

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); Section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.715 is revised to read as follows:

**§ 117.715 Debbies Creek.**

(a) The draw of the Monmouth County highway bridge, mile 0.4 at Manasquan, shall open on signal, except as follows:

(1) From January 1 through March 31, the draw need open only if at least 24 hours advance notice is given.

(2) From Memorial Day through Labor Day from 7 a.m. to 8 p.m., the draw need open only on the hour and half hour if any vessels are waiting to pass.

(b) The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than eight inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

Dated: January 11, 1999.

**Roger T. Rufe, Jr.,**

*Vice Admiral, U.S. Coast Guard Commander,  
Fifth Coast Guard District.*

[FR Doc. 99-1473 Filed 1-21-99; 8:45 am]

BILLING CODE 4910-15-M

revision submitted by the Commonwealth of Virginia. This revision requires Tuscarora Incorporated, a major source of volatile organic compounds (VOCs), to implement reasonably available control technology (RACT). In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by February 22, 1999.

**ADDRESSES:** Written comments should be addressed to David Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Janice M. Lewis, (215) 814-2185, at the EPA Region III address above, or via e-mail at lewis.janice@epa.gov.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: December 28, 1998.

**Thomas Voltaggio,**

*Acting Regional Administrator, Region III.*

[FR Doc. 99-1264 Filed 1-21-99; 8:45 am]

BILLING CODE 6560-50-P

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

[Docket No. A98-46, FRL-6222-9]

**Promulgation of Federal Implementation Plan for New Jersey; Ozone 15 Percent Rate of Progress Plans**

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

**ACTION:** Proposed rule.

**SUMMARY:** Under the authority of section 110(c)(1) of the Clean Air Act (CAA), EPA is proposing a federal implementation plan (FIP) that will further New Jersey's progress towards attaining the ozone standard. The intended effect of this FIP is to address the shortfall in the State's 15 Percent Rate of Progress (ROP) Plans for the New Jersey portions of two severe ozone nonattainment areas—the New York, Northern New Jersey, Long Island Area, and the Philadelphia, Wilmington, Trenton Area. EPA was required to develop a FIP because New Jersey did not meet the condition in its federally-approved 15 Percent ROP Plans requiring New Jersey to implement an enhanced inspection and maintenance program by November 15, 1997. Pursuant to a court order, EPA's final FIP must be signed by the EPA Administrator no later than August 15, 1999.

EPA's proposed FIP relies on four already-adopted federal air pollution control measures that will result in the required volatile organic compound (VOC) emission reductions. Specifically, the FIP recognizes VOC reductions resulting from the emission standards for new nonroad spark-ignition engines, the emission standards for automobile refinish coatings, and the emission standards for architectural coatings. In addition, for the Philadelphia, Wilmington, Trenton Area, the FIP relies upon emission reductions from the already adopted National Emission Standard for Benzene Waste Operations. In total, these measures will result in sufficient VOC emission reductions to achieve the 15 Percent ROP demonstration required by the CAA. Because these requirements are already adopted they will provide the emission

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

[VA 061-5039; FRL-6218-6]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Source-Specific VOC RACT for Tuscarora Incorporated**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve a State Implementation Plan (SIP)

reductions in the most expeditious time frame.

**DATES:** Comments must be received on or before March 17, 1999. EPA has scheduled a public hearing on the New Jersey Ozone 15 Percent Shortfall FIP for March 3, 1999 from 1:00 p.m. to 3:00 p.m.

**ADDRESSES:** Written comments on the EPA's proposed FIP must be received by EPA at the address below on or before March 17, 1999. Comments should be submitted (in duplicate, if possible) to: Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007-1866.

The public hearing will be held at the following location: Rutgers University, New Brunswick, Labor Education Center, Labor Center Way, room 102. For directions, please contact Paul Truchan at (212) 637-3711.

A copy of docket No. A98-46, containing material relevant to EPA's proposed action, is available for review at: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

Interested persons may make an appointment with Paul Truchan (212) 637-3711 to inspect the docket at EPA's New York City office on weekdays between 9 a.m. and 4 p.m.

A copy of docket No. A98-46 is also available to review at the New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

Electronic availability: This document is also available as an electronic file on EPA's Region 2 Web Page at <http://www.epa.gov/region02>.

**FOR FURTHER INFORMATION CONTACT:** Paul Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3711.

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**I. Executive Summary**

**A. Introduction—the Shortfall**

Today's action affects two areas of New Jersey which have been designated as nonattainment of the 1-hour national ambient air quality standard (NAAQS) for ozone. The measured levels of ozone in these areas were high enough that these areas were classified as having a "severe" ozone problem. These nonattainment areas are the portion of New Jersey in the New York, Northern New Jersey, Long Island ozone nonattainment area, and the portion of New Jersey in the Philadelphia, Wilmington, Trenton ozone nonattainment area. For the purposes of this action, these areas will be referred to as, respectively, the Northern New Jersey nonattainment area and the Trenton nonattainment area. These two severe nonattainment areas involve 18 of New Jersey's 21 counties and contain approximately 95 percent of the State's population. The counties located within the Northern New Jersey nonattainment area are: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union. The counties within the Trenton nonattainment area are: Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem.

