

amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995, unless, by no later than October 11, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The 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. If no such comments are received, the public is advised that this action will be effective November 13, 1995.

#### Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over population of less than 50,000.

Because this action does not create any new requirements but simply includes additional information into the SIP, I certify that it does not have a significant impact on any small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

#### Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The negative declarations being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this [proposed or final] action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

The OMB has exempted this action from review under Executive Order 12866.

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

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

Dated July 10, 1995.

**Felicia Marcus**,  
*Regional Administrator.*

Subpart F of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

##### Subpart F—California

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

**Authority:** 42 U.S.C. 7401-7671q.

2. Section 52.220 is amended by removing paragraph (c)(198)(ii).

3. Subpart F is amended by adding § 52.222 to read as follows:

##### § 52.222 Negative declarations.

(a) The following air pollution control districts submitted negative declarations for volatile organic compound source categories to satisfy the requirements of section 182 of the Clean Air Act, as amended. The following negative declarations are approved as additional information to the State Implementation Plan.

(1) Mojave Desert Air Quality Management District.

(i) Natural Gas and Gasoline Processing Equipment and Chemical

Processing and Manufacturing were submitted on July 13, 1994 and adopted on May 25, 1994.

(ii) Asphalt Air Blowing was submitted on December 20, 1994 and adopted on October 26, 1994.

(iii) Vacuum Producing Devices or Systems was submitted on December 29, 1994 and adopted on December 21, 1994.

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#### 40 CFR Part 52

[CT-18-1-6482a; A-1-FRL-5271-3]

#### Approval and Promulgation of Air Quality Implementation Plans—Connecticut; PM10 Attainment Plan and Contingency Measures for New Haven

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut to satisfy certain federal requirements for the New Haven initial PM10 nonattainment area. The purpose of this action is to bring about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10). EPA is also approving reasonable available control measures (RACM) and contingency measures for the New Haven initial PM10 moderate nonattainment area as established in this SIP revision, since Connecticut has demonstrated implementation of RACM will attain and maintain the PM10 NAAQS. Additionally, EPA is approving Connecticut's adoption of the PM10 NAAQS and emergency episode regulation. This action is being taken under the Clean Air Act.

**DATES:** This final rule is effective November 13, 1995, unless notice is received by October 11, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, EPA-New England, JFK Federal Building (AAA), Boston, MA 02203-2211. Copies of the documents relevant to this action are available for public inspection by appointment during normal business hours at the Air,

Pesticides and Toxics Management Division, EPA-New England, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, US Environmental Protection Agency, 401 M Street, SW, (LE-131), Washington, DC 20460; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Cairns, (617) 565-4982.

**SUPPLEMENTARY INFORMATION:**

**Background**

Part D, Subparts 1 and 4 of Title I of the Clean Air Act Amendments of 1990 (hereafter referred to as "the Act") set out air quality planning requirements for moderate PM10 nonattainment areas. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM10 nonattainment area SIP requirements. [See, generally, 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).] Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this approval and the supporting rationale.

By November 15, 1991, States containing initial moderate PM10 nonattainment areas were required to submit, among other things, the following items. [See §§ 172(c), 188, and 189 of the Act.]

- Provisions to assure that reasonably available control measures (RACM)—including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)—shall be implemented no later than December 10, 1993;
- Either a demonstration, including air quality modeling, that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;
- Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and
- Provisions to assure that the control requirements applicable to major stationary sources of PM10 also apply to major stationary sources of PM10

precursors except where the Administrator determines that such sources do not contribute significantly to PM10 levels which exceed the NAAQS in the area.

Some provisions were due at a later date. States with initial moderate PM10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM10 by June 30, 1992. [See § 189(a).] Such States also must submit contingency measures by November 15, 1993—which become effective without further action by the State or EPA—upon a determination by EPA that the area has failed to achieve RFP or to attain the PM10 NAAQS by the applicable statutory deadline. [See § 172(c)(9) and 57 FR 13543-44.]

