CONNECTICUT-CARBON MONOXIDE—Continued

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Andover Town, Bolton Town, Ellington Town, Hebron Town, Somers Town, Tolland Town, and Vernon Town				
New Haven—Meriden—Waterbury Area:				
Fairfield County (part)	12/4/98	Attainment		
Shelton City				
Litchfield County (part)	12/4/98	Attainment		
Bethlehem Town, Thomaston Town, Watertown, Woodbury Town				
New Haven County	12/4/98	Attainment		
New York-N. ew Jersey-Long Island Area:				
Fairfield County (part)	5/10/99	Attainment		
All cities and townships except Shelton City				
Litchfield County (part)	5/10/99	Attainment		
Bridgewater Town, New Milford Town				
AQCR 041 Eastern Connecticut Intrastate	.....	Unclassifiable/ Attainment		
Middlesex County (part)				
All portions except cities and towns in Hartford Area				
New London County				
Tolland County (part)				
All portions except cities and towns in Hartford Area				
Windham County				
AQCR 044 Northwestern Connecticut Intrastate	.....	Unclassifiable/ Attainment		
Hartford County (part) Hartland Township				
Litchfield County (part)				
All portions except cities and towns in Hartford, New Haven, and New York Areas				

[1] This date is November 15, 1990, unless otherwise noted.

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[FR Doc. 99–2976 Filed 3–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–7209a; A–1–FRL–6225–2]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; 15 Percent Rate-of-Progress and Contingency Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Connecticut. These revisions establish 15 percent rate-of-progress (ROP) and contingency plans for ozone nonattainment areas in the State. The intended effect of this action is to approve these plans in accordance with the Clean Air Act.

EFFECTIVE DATE: This rule is effective on May 10, 1999.

ADDRESSES: 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; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

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

SUPPLEMENTARY INFORMATION: Section 182(b)(1) of the Act requires ozone nonattainment areas classified as moderate or above to develop plans to reduce VOC emissions by 15 percent from 1990 baseline levels. There are two ozone nonattainment areas in Connecticut, one classified as a serious area, the other as a severe area. The areas are referred to as the Connecticut portion of the New York, New Jersey, Connecticut severe area (the ''NY–NJ–CT area''), and the Greater Hartford serious ozone nonattainment area (the ''Hartford area''). The State is, therefore, subject to the 15 percent ROP requirement.

I. Background

On October 24, 1997 (62 FR 55368), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed conditional approval of the State's 15 percent ROP and contingency plans. The formal SIP revision was submitted by Connecticut on December 30, 1994. The conditions listed in the proposed approval of the Connecticut 15 percent ROP plans, and the status of each, are as follows:

Condition 1—By January 1, 1998, Connecticut must begin testing motor vehicles using the ASM 25/25 program which is described within the State's August 22, 1997 letter to EPA.

Status of Condition 1—Connecticut began its motor vehicle emission testing program on January 2, 1998, thereby meeting the requirements of condition 1.

Condition 2—By April 1, 1998, Connecticut must submit revised 15 percent and contingency plans as revisions to the State's SIP which show that the emission reductions from the ASM 25/25 automobile emission testing program, when coupled with emission reductions from other measures, will meet the emission reduction goals of these requirements.

Status of Condition 2—On May 8, 1998, Connecticut submitted revisions to its 15 percent ROP and contingency plans which adequately demonstrate that the required level of emission reductions will be achieved. The submittal included a revised emission target level calculation performed in accordance with EPA guidance

memoranda of August 13, 1996, entitled ''Date by which States Need to Achieve all the Reductions Needed for the 15% Plan from I/M and Guidance for Recalculation'' and December 23, 1996, entitled ''Modeling 15% VOC Reduction(s) from I/M in 1999—Supplemental Guidance.'' The revised calculations submitted by the State indicate that sufficient emission reduction surpluses are available to cover the contingency measure emission reduction obligation for each nonattainment area. The State's original proposal to use NO_X emission reductions from stationary sources to form a portion of the contingency plan for the Greater Hartford area is therefore not required. The contingency plan for each of the State's ozone nonattainment areas consist of excess emission reductions achieved by the measures identified within the State's 15 percent ROP plans.