Ground level ozone, often known as smog, is the air pollution that blankets many urban areas during the summer. When inhaled, even at low levels, ozone can cause temporary respiratory problems and aggravate asthma in children, the elderly, those with respiratory disease, and even otherwise healthy adults who are working or exercising outside on a smoggy day. Children are exposed to ozone more often because they tend to be out doors during summer. Long-term exposures to

ozone may lead to premature aging of the lungs and chronic respiratory illnesses. Ozone also damages crops, rubberized materials and fabrics. A more complete description of the health effects of ozone and EPA's 8-hour ozone standard is available at the following EPA web site: <http://ttnwww.rtpnc.epa.gov/naaqsfm/>. State plans to meet this new standard are not due to EPA until 2003. Today's proposal will bring the State closer to meeting the previously established one-hour ozone standard which remains in effect for areas such as the two New Jersey nonattainment areas. Today's proposal will also, in turn, bring New Jersey closer to meeting the new more stringent 8-hour standard.

Ground-level ozone is formed by the atmospheric reaction of VOCs and nitrogen oxides in the presence of sunlight. The primary source of VOC emissions are: exhaust from automobiles, sport utility vehicles, trucks and other gasoline burning engines, solvent evaporation from paints and coatings, evaporation of petroleum products, and industrial manufacturing and surface coating operations. While nitrogen oxides also contribute to the formation of ozone they are not a part of today's action, as the 15 Percent ROP requirement in the CAA applies only to VOC emissions. There are separate CAA requirements for nitrogen oxides.

The CAA provides a framework that the states must follow in order to attain the ozone NAAQS as expeditiously as possible. This framework requires, at a minimum, the early adoption of specific control measures to achieve Reasonable Further Progress—including a 15 percent reduction in VOC emissions between 1990 and 1996. The CAA also provides that EPA has an obligation to develop a FIP if EPA disapproves a SIP for failing to provide the required VOC emission reduction strategies needed to make progress towards meeting the health-based standard.

New Jersey's federally-approved 15 Percent ROP Plans for the two severe ozone nonattainment areas relied on the emission reductions from several control measures including the implementation of a State enhanced inspection and maintenance (I/M) program. When implementation of this program was delayed, these emission reductions could not be achieved on schedule. Therefore, EPA's conditional approval of the New Jersey 15 Percent ROP Plans converted to a disapproval and EPA is now obligated to develop a FIP that will make up for the VOC emission reduction shortfall. This shortfall is 30.86 tons per day in the Northern New Jersey nonattainment

area and 10.24 tons per day in the Trenton nonattainment area.

In addition, EPA is under court order, as a result of a lawsuit by the American Lung Association of Northern Virginia, *et al.*, to promulgate a FIP which makes up the shortfall in the 15 Percent ROP Plan for the Trenton nonattainment area. Under the Consent Agreement, EPA has until January 15, 1999, to propose and August 15, 1999, to adopt the FIP.

#### B. FIP Proposal

EPA's FIP proposal for the Northern New Jersey and Trenton nonattainment areas relies on the emission reductions from three EPA-promulgated national air pollution control measures: the emission standards for new nonroad spark-ignition engines, the emission standards for automobile refinish coatings, and the emission standards for architectural coatings. In addition to the above measures, in the Trenton nonattainment area EPA's proposed FIP also includes emission reductions from the already-adopted national emission standard for benzene waste operations. These measures were selected because they are already adopted and will therefore, most expeditiously result in emission reductions.

The CAA and the Consent Agreement require EPA to develop a FIP to make up for shortfalls in New Jersey's 15 Percent ROP Plans. Another consequence of EPA's disapproval of the New Jersey 15 Percent ROP Plans is that a mandatory sanction process was started. The CAA provides for two mandatory sanctions: first, 18 months after notification, a requirement to offset the increased emissions from new or modified major sources of air pollution at a rate of two tons of reduction for every one ton of increased emissions; and second, 24 months after notification, restrictions on the receipt of federal highway funds. This sanctions process is only terminated by EPA approval of a new 15 Percent ROP SIP revision, not by promulgation of this FIP.

EPA is working closely with New Jersey so that the State can develop an approvable 15 Percent ROP Plan which will replace EPA's FIP and avoid these sanctions.

#### C. Public Involvement

EPA is today announcing a public hearing on this FIP proposal. The public comment period will begin upon publication of the FIP proposal and will remain open for 30 days following the public hearing. EPA encourages everyone who has an interest in this proposal to comment upon it. EPA will

consider all comments received during the public comment period in preparing the final FIP.

## II. Background

### A. Clean Air Act Requirements

Section 182(b)(1) of the CAA requires each ozone nonattainment area with a classification of moderate or above to develop a plan to reduce area-wide VOC emissions by 15 percent from a 1990 adjusted baseline, known as a 15 Percent ROP Plan. These plans were to be submitted by November 15, 1993.

### B. Chronology of Actions Related to New Jersey's 15 Percent ROP Plans

New Jersey's original submittal was determined to be incomplete on February 2, 1994, which started a sanction process and a federal obligation to promulgate a FIP within 24 months, unless New Jersey satisfactorily fulfills the CAA requirements. The original submittal was determined to be incomplete because it relied on emission reductions from an enhanced I/M program that New Jersey had not yet adopted. On July 10, 1995, New Jersey submitted a SIP revision containing an adopted enhanced I/M program that EPA subsequently determined to be complete on August 1, 1995. This stopped the sanction process, but EPA's FIP obligation would remain until EPA took final action to approve the 15 Percent ROP Plan. EPA did not act further on the State's submittals because subsequent to the July 10, 1995 enhanced I/M submittal the State decided to revise the enhanced I/M program to make use of the flexibility that Congress provided to states in the National Highway System Designation Act, which was enacted in November 1995.

EPA's FIP obligation continued, and, as a result of a lawsuit by the American Lung Association of Northern Virginia, *et al.*, relating to the Trenton nonattainment area, EPA entered into a consent agreement that contained a schedule for the promulgation of a FIP if New Jersey failed to submit a 15 Percent ROP SIP, or if EPA did not approve it, or if New Jersey failed to implement any conditions of the approved SIP. This consent agreement only applies to the Trenton nonattainment area.

