

final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This Rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This Rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This Rule meets applicable standards in section 3(a) and 3(b)(2) of this Order to

minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Regulation**

In consideration of the foregoing, subpart F of part 165 of Title 33, Code

of Federal Regulations, is amended as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05-1(g), 6.04-6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105-383.

2. A new § 165.T11-064 is added to read as follows:

**§ 165.T11-064 Safety Zone: San Pedro Bay.**

(a) *Location.* All navigable waters bounded by lines connecting the following coordinates are established as safety zone:

	Latitude	Longitude
Safety Zone Point #1 .....	33°-41'.16" N	118°-13'.15" W; thence to :
Safety Zone Point #2 .....	33°-40'.45" N	118°-13'.01" W; thence to :
Safety Zone Point #3 .....	33°-40'.34" N	118°-13'.37" W; thence to :
Safety Zone Point #4 .....	33°-41'.04" N	118°-13'.51" W; thence returning to the point of beginning.

Datum: NAD 83.

(b) *Effective dates:* This regulation will be in effect from 11:59 p.m. PDT on May 17, 1999 until 11:59 p.m. PST on December 31, 1999. If the need for this safety zone terminates before December 31, 1999, the Captain of the Port will cease enforcement of this safety zone and will announce that fact by broadcast notice to mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone in prohibited for all vessels with a draft of 50 feet or more, unless specifically authorized by the Captain of the Port, for the entire time that this regulation is enforced by the Captain of the Port.

(1) All other vessels are prohibited from entering into, transiting through, or anchoring within this safety zone, unless specifically authorized by the Captain of the Port, only when actual construction activities are in progress.

(2) The Captain of the Port will announce, via Broadcast, Notice to Mariners and any other means practicable, when the area is closed to vessels less than 50 feet in draft (because construction activities are in progress).

Dated: May 17, 1999.

**G.F. Wright,**

*Captain, U.S. Coast Guard, Captain of the Port, Los Angeles, Long Beach, California.*

[FR Doc. 99-13936 Filed 6-1-99; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[RI-39-6989a; A-1-FRL-6346-5]

**Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Amendments to Air Pollution Control Regulation Number 9**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision makes amendments to 3 portions of Rhode Island's Air Pollution Control Regulation No. 9. The intended effect of this action is to modify the definition of a point source for purposes of new source review pre-construction permitting, to eliminate the requirement for monitoring of total suspended particulates (TSP) and insert requirements for addressing particles with a mean aerodynamic diameter of 10 microns or less (PM10), and to clarify the definition of Best Available Control Technology (BACT). This action is being taken in accordance with the Clean Air Act.

**DATES:** This direct final rule is effective on August 2, 1999, without further notice, unless EPA receives relevant adverse comments by July 2, 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.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100 (CAA), Boston, MA 02114-2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE-131), Washington, D.C. 20460; and the Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908-5767.

**FOR FURTHER INFORMATION CONTACT:** Ian D. Cohen, (617) 918-1655.

**SUPPLEMENTARY INFORMATION:** On August 9, 1996, the State of Rhode Island submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of amendments to Rhode Island's Air Pollution Control Regulation No. 9, which governs pre-construction new source review (NSR) permitting for new and modified sources of air pollution. These changes will revise the State Implementation plan to reflect revisions in EPA rules and policy.

## I. Background

The proposed SIP Revision will make changes to 3 portions of Rhode Island's Rule: it will remove the "dual source" definition for stationary sources, and will replace it with the "plantwide" definition; it will make PM10 the standard for particulate matter; and it will include all Federal and State rules in the definition of BACT.

### A. Federal Regulatory Framework

#### Dual Source Definition

On August 7, 1980 (45 FR 52676), EPA promulgated a rule which defined a "source" as being a "building, structure, facility, or installation." This has become known as the "dual source" definition. Rhode Island has patterned its current definition of a source after this definition. On October 14, 1981 (46 FR 50766), EPA revised its NSR regulations to allow adoption of a "plantwide" definition. This allows the entire installation to be considered a single "source" under the NSR rules.