**Summary of Connecticut's SIP Revision**

On March 24, 1994, the State of Connecticut submitted a formal revision to its State Implementation Plan (SIP). This SIP revision consists of 7 consent orders and corresponding compliance plans, which contain enforceable control measures to reduce the re-entrainment of fugitive emissions from roads in New Haven. The implementation of these control measures by the end of 1994 will reduce PM10 emissions by 157 tons below the uncontrolled levels. Accordingly, CT DEP has adopted reasonable available control measures (RACM) for PM10 and through dispersion modeling has demonstrated that these control measures are sufficient to expeditiously attain PM10 NAAQS in New Haven. As required, the road dust control measures implemented through the consent orders also assure maintenance of the 24-hour PM10 NAAQS 3 years beyond the December 31, 1994 statutory attainment date. Additionally, Connecticut's SIP revision provides for the implementation of contingency measures, which were due to EPA by November 15, 1993. CT DEP submitted a supplement on May 20, 1994, which relies on a conservative strategy from one of the consent orders to satisfy the requirements for § 172(c)(9) contingency measures. This submittal demonstrates that the City of New Haven's controls will go beyond RACM and these excess reductions will serve as Connecticut's contingency measures.

These submittals complete the attainment plan and contingency measures for New Haven by meeting the applicable requirements to demonstrate attainment of the PM10 NAAQS by December 31, 1994 and maintenance of those standards for 3 years beyond that. These requirements are outlined in Part

D, Subparts 1 and 4 of the Act and elaborated upon in the General Preamble.

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals. (See 57 FR 13565-66.) Specific requirements and the rationale for EPA's proposed action are detailed in the Technical Support Document (TSD), dated March 27, 1995, accompanying this approval action and are summarized, but not restated, here in the following paragraphs. Interested parties should consult the TSD or Connecticut's submittals for details on the aspects of the New Haven SIP.

*Procedural Background*

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. Section 172(c)(9) of the Act also requires that plan provisions for nonattainment areas meet the applicable provisions of § 110(a)(2).

EPA must also determine whether a submittal is complete and therefore warrants further EPA review and action. (See § 110(k)(1) and 57 FR 13565.) EPA's completeness criteria for SIP submittals are set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). EPA attempts to make completeness determinations within 60 days of receiving a submittal. However, a submittal is deemed complete by operation of law if EPA does not make a completeness determination by 6 months after receipt of the submittal.

The State of Connecticut held public hearings on August, 20, 1993, October 18, 1993, December 29, 1993, and January 28, 1994 to entertain public comment on the various components of the PM10 attainment plan, consent orders, and compliance plans proposed for New Haven. The Commissioner of CT DEP (the Governor's designee) submitted the plans and consent orders to EPA on March 24, 1994 as a proposed revision to the SIP. On May 20, 1994, the Commissioner further submitted proposed PM10 contingency measures for New Haven.

On March 18, 1993, the State of Connecticut held a public hearing to amend its air quality standards and emergency episode regulations

concerning PM10. The CT DEP adopted the amendments upon filing with the Secretary of State on April 23, 1993, and the EPA received them as a proposed revision to the SIP on March 16, 1995.

EPA reviewed all submittals to determine completeness in accordance with criteria outlined in 40 CFR Part 51 Appendix V and as amended by 57 FR 42216 (August 26, 1991). In letters dated May 12, 1994, July 2, 1994, and April 5, 1995, EPA-New England informed the Connecticut Governor's designee that the respective submittals were determined complete and explained how the review process would proceed.

*Accurate Emissions Inventory*

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because such inventories are necessary to an area's attainment demonstration, the emissions inventories must be received with the attainment SIP submission. (See 57 FR 13539.)

CT DEP determined that the PM10 nonattainment problem in New Haven was a local problem in the area around the Stiles Street and Yankee Gas monitoring sites. Mud and dirt from the

unpaved areas in their vicinity are chronically dragged out onto area streets and are re-entrained by local traffic, contributing to high levels of airborne PM10 and therefore exceedences at nearby monitors. Corroborating CT DEP's observations and conclusions, Midwest Research Institute (MRI) made an independent general assessment of the Stiles Street area, as presented in a revised final report titled *Recommendations for an Approvable SIP Revision: Revised Final Report* (September 10, 1993).

CT DEP submitted an emissions inventory for baseyear 1990. Due to the localized and unique nature of the complex fugitive dust sources, a micro-scale inventory was developed for this section of New Haven, while the remainder of the inventory was developed on a larger scale from county or town-wide data. Moreover, Connecticut DEP's dispersion modeling confirms what its inventory shows: point sources do not contribute significantly to PM10 NAAQS violations in this airshed. EPA considers control measures which do not expedite attainment, or affect sources that contribute to PM10 levels, unreasonable even though technologically and economically feasible.