On April 30, 1997 (62 FR 23410), EPA proposed conditional interim approval of New Jersey's 15 Percent ROP Plans and, on June 30, 1997 (62 FR 35100), EPA gave final conditional interim approval to the 15 Percent ROP Plans, as well as approving several other CAA SIP requirements. In this notice EPA

found that the control measures included in the plans would achieve 15 Percent ROP by November 15, 1999, which is as soon as practicable. The conditions placed on the 15 Percent ROP Plan approval related only to the enhanced I/M program. No conditions regarding any of the other measures were included in EPA's approval. As a result of a delay in the start up of the conditionally approved enhanced I/M program, which delayed full implementation by more than one year, EPA made a finding that the State failed to implement the enhanced I/M program and disapproved New Jersey's 15 Percent ROP Plans on December 12, 1997.

EPA's FIP obligation with respect to the 15 Percent ROP Plans is limited to adopting control measures which will eliminate the resulting emission reduction shortfall caused by the delay in the enhanced I/M program since the other portions of New Jersey's 15 Percent ROP plan are still approved as part of New Jersey's SIP and are still producing VOC emission reductions that benefit the environment. Under the Consent Agreement, EPA has until January 15, 1999 to propose the FIP and has until August 15, 1999 to adopt a FIP.

### C. Relation to the 8-hour Average Ozone Standard

In July 1997, EPA adopted a new, more protective 8-hour ozone standard. However, for the purposes of making progress toward this new eight-hour ozone standard, the requirements for the old one-hour standard remain in effect until areas attain the one-hour standard. The requirement for a 15 Percent ROP Plan in the Northern New Jersey and the Trenton nonattainment areas continues since neither location has yet attained the one-hour ozone standard. Today's action deals only with the implementation of measures to make progress towards attainment of the one-hour ozone standard.

## III. FIP Development Process

### A. New Jersey's Efforts To Make Up the 15 Percent Shortfall

New Jersey is now in the process of revising its 15 Percent ROP Plans to make up for the shortfall created by the delay in implementing its enhanced I/M program. As part of this effort, New Jersey identified its landfill control program which was State promulgated and SIP-approved but was not included in its original 15 Percent ROP Plans. In addition, New Jersey used more accurate landfill emission estimating techniques which lowered the 1990

emissions from this category. The revised landfill emissions result in lower 1990 baseline emissions and, therefore, lower the amount of reductions needed to show 15 Percent ROP. In a letter dated November 9, 1998, New Jersey provided revised landfill information to be used in the revised 15 Percent ROP Plans. EPA considers this information to be the latest and most accurate assessment of the base year emissions. This correction reduces the shortfall which the FIP needs to account for from 31.41 to 30.86 tons per day in the Northern New Jersey nonattainment area and from 10.55 to 10.24 tons per day in the Trenton nonattainment area. With the exception of the enhanced inspection and maintenance program, all control programs have been adopted, implemented, and approved by EPA in the SIP. The table in section IV.E., provides a summary of New Jersey's previously conditionally approved 15 Percent ROP Plan and the resulting shortfall after consideration of the revised landfill data.

Therefore, EPA is basing its FIP on the need to make up for an emission reduction shortfall of 30.86 tons per day in the Northern New Jersey nonattainment area and 10.24 tons per day in the Trenton nonattainment area by November 15, 1999, the date which EPA previously found to be as soon as possible in New Jersey.

#### *B. Federal Implementation Plan Provisions*

Section 110(c) of the CAA provides that:

(1) The Administrator shall promulgate a federal implementation plan at any time within 2 years after the Administrator—

(A) Finds that the state has failed to make a required submission or finds that the plan or plan revision submitted by the state does not satisfy the minimum criteria established under section 110(k)(1)(A),<sup>1</sup> or

(B) Disapproves a State Implementation Plan submission in whole or in part, unless the state corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such federal implementation plan.

EPA has wide-ranging authority under section 110(c) to fill in gaps left by a state failure. EPA's authority to prescribe FIP measures is of three types.

First, EPA may promulgate any measure for which it has the authority under CAA provisions. Second, EPA may invoke section 110(c)'s general FIP authority and act to cure a planning inadequacy in any way not clearly prohibited by statute. Third, under section 110(c), the courts have held that EPA may exercise all authority that the state may exercise under the Act. For a more detailed discussion of these authorities and restrictions on EPA's FIP authorities, see 59 FR 23262, 23290–23292 (May 5, 1994).

#### *C. FIP Selection Factors*

In selecting proposed control measures to remedy the shortfall, EPA was guided by the following factors in evaluating potential control measures:

##### 1. Existing SIP

EPA removed from further consideration any measure which was already approved as part of the SIP and where the State has credited that measure towards meeting rate of progress requirements.

##### 2. Applicability to New Jersey

Before a measure can be considered as a potential FIP control measure, EPA must first determine if the measure would have any inherent potential to reduce VOC emissions in the affected nonattainment areas.

##### 3. Legal Authority

EPA must have the legal authority under the CAA to promulgate, implement, and enforce a measure, and must not be preempted from promulgating, implementing, or enforcing it by other federal statutes, regulations, or court orders before it considers a measure reasonably available for implementation in a FIP. EPA's FIP authority under CAA section 110(c) is broad (see section II.A.3. above); however, the Agency is constrained in specific instances by the CAA itself. See e.g., CAA section 110(a)(5)(A)(i) (prohibition on indirect source review programs) and section 110(c)(2)(B) (prohibition on parking surcharges).

