reported for 1990 for these sources. The State's revised 15 percent plan notes that although the regulation pertaining to Marine Vessel Loading operations is still applicable in the State, all sources that were subject to this regulation have ceased such activity.

EPA's review of emission reductions claimed from industrial sources indicates that reductions were claimed from two facilities that have chosen to comply with the State's Reasonably Available Control Technique (RACT) rule for non-Control Technique Guideline (CTG) sources using the alternative compliance option which that rule contains. Rhode Island has submitted to EPA the single source non-CTG RACT order for one source, Cranston Print Works, but has not submitted the required order for the other source, the Hoechst company. The total emission reduction expected from these two sources is 0.4 tpsd, and is not currently approvable because these reductions have not been made part of the State's SIP. EPA approves the emission reductions claimed by Rhode Island from industrial sources in the State, with the exception of the 0.4 tpsd claimed from the two sources noted above.

#### Area Source Controls

The State's revised 15 percent plan contains updated estimates of 1996 emissions for several area source categories. Rhode Island contacted asphalt suppliers and determined that cutback and emulsified asphalts were not used during the 1996 ozone season. The State accordingly assumed that no emissions occurred from this activity. A 2.99 tpsd reduction is now claimed for this source category, compared to the 2.57 tpsd reduction approved in the EPA's April 17, 1997 final rule. EPA approves the State's revised estimate of 1996 controlled emissions from this source category.

EPA guidance recommends that emissions from automobile refinishing operations be determined by multiplying the number of workers employed in this activity by per employee emission factors. Rhode Island's revised 15 percent plan utilizes more current estimates of 1996 employment levels for this category, which resulted in 2.14 tpsd in emission reductions being claimed for this source category. The State's original plan had claimed 2.97 tpsd in emission reductions. EPA approves the State's revised estimate of 1996 controlled emissions from this source category.

The EPA's April 17, 1997 final rule approved 3.30 tpsd in emission

reductions attributable to gasoline service station refueling controls, which are commonly referred to as "Stage II" vapor recovery controls. The State's revised plan includes a recalculation of emission reductions achieved by 1996 from this program. The recalculation was performed based upon actual 1996 fuel consumption and use of the EPA's Mobile 5b emissions model, neither of which were available when the previous plan was submitted. The revised emission reduction claimed from this source category is 3.47 tpsd. EPA approves the State's revised estimate of 1996 controlled emissions from this source category.

Rhode Island's original 15 percent ROP plan did not include an estimate of emission reductions from regulations on consumer and commercial products, or from architectural and industrial maintenance (AIM) coatings. The State did include emission reductions for these emission categories in its original contingency plan. The State's revised 15 percent plan relies upon emission reductions expected from recently promulgated federal controls on these emission source categories. The State estimated the expected emission reductions using procedures recommended by EPA, in conjunction with the most current population figures for the State. A 1.03 tpsd emission reduction is expected from the consumer and commercial products category, and a 1.83 tpsd reduction from the AIM coatings category, compared with 1.1 and 1.9 tpsd, respectively, that EPA approved on April 17, 1997. EPA approves the State's revised estimate of emission reductions achieved from these source categories.

#### On Road Mobile Source Controls

The primary reason for the limited disapproval of the State's original 15 percent ROP plan was its reliance on emission reductions from an enhanced automobile inspection and maintenance program that was not being implemented. Rhode Island has restructured its I/M program, and now projects that testing of motor vehicles will commence in mid-1999. A biennial test and repair program using a transient IM testing regime will be used. The State's revised 15 percent plan uses the EPA's Mobile 5b program in conjunction with EPA guidance that allows emission reductions from I/M programs that achieve benefits by November 15, 1999, to count towards the 15 percent emission reduction, to determine that 2.15 tpsd in emission reductions from the State's I/M program should be creditable towards the 15 percent emission reduction

requirement. However, EPA has not yet approved the State's I/M program. Accordingly, EPA defers action on a judgement as to the validity of the State's emission reduction claim from the I/M program at this time.

Rhode Island used the EPA's Mobile 5b program to determine that 13.2 tpsd in emission reductions will accrue from its set of on-road mobile source control measures, which include I/M, Tier I motor vehicle controls, reformulated gasoline, and low emission vehicles. The State's prior submittal had anticipated 20.8 tpsd in reductions from controls on motor vehicles. The primary reason for the decreased level of emission reductions from motor vehicles is that the original plan had claimed credit from a full cycle of testing motor vehicles through an enhanced I/M program, whereas the revised plan only claims credit from a partial cycle commensurate with the start date envisioned for the State's I/M program. EPA approves the State's determinations of emission reductions from these measures, with the exception of the 2.15 tpsd attributed to I/M, which EPA defers action on at this time.