Entrainment of dust by vehicular traffic contributed 2407 tons of the 1990 baseyear actual PM10 emissions, which totalled 2990 tons. Point sources contributed 120 tons and area sources

added 463 tons more. EPA is satisfied that Connecticut's inventory is sufficiently accurate and comprehensive for determining the adequacy of the New Haven attainment demonstration consistent with the requirements in § 172(c)(3) and § 110(a)(2)(k). Therefore, EPA is approving this emissions inventory, the details of which are embodied in the TSD.

*RACM/RACT*

As noted, the initial moderate PM10 nonattainment areas were required to submit provisions to assure that RACM/RACT are implemented no later than December 10, 1993. (See §§ 172(c)(1) and 189(a)(1)(C).) The General Preamble contains a detailed discussion of EPA's interpretation of the RACM/RACT requirement. (See 57 FR 13539-45 and 13560-61.)

CT DEP attributed the highest PM10 contributions in the New Haven area to mud and dirt from unpaved areas being dragged out onto area streets and re-entrained by local traffic. Also, frequent travel across private unpaved storage areas and emissions from loading and unloading of shredded scrap metal contribute to excessively high ambient PM10 levels in the area.

Accordingly, CT DEP negotiated and executed a set of 7 consent orders and compliance plans to implement RACM for PM10 area sources in New Haven. These orders and their effective dates are as outlined below.

CONSENT ORDERS FOR NEW HAVEN INITIAL MODERATE PM10 NONATTAINMENT AREA

Order No.	State of Connecticut vs.	Effective date
8073 .....	City of New Haven .....	September 24, 1993.
8074 .....	Waterfront Enterprises, Inc. ....	November 5, 1993.
8075 .....	Laydon Construction .....	September 21, 1993.
8076 .....	United Illuminating Company .....	December 2, 1993.
8076c .....	M. J. Metals, Inc. ....	June 18, 1993.
8078 .....	New Haven Terminal, Inc. ....	November 15, 1993.
8079 .....	Yankee Gas Services Company .....	September 24, 1993.

Specifically, the control measures adopted accomplish the following.

- All unpaved private industrial travel lanes and unpaved public roads in the Stiles Street area will be eliminated.
- All paved private travel lanes will be delineated with concrete rails or other effective borders for the purpose of eliminating off-pavement travel and reducing the transfer of exposed soil to adjacent road surfaces.
- Private travel roads will be posted with speed limit and directional signing to reduce additional fugitive emissions and vehicle miles traveled (VMT).

- All open storage lots will be covered with gravel to a minimum depth of 2 inches.
- All areas not used for travel, storage, or parking (or any other active use) will be mulched and vegetated or covered with gravel and rendered inaccessible to vehicular travel.
- Any significant piles of sand, scrap metal, or other erodible materials will be covered, sheltered with a wind break, and/or operated in conjunction with a wet suppression system.
- Segments of some public roads in the area will be lined with guard rails or other barriers to prevent further off-pavement travel.

- All paved private travel lanes and city streets in the Stiles Street area will be put on a maintenance plan, which includes periodic street sweeping.
- Each consent order requires a schedule and written plan detailing control measures designed to reduce PM10 emissions for each party's responsibility. CT DEP included these orders and plans in the March 24, 1994 submittal and EPA will incorporate them into Connecticut's SIP. Approval of the SIP will make these consent orders and compliance plans federally enforceable. EPA is therefore approving the control strategy as meeting RACM/RACT requirements.

### Demonstration

As noted, initial moderate PM10 nonattainment areas were to submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994. [See § 189(a)(1)(B) of the Act.] CT DEP submitted an attainment demonstration based on dispersion modeling in accordance with EPA's "Guideline on Air Quality Modeling (Revised)" (GAQM) (40 CFR Part 51 Appendix W) to model New Haven for a determination of PM10 design concentrations.