EPA's authority to promulgate measures in a FIP that require a state to enact legislation or expend state funds is limited. EPA may require a state to enact legislation or expend its funds if the FIP measures affect the pollution-creating activities of the State itself, but may not do so if the effect is to govern the pollution-creating activities of others. For example, EPA could not require a state to regulate buses within the state. EPA could, however, require a state to retrofit state-owned buses to

reduce emissions from those buses as part of an EPA strategy to regulate buses in general. For a detailed discussion of this issue, see 52 FR 23263, 23291–23292 (February 5, 1994) (proposed ozone and carbon monoxide FIP for the South Coast Air Basin).

##### 4. Method of Implementation

EPA considered the method of implementing the measure in determining whether a measure was available to EPA for promulgation under the FIP, i.e., (1) by rule requiring the owner/operator of the source to implement the control, (2) by direct action by EPA, or (3) by providing additional funding to the state or local agency to implement the measure.

##### 5. Technological Feasibility

As the term is proposed to be used here, technological feasibility means that the control measure is currently available and being implemented elsewhere and that the measure can achieve VOC emission reductions.

##### 6. Cost of Implementation

In considering the cost of implementing a measure in an area, the General Preamble for EPA action on SIPs under the 1990 amendments to the CAA (57 FR 13541) suggests that in case of public sector sources and control measures, the cost evaluation should consider the impact of the reasonableness of the measures on the governmental entity that must bear the responsibility for their implementation.

In promulgating a FIP, EPA is the primary implementing entity. As such, EPA must evaluate the reasonableness of potential control measures based on its financial and resource capabilities. The Agency notes that its duty to promulgate and implement FIPs is in addition to, rather than a replacement of, its other duties under the Clean Air Act. As such, where implementing a potential FIP measure would require the Agency to expend substantial efforts to acquire needed resources, including financial resources, EPA should take such factors into consideration in determining whether the measure is practicable and, thus, reasonable to implement.

#### **IV. Description of the Measures Included in the Proposed FIP**

The following control measures are being proposed to meet the shortfall in New Jersey's 15 Percent ROP Plans. In EPA's assessment, these measures will eliminate the shortfall in the most expeditious manner, with the least inconvenience to the public, and with

<sup>1</sup> Section 110(k)(1)(A) requires the Administrator to promulgate minimum criteria that any plan submission must meet before EPA is required to act on the submission. These completeness criteria are set forth at 40 CFR part 51, Appendix V.

the most effective use of available federal resources.

### A. New Nonroad Spark-Ignition Engines

#### 1. Background

Prior to 1990, EPA's regulatory programs for motor vehicles and engines dealt only with on-road vehicles. In the CAA as amended in 1990, section 213(a)(1) directed EPA to study the contributions to air quality from nonroad engines and vehicles. Section 213(a)(2) of the CAA directed the Administrator to determine whether the emissions from nonroad sources are significant contributors to ozone or carbon monoxide in more than one nonattainment area and, if so, directed the Administrator to promulgate regulations for nonroad engines. EPA determined that there are substantial summertime VOC emissions from nonroad sources in many nonattainment areas.

On May 16, 1994, EPA published a notice of proposed rulemaking for small nonroad engines (59 FR 25399). This **Federal Register** notice, "Control of Air Pollution; Emission Standards for New Nonroad Spark-Ignition Engines at or Below 19 Kilowatts," proposed emission standards that are expected to result in a 32 percent reduction in VOC emissions and a 14 percent reduction in carbon monoxide emissions nationally by the year 2020 when complete fleet turnover is projected. In a July 3, 1995 **Federal Register** (60 FR 34581), EPA promulgated a first phase of the final regulations to control emissions from new nonroad spark-ignition engines. This regulation is contained in the Code of Federal Regulations (CFR), Title 40, "Part 90—Control of Emissions From Nonroad Spark-Ignition Engines." A second phase will be adopted in the future. The FIP only relies on the emission reductions from this first fully promulgated phase. The reader is referred to these proposed and final **Federal Register** notices for greater detail.

#### 2. Emission Standards

This regulation is applicable to nonroad spark-ignition engines and vehicles that have a gross power output at or below 19 kilowatts and is effective for the 1997 model year and beyond. These engines are used principally in lawn and garden equipment and include such equipment as lawn mowers, leaf blowers, trimmers, chainsaws, and generators. Section 90.1(b) of 40 CFR Part 90 specifies those engine applications which are exempt from these emission standards.

Section 90.103 specifies the exhaust emission standards. Such standards are based on both engine displacement and whether the equipment is handheld. There are emission standards for hydrocarbons (VOCs), carbon monoxides, and oxides of nitrogen.

#### 3. Compliance and Recordkeeping

EPA has established certification procedures which engine manufacturers must comply with in order to obtain a "Certificate of Conformity." These procedures include engine testing, data reporting, record keeping, and labeling.

The inclusion of this control measure in the New Jersey FIP does not require any additional effort or burden to the manufacturers. There will be no separate testing, record keeping, or reporting requirements under the New Jersey FIP. Compliance with the national rule (40 CFR Part 90) is sufficient to insure compliance and emission reductions in New Jersey or any other state.

#### 4. Emission Reductions

EPA has determined that the new nonroad standards will reduce VOC emissions by 13.1 percent in 1997, 19.5 percent in 1998, and 23.9 percent in 1999 nationally. Applying these percentages to New Jersey's specific engine population, the resulting VOC emission reductions that will be achieved in 1999 will be 16.19 tons per day in the Northern New Jersey nonattainment area and 5.71 tons per day in the Trenton nonattainment area. EPA's technical analysis supporting these numbers is contained in the docket for this rulemaking.