**Non-road Controls**

Rhode Island's revised plan continues to rely upon emission reductions achieved by the use of reformulated gasoline in non-road engines. The State's revised plan uses more current growth projections for this source category. Additionally, a minor change was made to the base year emission estimate as noted in the text above. The State envisions that controls on this source category will reduce emissions by 0.87 tpsd; the State's original plan had projected a 0.97 tpsd emission reduction. EPA approves the State's determinations of emission reductions from the sale of reformulated gasoline in non-road engines.

**Emission Reduction Surplus**

The State's revised 15 percent plan contains a calculation showing that a 10.6 tpsd emission reduction surplus exists in the plan. The State's determination is summarized in Table 3.

TABLE 3.—DETERMINATION OF EMISSION REDUCTION SURPLUS

Category	1996 projected, controlled emissions from original plan (tpsd)	1996 projected, controlled emissions from revised plan (tpsd)
Point .....	19.02	16.10

TABLE 3.—DETERMINATION OF EMISSION REDUCTION SURPLUS—Continued

Category	1996 projected, controlled emissions from original plan (tpsd)	1996 projected, controlled emissions from revised plan (tpsd)
Area .....	55.02	44.70
On-road mobile .....	33.98	40.1
Non-road mobile .....	34.08	30.0
Total .....	142.1	130.9
Target Level of Emissions .....	143.1	141.5
Surplus .....	1.0	10.6

EPA agrees that the revised 15 percent plan contains an emission reduction surplus. However, since Rhode Island's I/M program has not been approved by EPA, the 2.2 tpsd emission reduction credit expected from this program is not approved as part of the State's surplus. Additionally, 0.4 tpsd in emission reductions are not currently approvable because they stem from two industrial sources for which non-CTG VOC RACT orders must be incorporated into the State's SIP, which has not yet occurred. The emission reduction surplus approved by EPA is therefore 8.0 tpsd.

**Contingency Plan**

The EPA's April 17, 1997 final rule issued a limited approval, limited disapproval of the Rhode Island Contingency plan. The State's revised 15 percent plan contains a new adjusted base year inventory of 166.5 tpsd, from which the 3 percent contingency measure obligation of 5 tpsd is derived. Rhode Island's 15 percent plan documents that the plan achieves surplus emission reductions sufficient to cover the State's contingency measure obligation of 5 tpsd. Additionally, the surplus emission reductions found in the State's 15 percent plan are still sufficient if the non-creditable reductions from I/M and two industrial point sources are excluded. EPA therefore finds that Rhode Island has complied with the contingency measure requirements of sections 172(c)(9) and 182(c)(9) of the CAA.

**Transportation Conformity Budgets**

Under EPA's transportation conformity rule the 15 percent plans are a control strategy SIP. The plan for Rhode Island establishes a VOC emission budget for on-road mobile sources within the Providence nonattainment area, which encompasses the entirety of the state. The 15 percent plan does not establish NO<sub>x</sub> emission

budgets for on-road mobile sources. However, Rhode Island has submitted a complete SIP revision consisting of a reasonable further progress plan to achieve a 9 percent emission reduction in ozone precursor emissions after 1996 (post-96 plans). This plan was submitted on September 21, 1998. These revisions establish the VOC and NO<sub>x</sub> emission budgets for 1999. The 1999 VOC emission budget is 41.57 tpsd, and the 1999 NO<sub>x</sub> emissions budget is 46.40 tpsd.

EPA believes that the VOC and NO<sub>x</sub> budgets established by the post-96 plans for Rhode Island are currently the controlling budgets for conformity determinations for 1999 and later years. The budgets in the post-1996 plans specifically address the 1999 reasonable further progress milestone year, whereas the 15 percent plan establishes a budget for the prior reasonable further progress milestone year of 1996. The time period for the budget in the 15 percent plans has passed. These budgets reflect the currently projected start date for Rhode Island's I/M program. Therefore, EPA is here confirming its finding made on September 29, 1998, that the budgets for VOC and NO<sub>x</sub> in the current post-1996 plan can be used for determining conformity.