The 24-hour PM10 NAAQS is 150 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above  $150 \mu\text{g}/\text{m}^3$  is equal to or less than one. [See 40 CFR 50.6.] Based on modeling 5 years of representative meteorological data and projecting growth on a controlled emissions inventory for 1994, the 24-hour design concentration for New Haven was predicted as  $135 \mu\text{g}/\text{m}^3$ . This demonstrates that implementation of RACM prescribed for New Haven will attain the 24-hour PM10 NAAQS. The annual PM10 NAAQS is attained when the expected annual arithmetic mean concentration is less than or equal to  $50 \mu\text{g}/\text{m}^3$ . The predicted annual design concentration of  $46 \mu\text{g}/\text{m}^3$  demonstrates that New Haven will also attain the annual PM10 NAAQS.

CT DEP's submittal further projected emissions for New Haven inventory to 1997 in order to demonstrate maintenance. Further dispersion modeling indicates that the control strategy, summarized above in the section titled RACT/RACM, will maintain air quality levels less than the PM10 NAAQS at least through December 31, 1997. This demonstration meets the EPA requirement for a minimum 3-year maintenance projection beyond the statutory attainment deadline. The TSD provides more details on EPA's review of the maintenance demonstration and the control strategy used.

### PM10 Precursors

The control requirements applicable to major stationary sources of PM10 also apply to major stationary sources of PM10 precursors unless EPA determines such sources do not contribute significantly to PM10 levels in excess of the NAAQS in that area. [See § 189(e) of the Act.]

CT DEP's analysis of air quality and emissions data for New Haven

demonstrates that PM10 nonattainment in New Haven is a micro-scale fugitive dust problem. EPA agrees that gaseous emissions, such as VOC, SO<sub>2</sub>, and NO<sub>2</sub>, do not contribute to PM10 levels above the NAAQS in New Haven. Consequently, stationary sources in New Haven need no further emission controls for possible PM10 precursors. The TSD accompanying this notice contains a further discussion of the data and analyses addressing the contribution of possible precursor sources in this area.

### Quantitative Milestones and Reasonable Further Progress

Section 171(1) of the Act defines reasonable further progress (RFP) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date. The PM10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by December 31, 1994. (See § 189(c) of the Act.)

In implementing RFP for this initial moderate area, EPA has reviewed the attainment demonstration and control strategy for the area to determine whether annual incremental reductions different from those provided in the SIP should be required in order to ensure attainment of the PM10 NAAQS by December 31, 1994. [See § 171(1).] Even though Connecticut's PM10 SIP does not require that all measures required for attainment be fully implemented effective December 1, 1993, CT DEP's dispersion modeling aptly confirms that implementation of RACM will bring about attainment by December 31, 1994, the statutory attainment date for initial moderate PM10 nonattainment areas. (See § 188(c)(1).) EPA keys the first milestone to the SIP revision containing control measures which will result in emission reductions (57 FR 13539) and, since the PM10 attainment date is less than 3 years from the actual submittal date of CT DEP's SIP revision, EPA is accepting CT DEP's SIP revision as its first quantitative milestone for New Haven. Subsequently, until New Haven is redesignated to attainment, Connecticut's SIP commits CT DEP to submit quantitative milestone and RFP reports to EPA every 3 years. EPA is therefore approving Connecticut's approach to quantitative milestones and RFP.

### Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA. (See §§ 172(c)(6) and 110(a)(2)(A) and 57 FR 13556.) The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (See 57 FR 13541.) Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP. (See § 110(a)(2)(C).)

The particular control measures contained in the SIP are summarized above under the section headed RACM/RACT. These control measures are defined and detailed in the compliance plans required under each negotiated consent order. Approval of this SIP submittal and incorporation by reference will make the consent orders, along with the control measures prescribed and contained therein, for New Haven federally enforceable.

### Contingency Measures

As provided in § 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. (See generally 57 FR 13543-44.) These measures were required to be submitted by November 15, 1993 for the initial moderate nonattainment areas. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM<sub>10</sub> NAAQS by the applicable statutory deadline.