### B. Emission Standards for Automobile Refinish Coatings

#### 1. Background

In the Clean Air Act as amended in 1990, section 183(e) directs EPA to study the emissions of VOCs into the ambient air from consumer and commercial products and determine their potential contribution to ozone levels. In this study EPA was to list the categories of consumer or commercial products that account for at least 80 percent of the VOC emissions from these products in ozone nonattainment areas and develop a schedule for regulating these categories over the next eight years.

Based on this study, EPA concluded that VOC emissions from automobile refinish coatings have the potential to contribute to ozone levels that violate the NAAQS for ozone. On April 30, 1996 (61 FR 19005), EPA proposed the "National Volatile Organic Compound

(VOC) Emission Standards for Automobile Refinish Coatings (Autobody Refinishing)." A supplemental proposal was published on December 30, 1997 (62 FR 67784). On September 11, 1998 (63 FR 48806), EPA promulgated final regulations at 40 CFR Part 59, Subpart B—"National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings" (Subpart B).

#### 2. Emission Standards

The promulgated rule is applicable to all entities nationally that manufacture or import automobile refinish coating components or complete refinish coatings. Regulated automobile refinish coatings are pretreatment wash primers, primers/primer surfacers, primer sealers, single/two-stage topcoats, topcoats of more than two stages, multi-colored top coats, and specialty coatings. The VOC content standards are dependent on the coating category and specify limitations in grams of VOC per liter of coating.

#### 3. Compliance and Recordkeeping

Automobile refinish coatings and coating components manufactured on or after January 11, 1999 must be in compliance with 40 CFR Part 59, Subpart B. Containers must be labeled with the date of manufacture or a code for the date. An initial report must be filed with EPA by January 11, 1999 or within 180 days after becoming subject to the rule. For purposes of determining compliance, the VOC content of each coating or component may be determined using EPA's Reference Method 24—"Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings," found in 40 CFR part 60, appendix A.

It should be noted that the inclusion of this control measure in the New Jersey FIP does not require any additional effort or burden to the manufacturers or importers of automobile refinishing components or coatings. There will be no separate testing, record keeping or reporting requirements. Compliance with the national rule will be sufficient to insure compliance and emissions reductions in New Jersey or any other state.

#### 4. Emission Reductions

EPA has determined that the automobile refinish coating standards will result in VOC emission reductions in 1999 of 13.23 tons per day in the Northern New Jersey nonattainment area and 3.44 tons per day in the Trenton nonattainment area using New Jersey specific data on the automobile

refinishing industry. EPA's technical analysis supporting these numbers is contained in the docket for this rulemaking.

### *C. Emission Standards for Architectural Coatings*

#### 1. Background

EPA developed national regulations for architectural coatings as part of a larger requirement to control VOC emissions from certain categories of consumer and commercial products. Based on this study, EPA concluded that VOC emissions from architectural coatings have the potential to contribute to ozone levels that violate the NAAQS for ozone.

EPA proposed the "National Volatile Organic Compound Emission Standards for Architectural Coatings" (Architectural rule) on June 25, 1996 (61 FR 32729) and September 3, 1996 (61 FR 46410), and the comment period was further extended on October 8, 1996 (61 FR 52735). On September 11, 1998 (63 FR 48848), EPA promulgated final regulations at 40 CFR Part 59, Subpart D—"National Volatile Organic Compound Emission Standards For Architectural Coatings." The reader is referred to these **Federal Register** notices for greater detail.

New Jersey developed its own architectural coatings regulation, Subchapter 23 "Prevention of Air Pollution From Architectural Coatings and Consumer Products," which was originally adopted in 1989 and subsequently revised. The regulation took effect in January 1990 for Group 1 products and March 1990 for Group 2 products. The regulation allowed coatings manufactured before 1990 to be sold until 1993. Because of the uncertainty in determining when the emission reductions occurred, New Jersey treated this source category as uncontrolled in the 1990 base year emission inventory. By 1999, Subchapter 23 would have achieved emission reductions of as much as 4.9 tons per day in Northern New Jersey nonattainment area and 0.9 tons per day in the Trenton nonattainment area. However, EPA is not proposing to take credit for the reductions associated with New Jersey's regulation at this time because EPA was unable to verify the quantity of VOC emission reductions which occurred after 1990 and would be creditable towards the 15 Percent ROP Plan. Rather, EPA is taking credit only for the emission reductions associated with those categories of coatings where EPA's national rule goes beyond New Jersey's rule. This decision provides a cushion in the emission reduction

estimates that addresses any uncertainty in EPA's proposed FIP.

#### 2. Emission Standards

The national architectural coatings rule is applicable to all entities that manufacture or import for sale or distribution in the United States architectural coatings. Architectural coatings include, but are not limited to, such coatings as: primers and sealers, flat and nonflat paints, stains, enamels, and wood preservatives. A complete list of coatings subject to this rule is contained in 40 CFR part 59, subpart D, Table 1. The VOC content standards are dependent on the coating category and specify limitations expressed as grams of VOC per liter of coating. The rule contains a tonnage exemption for exempting limited quantities of coatings. EPA also included an exceedance fee provision in the national rule. Under this provision, manufacturers or importers would have the option of paying a fee, based on the amount that VOC content levels are exceeded, instead of actually achieving the VOC content limitations. The fee is \$0.0028 per gram or \$2,500 per ton. EPA believes this will provide an option where the cost of reformulating low volume specialty coatings is high, while still providing an incentive to reformulate. EPA took this option into consideration in calculating the emission reduction potential of this rule as it would be used in the FIP.