The State's May 8, 1998 submittal contained a minor adjustment to the credit claimed from national rules for architectural and industrial maintenance coatings, and incorporated into its 15 percent ROP plans emission reductions expected from a national rule on consumer and commercial products of 0.9 tons per summer day (tpsd) in the State's portion of the NY–NJ–CT area, and reductions of 2.7 tpsd in the Greater Hartford area. The State properly determined the amount of emission reduction which will accrue from implementation of these two national rules. The State's submittal also made an adjustment to the reporting frequency contained within the cutback asphalt rule effectiveness improvement portion of the 15 percent plan. EPA approves this revision in light of support documentation submitted by the State verifying the compliance status of municipalities with this rule.

Although the State's submittal was made later than the date specified in EPA's proposed conditional approval, the content of the submittal adequately addresses EPA's concern's as expressed in the condition.

Condition 3—By April 1, 1998, Connecticut must submit a revised I/M program as a revision to the State's SIP.

Status of Condition 3—On June 24, 1998, Connecticut submitted a revised automobile emissions inspection and maintenance program to EPA as a revision to the State's SIP. Although the State's submittal was made later than the date specified in EPA's proposed conditional approval of the Connecticut 15 percent plans, the content of the submittal adequately addresses EPA's concerns. A final conditional approval of the Connecticut I/M program is being published in the rules section of today's **Federal Register**.

EPA has considered whether the 15 percent plans for the State should also be conditionally approved, and determined that full approval of the 15 percent plans is more appropriate. The State began its motor vehicle emissions testing program on January 2, 1998, and has continued to operate the program since that time without encountering major difficulties. It is the testing of motor vehicles and subsequent requirement that high polluting vehicles be repaired to emit less pollution that achieves the emission reductions attributable to automobile I/M programs. The conditions contained within EPA's approval of the Connecticut I/M program pertain to requirements that the State fully document that the State's I/M program complies with the provisions of section 182(c)(3) of the CAA. Achievement of these conditions, although necessary for full approval of the I/M program, are not prerequisite to achieving the emission reductions from the program on which these 15 percent plans rely. The I/M program as currently implemented is accomplishing the necessary emission reductions to support the 15 percent plans, and the largely procedural requirements of EPA's conditions on the I/M program are not necessary to achieve that level of emissions control.

A final conditional approval of Connecticut regulations which define reasonably available control technology (RACT) for specific categories of industrial sources that emit VOCs is being published in the rules section of today's **Federal Register**. Although the Connecticut 15 percent ROP plans rely on emission reductions from the VOC RACT rules which are being conditionally approved in today's **Federal Register**, the achievement of the emission reductions from these rules which Connecticut has relied upon within its 15 percent ROP plans in no way depends upon the fulfillment of the conditions outlined within that final rule. The conditions in the VOC RACT final rule relate to the State's obligation to ensure that its SIP complies with the provisions of section 183(b) of the CAA pertaining to new control technique guidelines (CTGs). The State has not assumed emission reductions from new CTGs within its 15 percent ROP plans. Therefore, EPA will not condition full approval of the State's 15 percent ROP plans upon fulfillment of the conditions outlined within today's document regarding the State's VOC RACT rules.

The State of Connecticut has addressed the conditions contained within the EPA's October 24, 1997 proposed conditional approval. Additionally, the conditions EPA is attaching to approval of Connecticut's I/M and VOC RACT regulations do not effect the emissions reductions on which these 15 percent plans rely. Accordingly, EPA believes that full approval of the State's 15 percent plans is appropriate.

Transportation Conformity Budgets

Under EPA's transportation conformity rule the 15 percent plans are a control strategy SIP. The plans for Connecticut establish VOC emission budgets for on-road mobile sources within the respective nonattainment areas. These plans do not establish NO_X emission budgets for on-road mobile sources. However, Connecticut has submitted a complete SIP revision consisting of reasonable further progress plans to achieve a 9 percent emission reduction in ozone precursor emissions after 1996 (post-96 plans). Connecticut submitted post-96 plan to EPA on December 31, 1997. These revisions establish the VOC and NO_X emission budgets for 1999 shown in Table 1.

TABLE 1.—1999 EMISSION BUDGETS FOR ON-ROAD MOBILE SOURCES

Nonattainment area	VOC Budget tons per summer day	NO_X Budget tons per summer day
CT portion of NY–NJ–CT area	20.5	39.4
Greater Hartford area	61.6	125.3

EPA believes that the VOC and NO_X budgets established by the post-96 plans for Connecticut are currently the controlling budgets for conformity determinations for 1999 and later years. The budgets in the post-1996 plans specifically address the 1999 reasonable further progress milestone year, whereas the 15 percent plan establishes a budget for the prior reasonable further progress milestone year of 1996. The time period for the budget in the 15 percent plans has passed. Additionally, the post-96 plan establishes a more stringent budget.