Connecticut's May 20, 1994 supplemental submittal for New Haven addressed contingency measures required under § 172(c)(9), since the submittal on March 24, 1994 did not. It relies on a conservative strategy through the consent order and compliance plan for the City of New Haven. This submittal demonstrates that the City of New Haven is controlling PM<sub>10</sub> emissions beyond RACM. CT DEP did not consider (i.e., take credit for) these additional measures in the 1994 attainment year or 1997 maintenance year modeling demonstrations. Specifically, these measures consist of the following:

- Installing granite curbs along Waterfront Street between Forbes Avenue and Alabama Street;
- Planting vegetation in barren areas between Waterfront Street and the I-95 exit ramp to the east, including new trees to act as permanent barriers from illegal parking;

- Reconstructing Stiles Street, including installation of sewers, catch-basins, curbs, and sidewalks on both sides of the street;
- Installing granite curbing along both sides of Connecticut Avenue from the edge of existing curbing north to Albia Street and south to connect with the existing curbing; and
- Repaving Alabama Street from Waterfront Street to its end at the east, including installation of sewers, catch-basins, curbs, handicapped curb cuts at the corners, and vegetation between curb and lot lines, and fencing where necessary.

Contingency emissions reductions should be approximately equal to the emissions reductions necessary to demonstrate RFP for one year or 25 percent for the initial moderate nonattainment areas. (See 57 FR 13543-4.) CT DEP's contingency measures submittal estimates the emissions reductions due to these measures to be 84 tons per year. Since total emission reductions required to demonstrate attainment for New Haven by December 31, 1994 are 157 tpy, the estimated 84 tpy emissions reduction (or 53.5 percent) from the control measures found in the control plan for the City of New Haven will exceed one year or 25 percent of RFP.

EPA finds that CT DEP's contingency measures for New Haven fulfill § 172(c)(9) requirements.

#### Other SIP Requirements

CT DEP has amended Sections 22a-174-24(f) and -24(g) "Connecticut primary and secondary ambient air quality standards for particulate matter" and 22a-174-6(a) and -6(b) "Air Pollution" emergency episode procedures." These regulations now reflect the PM<sub>10</sub> NAAQS and contain the PM<sub>10</sub> alert, warning and emergency levels that appear in EPA's "Example Regulations for Prevention of Air Pollution Emergency Episodes" (Appendix L to Part 51). There only exist two outstanding definitions which Connecticut should adopt to complete all § 110 requirements: "particulate matter emissions" and "PM<sub>10</sub> emissions," but their absence here does not preclude EPA's approval of all else detailed above.

Under § 188 of the Act, if an initial moderate nonattainment area does not meet the December 31, 1994 attainment deadline, the area is normally "bumped up" to a serious non-attainment area and must implement additional control measures and must also submit another SIP revision. However, if an area can show, among other things, that the area had no more than one exceedance at any

monitoring site in the nonattainment area in the year preceding the extension year, the area may apply for, and obtain a 1-year extension of the attainment date. (EPA may grant a total of two 1-year extensions of the attainment date to a qualifying area.) Based on air quality data for 1992-94, New Haven did not meet the December 31, 1994 attainment deadline, mainly because of a delay in implementing RACM. However, since mid-1994, when the implementation of New Haven's prescribed control measures were mostly underway and in some cases complete, New Haven has not seen further exceedences of the PM<sub>10</sub> NAAQS. Actually, there has been a dramatic decrease in monitored PM<sub>10</sub> levels at the Yankee Gas monitor since then. On March 31, 1995, Connecticut DEP applied for a 1-year extension of the attainment deadline for New Haven, and EPA is granting the extension in a separate notice elsewhere in today's **Federal Register**. This, however, does not preclude EPA from approving the attainment plan and contingency measures for New Haven.

#### Final Action

EPA is approving the SIP revisions submitted to the EPA on March 24 and May 20, 1994. These revisions include 7 consent orders (listed previously in the table in the section titled RACM/RACT) and compliance plans which the CT DEP negotiated and executed to bring about attainment of the PM<sub>10</sub> NAAQS for the New Haven initial moderate PM<sub>10</sub> nonattainment area. These orders and plans impose RACM and delineate contingency measures for New Haven. Among other things, the State of Connecticut has demonstrated that, with the implementation of RACM, the New Haven initial moderate PM<sub>10</sub> nonattainment area attains the PM<sub>10</sub> NAAQS and will maintain air quality levels below the NAAQS at least through December 31, 1997.