#### 3. Compliance and Recordkeeping

Architectural coatings manufactured on or after September 11, 1999 for sale or distribution in the United States must meet the VOC content limitations of 40 CFR part 59, table 1 (the compliance date for coatings subject to the Federal Insecticide, Fungicide, and Rodenticide Act is May 10, 2000). Containers must be labeled with the date of manufacture or a code for the date and the VOC content in the coating. An initial report must be filed with EPA no later than September 13, 1999 or within 180 days after becoming subject to the rule. Manufacturers must maintain records for a period of three years. For purposes of determining compliance, the VOC content of each coating or component may be determined using EPA's Reference Method 24—"Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings," found in 40 CFR part 60, appendix A (or an alternate method approved by EPA), formulation data, or other appropriate means. In the event of a discrepancy, however, the results from Method 24 (or

the approved alternative method) govern.

It should be noted that the inclusion of this control measure in the New Jersey FIP does not require any additional effort or burden to the manufacturers or importers of architectural coatings. There will be no separate testing, recordkeeping or reporting requirements. Compliance with the national rule will be sufficient to ensure emission reductions and compliance in New Jersey or any other state.

#### 4. Emission Reductions

EPA calculated the additional benefit from applying the national architectural coating rule, which has more stringent emission limits than New Jersey's current rule for some categories. The national rule will result in additional VOC emission reductions of 2.31 tons per day in the Northern New Jersey nonattainment area and 0.89 tons per day in the Trenton nonattainment area using New Jersey specific population data. EPA's technical analysis supporting these numbers is contained in the docket for this rulemaking.

### *D. National Emission Standard for Benzene Waste Operations*

#### 1. Background

On March 7, 1990 (55 FR 8292), the EPA promulgated the national emission standards for hazardous air pollutants (NESHAPS) for benzene emissions from benzene waste operations, 40 CFR part 61, Subpart FF (the rule). EPA initially issued a stay of effectiveness for this rule on March 5, 1992. EPA published a final rule on January 7, 1993 (58 FR 3072) that clarified the provisions and lifted the stay. The final benzene waste operations rule became effective on January 7, 1993.

#### 2. Emission Standards

The rule is applicable to owners or operators of chemical manufacturing plants, manufacturing plants, coke by-product recovery plants, and petroleum refineries nationally and includes facilities with waste management units that treat, store or dispose of waste containing benzene. The final amendments clarify points on compliance that give owners and operators increased flexibility in meeting the requirements of the rule while meeting the NESHAPS goals for risk protection.

The rule requires control of benzene emissions from waste that is placed in storage tanks; surface impoundments; containers; individual drain systems; oil-water separators; treatment

processes; and closed vent systems. (See 40 CFR part 61, subpart FF and 58 FR 3071 for more details on these regulations.) For this 15 Percent ROP FIP action, EPA is only claiming credit for wastewater treatment processes at one facility covered by this rule. While the rule has resulted in real additional emission reductions, these emission reductions are not included as part of EPA's emission reduction calculations because they are not needed to fulfill the shortfall in the New Jersey 15 Percent ROP Plan.

Owners and operators of wastewater streams meeting the applicability requirements in sections 61.340 and 61.342 are required to comply with the following wastewater stream and process vent control requirements:

Such operators must install and operate a treatment process that removes benzene from the wastewater stream either to a level less than 10 parts per million by weight (ppmw) on

a flow weighted annual average basis; or by at least 99 percent on a mass basis; or, by incinerating the waste in a combustion unit that achieves a destruction efficiency of at least 99 percent.

**3. Compliance and Recordkeeping**

Owners and operators subject to Subpart FF Sections 61.340 and 61.342 were required to comply with the control requirements outlined in sections 61.348 and 61.349 by April 7, 1993. Provisions under these sections require the owner or operator to report and maintain records which both identify each waste stream at a facility for streams controlled and uncontrolled for benzene emissions and include emission test results, emission measurements, annual waste quantity and other documentation related to wastewater processes. Records must be kept for at least 2 years from the date the information is recorded.

**4. Emission Reductions**

As mentioned earlier, Subpart FF requires control of benzene emissions from waste placed in storage tanks, surface impoundments, containers, individual drain systems, oil-water separators, treatment processes, and closed vent systems. However, EPA is only crediting emission reductions from the wastewater treatment processes at one of several petroleum refineries in the Trenton nonattainment area although additional reductions could be documented if needed to meet the shortfall. Complying with these provisions has resulted in VOC emission reductions of 2.37 tons per day in the New Jersey portion of the Trenton nonattainment area. EPA's technical analysis supporting these numbers is contained in the docket for this rulemaking.

*E. Summary of New Jersey's 15 Percent ROP Plan and FIP*

	Northern New Jersey NAA (tons/day)	Trenton NAA (tons/day)
<b>15 Percent ROP Plan Required Reductions</b>		
Originally required reductions .....	129.82	37.18
Changes to required reductions due to lower landfill emissions in base year inventory .....	- 1.09	-0.49
New required reductions .....	128.73	36.69
<b>Reductions from New Jersey Control Measures</b>		
Originally approved New Jersey control measure reductions .....	130.82	38.28
Benefit from landfill controls .....	0.13	0.08
Removal of enhanced I/M reductions .....	- 33.08	- 11.91
Currently achieved reductions .....	97.87	26.45
<b>Shortfall Calculations</b>		
New required reductions .....	128.73	36.69
Currently achieved reductions .....	97.87	26.45
SIP shortfall .....	30.86	10.24
<b>Proposed FIP Control Measures</b>		
New Nonroad Spark-Ignition Engines .....	16.19	5.71
Automobile Refinish Coatings .....	13.23	3.44
Architectural Coatings .....	2.31	0.89
Benzene Waste NESHAPS .....	2.37	2.37
Total FIP Measures .....	31.73	12.41
Excess Reductions .....	0.87	2.17

Additional emissions reductions have been achieved from New Jersey's architectural coatings regulation and the national emission standard for benzene waste operations, but have not been specifically enumerated in this notice since sufficient reductions have already been identified to achieve the 15 Percent ROP requirement.

