

Dated: January 28, 1999.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Region II Docket No. NJ33-1-190 FRL-6237-1]

#### Approval and Promulgation of Implementation Plans; New Jersey 15 Percent Rate of Progress Plans, Recalculation of 9 Percent Rate of Progress Plans and 1999 Transportation Conformity Budget Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing approval of a New Jersey State Implementation Plan (SIP) revision involving the State's Ozone plan. Specifically, EPA's proposed approval includes the 15 Percent Rate of Progress (ROP) Plans, recalculation of the 9 Percent ROP Plans, updates to the 1990 base year emission inventories, 1996 and 1999 projection year emission inventories, and the 1999 transportation conformity budgets. The intended effect of this action is to approve programs required by the Clean Air Act which will result in emission reductions that will help achieve attainment of the 1-hour national ambient air quality standard for ozone. In addition, a final approval of this SIP revision would correct the deficiency which led EPA to disapprove on December 12, 1997 New Jersey's 15 Percent ROP Plans. Consequently, the sanction and Federal Implementation Plan (FIP) process that was started by EPA's disapproval would terminate when EPA takes action to approve in

final form, today's proposed approval. The clocks associated with the State's failure to implement the enhanced inspection and maintenance program continue to run.

**DATES:** Comments must be received on or before March 31, 1999.

**ADDRESSES:** All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007-1866.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

New Jersey Department of Environmental Protection and Energy, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction/Background

Section 182 of the Clean Air Act (Act) specifies what states are required to submit to EPA for areas classified as nonattainment for ozone. On April 30, 1997 (62 FR 23410), EPA proposed approval of New Jersey's plan designed to meet several of these Act requirements, including all of those which were subsequently revised by New Jersey and are being proposed for action today. On June 30, 1997 (62 FR 35100), EPA either approved or gave conditional interim approval to these requirements. The reader is referred to these actions for further details.

On December 12, 1997, EPA announced by letter that the conditional

approval of New Jersey's 15 Percent ROP Plans had converted to a disapproval because the enhanced inspection and maintenance program, which was part of the State's plans, did not start as scheduled and resulted in an emission reduction shortfall. This disapproval applied to the New Jersey portions of the two severe ozone nonattainment areas: the New York, Northern New Jersey, Long Island Area, and the Philadelphia, Wilmington, Trenton Area. For the purposes of this action, these areas will be referred to as, respectively, the Northern New Jersey nonattainment area (NAA) and the Trenton NAA.

##### II. State Submittal

On February 10, 1999, Commissioner Shinn of the New Jersey Department of Environmental Protection (NJDEP) submitted a request to EPA to process its revision of the 15 Percent ROP portion of its ozone SIP. This SIP revision includes: updates to the 1990 base year emission inventories, 1996 and 1999 projection year emission inventories, 15 Percent ROP Plans and the 1999 transportation conformity budgets. The intended effect is to provide sufficient emission reductions to address the shortfall.

##### A. Revisions to the 1990 Base Year and 1996 and 1999 Projection Year Emission Inventories

As part of New Jersey's efforts to continually improve the accuracy of its emission estimates, the NJDEP identified an update/correction to the estimate of emissions from landfills which affects the 1990 base year and 1996 and 1999 projection year emission inventories. This update/correction is the result of three changes: (1) revised modeling guidance from the USEPA for estimating landfill emissions; (2) correction of errors identified in the NJDEP's landfill emissions data base; and (3) updated landfill emissions data. The changes to these inventories are summarized in Table 1.