#### Particulates

On July 1, 1987, (52 FR 24634) EPA promulgated revised National Ambient Air Quality Standards (NAAQS) for particulate matter. This changed the standard for particulates from TSP to particulates with a mean aerodynamic diameter of 10 microns or less, PM10. On June 3, 1993, EPA promulgated a further revision (59 FR 31636) which replaced TSP with PM10 in the Prevention of Significant Deterioration (PSD) program, and the NSR program for attainment area pollutants. The effect of these rules was to eliminate the need to measure TSP as a pollutant. With these amendments, Rhode Island removes all remaining references to TSP, and specifies PM10 as the standard for particulate matter.

#### BACT

Best Available Control Technology (BACT) is defined as an emissions limitation based on the maximum degree of reduction for each air pollutant which would be emitted from a proposed new stationary source or modification to an existing stationary source. BACT is decided on a case-by-case basis. The federal definition of BACT requires that BACT limits be no less stringent than any emission standard promulgated under sections 111 and 112 of the Act. Rhode Island will increase the number of regulations which will be considered to determine the minimum BACT requirement. This change will make BACT more stringent.

#### Rhode Island's Revision

Rhode Island's Revision makes several changes to Air Pollution Control Regulation Number 9, Air Pollution Control Permits. Revisions to sections 9.1.7, 9.1.18, and 9.5.1 delete the word "installation" from the definition of "stationary source." Revisions to sections 9.1.23, 9.5.1, and 9.5.2 delete all reference to TSP and make PM10 emissions the criterion used to evaluate net emissions increases for particulate matter. A revision to section 9.1.6 amends the definition of BACT. A public hearing was held on July 17, 1996. There were no adverse comments.

#### Dual Source Definition

Rhode Island's SIP revision will allow all pollutant emitting activities at a single facility, under common control, and which belong to the same industrial grouping to be counted together when computing the changes in emissions for purposes of new source review.

This action will give sources flexibility by allowing them to make modifications which may increase pollution from one emission unit at a plant, but result in a decrease in the pollutant on a plantwide basis. Through the process of "netting," in which reductions of emissions at one site within a plant can be credited against increases in emissions at another site, unnecessary new source review actions can be eliminated. This change will free time and resources for those actions which would result in overall increases of a pollutant, and therefore require more careful new source review.

Pursuant to section 193 of the Clean Air Act, the "general savings clause," EPA must determine whether this revision to Rhode Island's NSR Program ensures equivalent or greater reductions of nonattainment area pollutants. In conducting this analysis, EPA examined the impact of all revisions to Rhode Island's SIP since 1990. EPA's analysis found that Rhode Island's SIP revision will ensure equivalent or greater emissions reductions as compared with the existing Rhode Island SIP.

To determine the impact of Rhode Island's change from the dual source definition to the plantwide definition, EPA considered the number of sources effected by the change. Typically, the change in the source definition from dual source to plantwide may allow more sources to "net out" of NSR. However, the NSR rules contain numerous applicability provisions that all work together in determining if a new source is subject to NSR or if it can "net out." EPA concludes that, while the revision may allow more sources to

net out of NSR, EPA could not determine the number of sources directly effected by the revision.

In addition, EPA found that from 1990 through 1997, no new sources triggered Rhode Island's current NSR applicability requirements for major modifications. Considering the small number of sources effected by Rhode Island's permitting program, EPA concludes that relaxing one element of Rhode Island NSR applicability provisions would result in an insignificant increase in emissions, if any.

To offset the relatively small increase in emissions from the revision, EPA considered other revisions submitted by Rhode Island since 1990 that strengthen its SIP. EPA notes that as part of the plantwide definition revision submittal, Rhode Island is revising its BACT rules. The BACT revision clarifies the minimum control standards that all new major and minor source must implement. Rhode Island's BACT revision will ensure that BACT controls and procedures meet high standards of performance and result in greater emission reductions for all new sources throughout Rhode Island.

EPA concludes that the overall effect of Rhode Island's revised SIP will ensure reductions equivalent to those obtained in the existing SIP. EPA understands that the plantwide definition is a relaxation of the SIP that may cause a slight increase in emissions. However, EPA believes that Rhode Island's revision clarifying the minimum requirements for the State's BACT provisions strengthens the SIP and provides emission decreases that more than offset the emission increases from the new source definition revision. Therefore, EPA finds that approving Rhode Island's nonattainment area NSR revisions is consistent with the Act.