**V. Conclusion**

EPA's proposed FIP addresses shortfalls in New Jersey's 15 Percent ROP Plans using measures with real air pollution reductions that are either already fully implemented or are fully adopted and in the process of being achieved. These measures will continue New Jersey's progress toward meeting

the federal air quality one-hour ozone standard and will result in cleaner, healthier air for all New Jersey residents.

Specifically, EPA is proposing a FIP for New Jersey to address the shortfall in the 15 Percent ROP Plans for the two severe ozone nonattainment areas—the Northern New Jersey area and the Trenton area. EPA'S FIP relies on



emission reductions from three EPA adopted control measures for the Northern New Jersey and Trenton nonattainment areas, emission standards for new nonroad spark-ignition engines, emission standards for automobile refinish coatings, emission standards for architectural coatings, and one additional EPA promulgated control measure for the Trenton nonattainment area, the national emission standard for benzene waste water operations at refineries. When added to those control measures already included in New Jersey's 15 Percent ROP Plans, these measures will result in sufficient VOC emission reductions to achieve the rate of progress required by the CAA.

## VI. Administrative Requirements

In order to meet the requirement of section 182(b)(1) of the Act, the proposed FIP for New Jersey relies on the VOC emission reductions which will result from the implementation of four national control programs, each of which has already been adopted by EPA. The control measures are:

Control of Emissions from Nonroad Spark-ignition Engines, 40 CFR Part 90—adopted, July 3, 1995 (60 FR 34581);

National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings, 40 CFR Part 59—adopted, September 11, 1998 (63 FR 48806);

National Volatile Organic Compounds Emission Standards for Architectural Coatings, 40 CFR Part 59—adopted, September 11, 1998 (63 FR 48848), and

National Emission Standard for Benzene Waste Operations, 40 CFR Part 61—adopted January 7, 1993 (58 FR 3072).

With these four control measures, the New Jersey FIP will be able to make up the emission reduction shortfall in the disapproved New Jersey 15 Percent ROP Plans without imposing any new regulatory burdens, since these regulations have already been adopted and are currently applicable nationally. These measures will expeditiously achieve the reductions with the least disruption and cost to the general public without the need for developing, proposing and adopting additional individual regulations for other source categories.

### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of Executive Order 12866 to prepare a regulatory impact analysis (RIA). The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may (1) have an

annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order.

Since this FIP rulemaking will not add to or change any of the requirements of the previously promulgated rules, including record keeping or reporting, and will not result in any additional costs, this FIP rulemaking is not "significant" under Executive Order 12866 and it is therefore not subject to the requirements of the Executive Order. Due to potential novel policy issues this action is being sent to OMB for review.

### B. Executive Order 12875

Under Executive Order 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, 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 consults with those governments, 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 any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 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 Executive Order 12875 do not apply to this rule.

### C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) for which the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA 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 EPA.

Since the FIP is not adding any additional economic burden, and since no new requirements are being imposed, this FIP is not economically significant under Executive Order 12866. The FIP also does not impose any new requirements that address any risk which may have a disproportional effect on children, and, as a result Executive Order 13045 is not applicable.

### D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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 consults with those governments, 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. It does not create a mandate on tribal governments, nor imposes any enforceable duties on



these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. The EPA is required to prepare a regulatory flexibility analysis, including consideration of regulatory options for reducing any significant impacts, unless the Agency determines 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.

For the purposes of analyzing whether the proposed FIP will have "a significant economic impact," EPA assumes that sources subject to the previously adopted rules are complying with them. The appropriate inquiry then is whether the terms of EPA's proposed FIP would impose a significant economic impact beyond that already imposed by the terms of the existing rules. The proposed FIP does not change the nature of the already applicable rule requirements in any way. There should, therefore, be no additional burden on regulated sources because they are already legally required to comply with the relevant federal rules. When EPA originally promulgated the four federal measures it is relying on in this FIP, EPA fully complied with the applicable provisions of the RFA and SBREFA with respect to small entities. Because today's action neither proposes any additional specific regulatory requirements, nor obligates EPA to propose requirements necessarily applicable to small entities, it will not, by itself have a significant economic impact on a substantial number of small entities.

For these reasons, pursuant to 5 U.S.C. 605(b), EPA certifies that today's proposed FIP will not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

*F. Unfunded Mandates Reform Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Reform Act"),

signed into law on March 22, 1995, the 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 in any one year. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent within statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Since this FIP rulemaking will not add to or change any of the requirements, including record keeping or reporting and will not result in any additional costs, it will not result in expenditures by state, local, and tribal governments or the private sector of \$100 million or more in any one year. Thus, this FIP is not subject to the requirements of the Unfunded Mandates Reform Act.

*G. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, with explanations when the EPA decides not to use available and applicable voluntary consensus standards.

Since this FIP does not create any new technical standards, no analysis under the NTTAA is required. It should be noted, however, that EPA performed an analysis under the NTTAA when it promulgated the final Architectural Coatings and Automobile Refinish rules which were subject to the NTTAA when promulgated. (See 63 FR 48876 and 63 FR 48814.) EPA determined that the methods proposed by EPA at that time were more appropriate than any of the analyzed alternatives.