**Rationale for Interim Final Determination**

By means of an April 17, 1997 final rule, EPA disapproved portions of the original 15 percent and contingency plans that were submitted by Rhode Island in 1994. The disapproval triggered the 18 month time clock for the mandatory application of sanctions under section 179(a) of the Act. That 18 month sanctions clock will expire on November 19, 1998. To remedy that failure, on September 21, 1998, Rhode Island submitted revised 15 percent and contingency plans to EPA, requesting approval action under the Act.

Within this final rule, EPA is approving the State's revised 15 percent and contingency plans. Additionally, EPA has proposed approval of the revised 15 percent plan in the proposed rules section of today's **Federal Register**. EPA has determined that, as a result of the proposed approval of these revised plans, Rhode Island has remedied the SIP deficiency triggering the sanctions clock for the duration of EPA's rulemaking process on the revised plans. This interim determination will not halt or reset the sanctions deadline, but will continue to defer the implementation of sanctions until one of the following outcomes with respect to the 15 percent and contingency plans: (1) the plans become

effective on February 8, 1999 pursuant to this direct final approval of the revised Rhode Island 15 percent and contingency plans, at which time the sanctions clock will be removed; (2) EPA approves the 15 percent and contingency plans after responding to any relevant adverse comments received pursuant to EPA's approval, at which time the sanction clock will be removed; or (3) EPA disapproves, or proposes to disapprove, the revised plans.

Today EPA is also providing the public with an opportunity to comment on this interim final determination. If, based on any comments received by EPA upon this interim final determination action and any comments on EPA's proposed approval of the State's revised 15 percent and contingency plans, EPA determines that the SIP revision is not approvable and this final action was inappropriate, EPA will take further action to disapprove the State's revised plans. If EPA disapproves or proposes to disapprove the Rhode Island 15 percent and contingency plans, then sanctions would be applied as required under section 179(a) of the Act and 40 CFR 52.31.

## II. Final Action

### *Direct Final Rule*

EPA is approving the State of Rhode Island 15 percent ROP and contingency plan, and approving minor revisions to the Rhode Island 1990 emission inventory of ozone precursors. EPA published a final rule issuing a limited approval, limited disapproval of the original Rhode Island 15 percent and contingency plans in the April 17, 1997 **Federal Register** (62 FR 18712). Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. This final rule approving the Rhode Island 15 percent plan and contingency plan stops the sanctions clock which began on the effective date of EPA's April 17, 1997 final rule, which was May 19, 1997.

EPA's April 17, 1997 final rule rescinded the protective finding which had previously been made on the motor vehicle emission budget contained within the original Rhode Island 15 percent plan submitted to EPA in 1994. This caused a transportation conformity freeze to occur 120 days after the

effective date of EPA's April 17, 1997 final rule. By letter dated September 29, 1998, EPA informed Rhode Island that the State's September 21, 1998 SIP revision request consisting of revised 15 percent and post 1996 rate-of-progress plans contained motor vehicle emission budgets that were adequate for use in determining transportation conformity, and so the transportation conformity freeze was being removed.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective February 8, 1999 without further notice unless the Agency receives relevant adverse comments by January 7, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 8, 1999 and no further action will be taken on the proposed rule.

### **Interim Final Rule**

EPA has determined that the State has corrected the deficiencies that prompted the disapproval of portions of the Rhode Island 15 percent and contingency plans by EPA in the April 17, 1997 **Federal Register**. Therefore, EPA concludes that sanctions should be stayed until either the effective date of EPA's approval of the revised Rhode Island 15 percent and contingency plans pursuant to either this direct final rule or the proposed approval, at which time the sanctions clock will be removed, or EPA disapproves, or proposes to disapprove, the revised plans in light of comments from the public that persuade EPA that disapproval is a more appropriate action.

Because EPA has determined that the September 21, 1998 Rhode Island 15 percent and contingency plan SIP is approvable, relief from future sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for

comment before this action takes effect.<sup>2</sup> 5 U.S.C. 553(b)(B). The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest.

The EPA, through this notice, is approving the State's revised 15 percent and contingency plans that were submitted to EPA on September 21, 1998. This approval remedies the deficiency that caused the sanctions clock to begin. Therefore, it is not in the public interest to initially apply sanctions when the State has corrected the deficiency that triggered the sanctions clock. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiency prior to the expiration of the 18 month sanction clock, which is November 19, 1998. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to defer sanctions until either: the effective date of EPA's approval of the revised Rhode Island 15 percent and contingency plans pursuant to either this direct final rule or the proposed approval, at which time the sanctions clock will be removed, or EPA disapproves, or proposes to disapprove, the revised plans in light of comments from the public that persuade EPA that disapproval is a more appropriate action. In addition, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

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

## III. Administrative Requirements

### *A. Executive Orders 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

### *B. Executive Order 12875*

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government,

<sup>2</sup> As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

#### C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an "economically significant" action under Executive Order 12866.