#### Particulates

Prior to 1987, the NAAQS for particulates was evaluated using TSP. States maintained monitoring networks to track levels of TSP. In 1987, EPA revised the NAAQS for particulates to measure PM10. This was in response to evidence that the smaller particles were responsible for the majority of the health problems which had been linked to particulates. In 1993, EPA made PM10 the standard for PSD. This revision eliminated the need for requirements for TSP monitors. Rhode Island still maintained some TSP monitors, since their state regulations still required TSP measurements for NSR purposes. The changes Rhode Island is making will eliminate those TSP requirements and make PM10 the

sole criterion for particulates. In the future, Rhode Island will have to amend these rules to incorporate EPA's recently promulgated standard for yet finer particles, so-called PM<sub>2.5</sub>. This change can be accomplished by a future SIP revision.

#### BACT

Rhode Island's current regulations define BACT so that it must be no less stringent than the emission standards found in 40 CFR parts 60 and 61. 40 CFR part 60 includes performance standards for new stationary sources; 40 CFR part 61 includes requirements from hazardous air pollutants. The revised rule will require that BACT be no less stringent than all applicable State and Federal standards. This change will make BACT more stringent by adding the new post-1990 hazardous air pollution requirements from 40 CFR part 63 and any further State controls to the floor of BACT. By making BACT more stringent, Rhode Island will require sources to consider a wider range of technologies and, when BACT is required, utilize the strongest available technology.

#### II. Final Action

EPA is approving amendments to Air Pollution Control Regulation Number 9. The EPA is publishing this rule 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 action will be effective August 2, 1999 without further notice unless the Agency receives relevant adverse comments by July 2, 1999.

If the EPA receives such comments, then EPA will publish a notice 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 on the proposed rule. 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 August 2, 1999 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for

revision to the State implementation plan 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 Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 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, 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 does not involve decisions intended to mitigate environmental health or safety risks.

##### 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. 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 August 2, 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, Best available control technology, Air pollution control, Incorporation by reference, Intergovernmental relations, Monitoring requirements, New Source Review, Particulate matter, Prevention of significant deterioration, Reporting and recordkeeping requirements.

**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: May 6, 1999.

**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 OO—Rhode Island**

2. Section 52.2070 is amended by adding paragraph (c)(54) to read as follows:

**§ 52.2070 Identification of plan**

\* \* \* \* \*

(c) \* \* \*

(54) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated 9 August 1996 submitting a revision to the Rhode Island State Implementation Plan.

(B) Changes to Air Pollution Control Regulation Number 9.

For the State of Rhode Island.

3. In § 52.2081 Table 52.2081 is amended by adding new entries to existing state citations for Air Pollution Control Regulation No 9:

**§ 52.2081— EPA—approved Rhode Island state regulations**

\* \* \* \* \*

TABLE 52.2081.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/ Unapproved sections
No. 9	Air Pollution Control Permits.	7/30/96	6/2/99	[Insert FR citation from published date].	(c)(54)	5
*	*	*	*	*	*	*

[FR Doc. 99-13028 Filed 6-1-99; 8:45 am]

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

[MA-67-7202a; A-1-FRL-6346-6]

**Approval and Promulgation of Air Quality Implementation Plans; Massachusetts and Rhode Island; Nitrogen Oxides Budget and Allowance Trading Program**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the States of Rhode Island (RI) and Massachusetts (MA). This action consists of approving regulations in RI and MA which are part of a regional nitrogen oxide (NO<sub>x</sub>) reduction program designed to reduce stationary source NO<sub>x</sub> emissions during the ozone season in the Ozone Transport Region (OTR) of the northeastern United States. (Section 184(a) of the Clean Air Act defines an ozone transport region in the northeastern United States comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated metropolitan Statistical Area that includes the District of Columbia.) Additionally, this action involves the approval of a source specific order which establishes alternative NO<sub>x</sub> reasonably available control technology (RACT) requirements for four boilers at the Rhode Island Economic Development Corporation (RIEDC). These SIP revisions were submitted pursuant to section 110 of the Clean Air Act (CAA).

**DATES:** This direct final rule is effective on August 2, 1999 without further notice, unless EPA receives adverse comment by July 2, 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.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114-2023. 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; at the Division of Air and Hazardous Materials, Rhode Island Department of Environmental Management, 291 Promenade Street, Providence, RI 02908-5767, and at the Massachusetts Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Steven A. Rapp, (617) 918-1048 or at Rapp.Steve@EPAMAIL.EPA.GOV.