*H. Paperwork Reduction Act*

The individual control measures that make up this FIP have information

collection requirements which were submitted to the Office of Management and Budget (OMB) when the underlying measures were published. All Paperwork Reduction Act requirements were complied with at that time. There are no additional information collection requirements in this proposed FIP and therefore, submittal of this action to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* is not required.

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 15, 1999

**Carol M. Browner,**  
*Administrator.*

For the reasons set forth in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is proposed to be 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 FF—New Jersey**

2. Subpart FF is proposed to be amended by adding new section 52.1585 to read as follows:

**§ 52.1585 Ozone 15 Percent ROP Federal Implementation Plan**

(a) The volatile organic compound emission reductions from the following control measures are used towards meeting the rate of progress requirements of the 15 percent plans.

(1) New York, Northern New Jersey, Long Island nonattainment area:

(i) Title 40, "Part 90—Control of Emissions From Nonroad Spark-Ignition Engines,"

(ii) Title 40, Part 59, Subpart B—"National Volatile Organic Compound Emission Standards for Automobile Refinishing Coatings,"

(iii) Title 40, Part 59, Subpart D—"National Volatile Organic Compound Emission Standards For Architectural Coatings," and

(2) Philadelphia, Wilmington, Trenton nonattainment area: Title 40, "Part 90—Control of Emissions From Nonroad Spark-Ignition Engines,"

(i) Title 40, Part 59, Subpart B—"National Volatile Organic Compound

Emission Standards for Automobile Refinishing Coatings.”

(ii) Title 40, Part 59, Subpart D—“National Volatile Organic Compound Emission Standards For Architectural Coatings,” and

(iii) Title 40, Part 61, Subpart FF—“National Emission Standard for Benzene Waste Operations.”

(b) Pursuant to the federal planning authority in section 110(c) of the Clean Air Act (CAA), the Administrator finds that the applicable implementation plans for the New Jersey portions of the New York, Northern New Jersey, Long Island nonattainment area, and the Philadelphia, Wilmington, Trenton nonattainment area demonstrate the 15 percent VOC rate of progress required under section 182(b)(1)(A)(1) of the CAA.

[FR Doc. 99-1482 Filed 1-21-99; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

#### 42 CFR Part 405

[HCFA-1002-NOI]

RIN 0938-A172

#### Medicare Program: Ambulance Fee Schedule; Intent To Form Negotiated Rulemaking Committee

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of Intent to form negotiated rulemaking committee and notice of meeting

**SUMMARY:** Section 4531(b) of the Balanced Budget Act (BBA) of 1997 requires that the Secretary establish a fee schedule for the payment of ambulance services under the Medicare program by negotiated rulemaking. We are required to establish a Negotiated Rulemaking Committee under the Federal Advisory Committee Act (FACA). The Committee's purpose will be to negotiate this fee schedule for ambulance services. The Committee will consist of representatives of interests that are likely to be significantly affected by the proposed rule. The Committee will be assisted by a neutral facilitator.

This notice announces our intent to establish a Negotiated Rulemaking Committee and outlines the scope of issues to be negotiated by the Committee as specified by section 4531(b)(2) of the BBA. We request public comment on whether we have

properly identified the key issues to be negotiated by the committee as well as the interests that will be affected by those issues.

**DATES:** Comments: Comments and requests for representation or for membership on the Committee will be considered if we receive them at the appropriate address provided below, no later than 5 p.m. on February 22, 1999.

**Meetings:** The first meeting will be held at Turf Valley Hotel in Ellicott City, Maryland at 9 a.m. on February 22, 23, and 24, 1999 (410) 465-1500.

**ADDRESSES:** Mail written comments and requests for representation or for membership on the Committee, or nominations of another person for membership on the Committee (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA-1002-NOI, P.O. Box 7517, Baltimore, MD 21207-5187.

If you prefer, you may deliver your written comments, applications, or nominations (1 original and 3 copies) to one of the following addresses:

Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201; or Room C5-09-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

**FOR FURTHER INFORMATION CONTACT:**

Bob Niemann (410) 786-4569 or Margot Blige (410) 786-4642 for general issues related to ambulance services. Lynn Sylvester (202) 606-9140 or Elayne Tempel (207) 780-3408, Conveners.

**SUPPLEMENTARY INFORMATION:**

**Comments, Procedures, Availability of Copies, and Electronic Access**

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA-1002-NOI. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 445-G of the Department's offices at 300 Independence Avenue, SW, Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

**Copies:** To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or

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#### I. Balanced Budget Act of 1997

Section 4531(b)(2) of the Balanced Budget Act of 1997 (BBA), Public Law 105-33, added a new section 1834(l) to the Social Security Act (the Act). Section 1834(l) of the Act mandates implementation, by January 1, 2000, of a national fee schedule for payment of ambulance services furnished under Medicare Part B. The fee schedule is to be established through negotiated rulemaking. Section 4531(b)(2) also provides that in establishing such fee schedule, the Secretary will—

- Establish mechanisms to control increases in expenditures for ambulance services under Part B of the program;
- Establish definitions for ambulance services that link payments to the type of services furnished;
- Consider appropriate regional and operational differences;
- Consider adjustments to payment rates to account for inflation and other relevant factors; and
- Phase in the fee schedule in an efficient and fair manner.

#### II. Negotiated Rulemaking Process

Section 1834(l)(1) of the Act provides that these negotiations take place within the framework of the Negotiated Rulemaking Act of 1990 (Public Law 101-648, 5 U.S.C. 561-570). Under the Negotiated Rulemaking Act, the head of an agency generally must consider whether—