#### D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084

requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

#### E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to

accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### G. Submission to Congress and the Comptroller General

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

#### H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for

judicial review, unless the objection arises after the comment period allowed for in the proposal.

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone.

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

Dated: November 13, 1998.

**John P. DeVillars,**

*Regional Administrator, Region I.*

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

**PART 52—[AMENDED]**

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

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

**Subpart 00—Rhode Island**

2. Section 52.2070 is amended by revising paragraph (c)(50) to read as follows:

**§ 52.2070 Identification of plan**

\* \* \* \* \*

(c) \* \* \*

(50) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on September 21, 1998. The revisions consist of the State's 15 Percent plan and Contingency plan. The EPA is approving the calculation of the required emission reductions, and the emission reduction credit claimed from surface coating operations, printing operations, plant closures, cutback asphalt, synthetic pharmaceutical manufacturing, automobile refinishing, consumer and commercial products, architectural and industrial maintenance coatings, stage II vapor recovery, reformulated gasoline in on-road and off-road engines, tier I motor vehicle controls, and low emitting vehicles. EPA is taking no action at this time on the emission reduction credit claim made for the Rhode Island automobile inspection and maintenance program.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated September 21, 1998 submitting a revision to the Rhode Island State Implementation Plan.

3. Section 52.2084 is amended by removing and revising paragraph (a)(2).

4. Section 52.2086 is amended by adding paragraph (d) to read as follows:

**§ 52.2086 Emission inventories**

\* \* \* \* \*

(d) Minor revisions to the Rhode Island 1990 base year emission inventory were submitted to EPA on September 21, 1998. The revised emission estimates were prepared in accordance with EPA guidance, and are approved into the State's SIP.

[FR Doc. 98-32415 Filed 12-7-98; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF DEFENSE**

**Department of the Air Force**

**48 CFR Part 5316**

**Types of Contracts**

**AGENCY:** Department of the Air Force, Department of Defense

**ACTION:** Final rule.

**SUMMARY:** The Department of the Air Force is amending Title 48, Chapter 53 of the CFR by removing Part 5316, Types of Contracts. This rule is removed because it does not meet the requirement for codification. It was revised as part of the Federal Acquisition Regulation Part 15 rewrite, and was changed in the AFFARS on an interim basis by Contracting Policy memo 93-C-02 on January 8, 1998. It contains internal operating procedures that will be finalized in AFAC 96-2.

**EFFECTIVE DATE:** December 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Powell, Contracting Policy Branch, SAF/AQCP, 1060 Air Force Pentagon, Washington, DC 20330-1060, telephone (703) 588-7062.

**SUPPLEMENTARY INFORMATION:** Under the authority of 5 U.S.C. 301 and FAR 1.301 48 CFR, Chapter 53, is amended by removing Part 5316.

**Carolyn A. Lunsford,**

**Air Force Federal Register Liaison Officer.**

[FR Doc. 98-32530 Filed 12-7-98; 8:45 am]

BILLING CODE 5001-05-U

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**49 CFR Parts 381 and 383**

[FHWA Docket No. FHWA-98-4145]

RIN 2125-AE48

**Federal Motor Carrier Safety Regulations; Waivers, Exemptions, and Pilot Programs; Rules and Procedures**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The FHWA is adopting regulations to implement section 4007 of the Transportation Equity Act for the 21st Century (TEA-21), concerning waivers and exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs), and the administration of pilot programs to evaluate innovative alternatives to the regulations. The regulations establish the procedures persons must follow to request waivers and to apply for exemptions from the FMCSRs, and the procedures the FHWA will use to process the requests for waivers and applications for exemptions. The regulations also codify statutory requirements concerning the agency's administration of pilot programs. This rulemaking is intended to provide procedures to ensure the timely processing of requests for waivers and applications for exemptions, and public disclosure of the procedures the agency would use in initiating and managing pilot programs.

**DATES:** This rule is effective December 8, 1998. Comments must be received on or before February 8, 1998.

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. FHWA-98-4145, the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., et., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS-10, (202) 366-4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590-0001.