EPA's rationale for granting approval to these plans, and the details of the State's submittal are contained in the NPR and the accompanying technical support document and will not be restated here.

II. Public Comments and EPA Responses

EPA received a letter in response to the October 24, 1997 NPR from the Connecticut Department of

Environmental Protection (CT–DEP). The following discussion summarizes and responds to the comments received on the October 24, 1997 NPR.

Comment 1. CT–DEP commented that the State's submittal only took credit for a 15 percent reduction from architectural and industrial maintenance coatings, not a 20 percent reduction as referenced in the NPR and allowed by current EPA guidance. The CT–DEP indicated that a revision would be made to the 15 percent plan to take the full 20 percent emission reduction credit from this source category.

Response 1. EPA agrees that Connecticut's December 30, 1994 15 percent ROP plan only claimed a 15 percent emission reduction for this source category. EPA acknowledges receipt of revisions to the State's plan on May 8, 1998, which contain a revised emission reduction calculation for this source category using the 20 percent reduction. Based on this recalculation, Connecticut is able to claim an additional 0.5 ton per summer day (tpsd) VOC emission reduction in the State's portion of the NY–NJ–CT severe area, for a total reduction of 2.1 tpsd in this area. Additionally, the state can claim an additional 1.6 tpsd VOC reduction in the Greater Hartford serious area, for a total reduction of 6.5 tpsd.

Comment 2. The CT–DEP commented that the EPA's approval of the NO_X budget for mobile sources is inappropriate, as 15 percent plans are only required to reduce VOC emissions. The DEP notes that although the State's plan does rely upon NO_X emission reductions to achieve contingency measure emission reductions, this does not create a requirement for approval of a NO_X budget for mobile sources.

Response 2. Connecticut's initial reliance on NO_X emission reductions to form a part of its original contingency plans created a need to establish NO_X emission budgets. However, on May 8, 1998, Connecticut submitted revised 15 percent and contingency plans to EPA which demonstrated that the required contingency measure emission reduction obligation for both ozone nonattainment areas within the State could be met utilizing VOC emission reduction surpluses generated by the measures within the 15 percent plans. Accordingly, EPA agrees that a NO_X emission budget does not need to be established for the 15 percent ROP plans. For the reasons discussed above, however, EPA is setting VOC and NO_X emission budgets based on the 1999 projections in Connecticut's post-1996 plans.

Comment 3. The CT–DEP commented that the EPA's notice implies that the State is not meeting a statutory requirement, by suggesting that the employee commute option is not being implemented. CT–DEP notes that, as allowed by the CAA, it has amended its employee commute option (ECO) legislation to create a voluntary traffic reduction program, which is being implemented. CT–DEP further notes that it is not, at this time, seeking to adopt this program into the SIP.

Response 3. EPA acknowledges the existence of Connecticut's voluntary traffic reduction program as an acceptable alternative to an enforceable ECO program. However, as noted in the State's comment, the traffic reduction program has not been adopted into the State's SIP, and is therefore not a program from which the State can derive emission reductions for use within its 15 percent ROP demonstrations.

III. Final Action

EPA is approving the Connecticut 15 percent ROP and contingency plans as revisions to the Connecticut SIP. This rule will become effective on May 10, 1999, which corresponds to the effective date for EPA's direct final rules on Connecticut's automobile inspection and maintenance program and stationary source volatile organic compound (VOC) regulations which are referenced in this document, unless EPA receives relevant adverse comments on either of those direct final rules. In the event relevant adverse comments are received on either of those rules, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule and the corresponding direct final rule or rules will not take effect.

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.

IV. Administrative Requirements

A. Executive Orders 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

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

C. Executive Order 13045

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

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

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the

Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

E. Regulatory Flexibility

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

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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: January 15, 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 H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(77) to read as follows:

§ 52.370 Identification of plan.

* * * * * *

(c) * * *

(77) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on December 30, 1994, and May 8, 1998. This revision is for the purpose of satisfying the rate-of-progress requirement of section 182(b) and the contingency measure requirements of sections 172(c)(9) and 182(c)(9) of the Clean Air Act, for the Greater Hartford serious ozone nonattainment area, and the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated December 30, 1994, submitting a revision to the Connecticut State Implementation Plan.

(B) Letter from the Connecticut Department of Environmental Protection dated May 8, 1998, submitting a revision to the Connecticut State Implementation Plan.

[FR Doc. 99–2980 Filed 3–9–99; 8:45 am]

BILLING CODE 6560–50–P