EPA is also approving two amendments to the Regulations of Connecticut State Agencies concerning abatement of air pollution: adoption of the PM<sub>10</sub> NAAQS in amended Sections 22a-174-24(f) and -24(g) "Connecticut primary and secondary ambient air quality standards for particulate matter" and emergency episodes for PM<sub>10</sub> in amended Sections 22a-174-6(a) and -6(b) "Air Pollution" emergency episode procedures", both received by EPA on March 16, 1995 and effective in the State of Connecticut on July 7, 1993.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate

document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 13, 1995 unless adverse or critical comments are received by October 11, 1995.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The 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. If no such comments are received, the public is advised that this action will be effective on November 13, 1995.

Under the Regulatory Flexibility Act, 5 USC § 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 USC §§ 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Under §§ 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under § 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

SIP approvals under § 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 US 246, 256-66 (S.Ct. 1976); 42 USC § 7410 (a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

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.

Under § 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1995. 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 § 307(b)(2)).

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

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

**Note:** Incorporation by reference of the State Implementation Plan for the State of

Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 26, 1995.

**John P. DeVillars,**  
*Regional Administrator, EPA-New England.*

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 USC 7401-7671q

**Subpart H—Connecticut**

2. Section 52.370 is amended by adding paragraph (c)(68) to read as follows:

**§ 52.370 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(68) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on March 24, 1994, May 20, 1994, and March 4, 1994.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated March 24, 1994 submitting a revision to the Connecticut State Implementation Plan.

(B) Letter from the Connecticut Department of Environmental Protection dated May 20, 1994 submitting a supplemental revision to the Connecticut State Implementation Plan.

(C) State Order No. 8073: State of Connecticut vs. City of New Haven (effective September 24, 1993) and attached plan titled "Remedial Action Plan for Prevention of Airborne Particulate Matter and Fugitive Discharge of Visible Emissions in the Alabama Street/East Shore Parkway Area of New Haven."

(D) State Order No. 8074: State of Connecticut vs. Waterfront Enterprises, Inc. (effective November 5, 1993) and attached plan titled "Proposed Operation Plan in Response to Unilateral Order (September 20, 1993)."

(E) State Order No. 8075: State of Connecticut vs. Laydon Construction, (effective September 21, 1993) and attached plan titled "Plan for Control of Fugitive Emissions of PM10 (September 21, 1993)."

(F) State Order No. 8076: State of Connecticut vs. United Illuminating Company (effective December 2, 1993) and attached plan titled "Remediation Plan for Fugitive Emissions: Alabama Street and Connecticut Avenue, New Haven, Connecticut (November 19, 1993)."

(G) State Order No. 8076c: State of Connecticut vs. M. J. Metals, Inc. (effective June 18, 1993).

(H) State Order No. 8078: State of Connecticut vs. New Haven Terminal, Inc. (effective November 15, 1993) and attached plan titled "Fugitive Dust Control Plan (Revised January 19, 1994)."

(I) State Order No. 8079: State of Connecticut vs. Yankee Gas Services Company (effective September 24, 1993) and attached plan titled "Revised Compliance Plan for Consent Order No. 8079 (August 31, 1993)."

(J) Letter from the Connecticut Department of Environmental Protection dated March 4, 1994 (received March 16, 1995) submitting two amendments to the Regulations of Connecticut State Agencies concerning abatement of air pollution: amended Sections 22a-174-24(f) and -24(g) "Connecticut primary and secondary ambient air quality standards for particulate matter" and amended Sections 22a-174-6(a) and -6(b) "'Air Pollution' emergency episode procedures" (both effective July 7, 1993).

(K) Amended Regulations of Connecticut State Agencies: amended Sections 22a-174-24(f) and -24(g) "Connecticut primary and secondary ambient air quality standards for particulate matter" and amended Sections 22a-174-6(a) and -6(b) "'Air Pollution' emergency episode procedures" (both effective July 7, 1993).

(ii) Additional materials.

(A) An attainment plan and demonstration which outlines Connecticut's control strategy and for attainment and maintenance of the PM10 NAAQS, implements and meets RACM and RACT requirements, and provides contingency measures for New Haven.

(B) Nonregulatory portions of the submittal.

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BILLING CODE 6560-50-P

**40 CFR Part 52**

[DE22-1-7160a, DC19-1-7159a, MD36-1-7161a, PA48-1-7162a, VA42-1-7163a; FRL-5291-8]

**Approval and Promulgation of Air Quality Implementation Plans; Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia; Revisions to the State Implementation Plans (SIPs) Addressing Ozone Monitoring**

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