**SUPPLEMENTARY INFORMATION:** On December 19, 1997, the Massachusetts (MA) Department of Environmental Protection (DEP) submitted to EPA a request to revise its State Implementation Plan (SIP). The request proposes to add 310 CMR 7.27, "NO<sub>x</sub> Allowance Program" to the SIP. Similarly, on January 20, 1999, the Rhode Island (RI) Department of Environmental Management (DEM) submitted Regulation No. 38, "Nitrogen Oxides Allowance Program," and Consent Agreement No. 96-04-AP for the Rhode Island Economic Development Corporation (RIEDC) as revisions to the Rhode Island SIP. The two regulations are part of a regional NO<sub>x</sub> reduction program designed to reduce stationary source NO<sub>x</sub> emissions during the ozone season in the OTR. The consent agreement no. 96-04-AP establishes alternative NO<sub>x</sub> reasonably available control technology (RACT) requirements for four boilers at the RIEDC facility in North Kingstown, RI.

**I. Summary of SIP Revisions****NO<sub>x</sub> RACT Consent Agreement No. 96-04-AP for RIEDC**

On September 2, 1997, EPA approved Regulation No. 27, "Control of Nitrogen Oxides Emissions" as meeting the NO<sub>x</sub> RACT requirements of sections 182(b) and (c) of the Clean Air Act and revised the Rhode Island SIP accordingly (see 62 FR 46202). Section 27.4.8 allows RI DEM to relax the RACT requirements on a case-by-case basis, upon approval by EPA. The NO<sub>x</sub> RACT Consent Agreement No. 96-04-AP for RIEDC represents a case-specific alternative RACT determination as provided for under section 27.4.8.

**Ozone Transport Region Nitrogen Oxides Allowance Program in Massachusetts and Rhode Island**

Sections 182(b)(1)(A) and 182(c)(2)(A) of the CAA require States with areas classified as "moderate," "serious," and "severe" ozone nonattainment to submit revisions to their applicable SIPs to

provide for specific annual reductions in emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>) as necessary to attain the national primary ambient air quality standard for ozone. Additionally, section 110 of the Act requires that such plans be subject to public notice, comment, and hearing procedures and that the States adopt and submit the plans to EPA.

As part of MA's and RI's efforts to meet these requirements, the States have submitted regulations which impose statewide caps on NO<sub>x</sub> emissions from certain industrial sectors (e.g., electric utility boilers, industrial boilers, combustion turbines, etc.). RI's Regulation No. 38 and MA's Regulation 310 CMR 7.27 are based closely on a model rule which was developed using the EPA's economic incentive program rules (67 FR 16690, April 7, 1994) as the general regulatory framework. This model rule was developed by the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA) and is entitled, "NESCAUM/MARAMA NO<sub>x</sub> Budget Model Rule," issued on May 1, 1996. The basis for the model rule was a memorandum of understanding entitled, "Memorandum of Understanding Among the States of the Ozone Transport Commission on Development of a Regional Strategy Concerning the Control of Stationary Source Nitrogen Oxide Emissions," dated September 27, 1994, otherwise known as the OTC MOU.

RI's and MA's NO<sub>x</sub> budget regulations set statewide, five month (May 1 through September 30) NO<sub>x</sub> "budgets," or mass emission limits in tons, to reduce the aggregate emissions from large fossil fuel fired combustion equipment by as much as 75% from a 1990 baseline. In order to achieve the aggregate NO<sub>x</sub> reductions, the regulations proportion NO<sub>x</sub> "allowances" (in tons) to the facilities with emission units subject to the program. The regulations require each owner or operator of each unit to hold, by December 31 of each year, at least as many NO<sub>x</sub> allowances in their compliance account as total tons of NO<sub>x</sub> emitted during the previous five month ozone season. Under these regulations, NO<sub>x</sub> allowances may be bought or sold and unused allowances may be banked from one year to another in a central registry administered by EPA. The program requires NO<sub>x</sub> emissions to be monitored by either a continuous emission monitoring system (CEMS) or equivalent, although the use of alternatives is allowed where approved