TABLE 1.—1990 VOC EMISSION INVENTORIES, AND 1996 AND 1999 VOC PROJECTION EMISSION INVENTORIES

	Northern New Jersey NAA (VOC tons/day)			Trenton NAA (VOC tons/day)		
	1990	1996	1999	1990	1996	1999
Major Point Sources .....	238.02	211.93	216.28	111.68	85.87	87.93
Minor Point Sources .....	170.24	162.81	166.82	63.49	61.41	62.61
Area Sources .....	115.52	117.29	118.01	33.78	35.53	36.36
Highway Mobile Sources .....	296.66	246.71	242.41	103.45	89.22	88.17
Off-Highway Mobile Sources .....	136.58	139.82	141.44	45.76	48.13	49.34
Biogenic Sources <sup>1</sup> .....	209.66	.....	.....	203.20	.....	.....
Use of Pre-1990 Banked ERC .....	.....	5.00	5.00	.....	3.00	3.00

TABLE 1.—1990 VOC EMISSION INVENTORIES, AND 1996 AND 1999 VOC PROJECTION EMISSION INVENTORIES—  
Continued

	Northern New Jersey NAA (VOC tons/day)			Trenton NAA (VOC tons/day)		
	1990	1996	1999	1990	1996	1999
Total .....	1166.69	883.56	889.96	561.35	323.16	327.42

<sup>1</sup> The State did not account for biogenic sources in its 1996 and 1999 Projections.

Using the revised emission inventories, New Jersey recalculated target emission reductions. They used the same procedure used in its earlier 15

Percent ROP Plans. A detailed discussion of this procedure is contained in the April 30, 1997 **Federal Register** (62 FR 23413). Table 2

summarizes the original and revised 15 Percent ROP calculations.

TABLE 2.—ORIGINAL AND REVISED 15 PERCENT ROP PLAN CALCULATIONS

Component of the plan	Original 15% plan		Revised 15% plan	
	Northern New Jersey NAA VOC (tons/day)	Trenton NAA VOC (tons/day)	Northern New Jersey NAA VOC (tons/Day)	Trenton NAA VOC (tons/day)
1990 Base Year Emission Inventory .....	1173.96	564.67	1166.69	561.35
1990 Baseline Emission Inventory .....	958.19	359.90	950.91	356.59
Non-Creditable Emission Reductions .....	69.18	21.17	69.18	21.17
1990 Adjusted Baseline Emission Inventory .....	889.01	338.74	881.73	335.42
15% Reduction Target .....	133.35	50.81	132.26	50.31
1996 Target Emission Inventory .....	755.66	287.93	749.47	285.11
1996 Projected Emission Inventory .....	885.48	325.11	883.56	323.16
Required 15 Percent Reductions .....	129.82	37.18	134.10	38.05

Based on EPA's review of the methodology New Jersey used to make these calculations, EPA proposes to approve the revisions to the 1990 base year VOC emission inventories, and 1996 and 1999 projection year VOC emission inventories. In addition, EPA proposes to approve the 15 Percent ROP calculations.

#### B. New 15 Percent ROP Plans

New Jersey has provided a plan to achieve the reductions required for the two nonattainment areas. The following is a concise description of each control measure New Jersey plans on using to achieve the emission reductions in its 15 Percent ROP Plans. All the State measures have been adopted and submitted as SIP revisions except for administrative changes to New Jersey's Low Emission Vehicle Program. The

revisions to New Jersey's Low Emission Vehicle Program are in the proposal stage and are needed to formalize New Jersey's opt-in to the National Low Emission Vehicle Program which is included in the 15 Percent ROP Plans. EPA anticipates that New Jersey will submit these administrative changes by March 1, 1999. EPA will not include these emission reductions in the final action unless New Jersey has submitted them in final form.

TABLE 3.—SUMMARY OF REVISED 15 PERCENT ROP PLANS

	Northern New Jersey NAA VOC (tons/day)	Trenton NAA VOC (tons/day)
Required VOC reductions to meet 15 Percent Plan .....	134.10	38.05
Previous 15 Percent ROP Plan measures:		
Mobile Source control measures:		
Tier 1 vehicles .....	14.85	5.53
Reformulated gasoline—on highway .....	45.98	16.77
Reformulated gasoline—off highway .....	4.37	1.36
Enhanced Inspection and Maintenance .....	0.00	0.00
Stationary source control measures:		
Barge loading .....	22.75	1.23
Subchapter 16 .....	16.74	3.79
NJ consumer products rule .....	5.98	1.84
Federal HON rule .....	0.12	0.06
Total VOC reductions .....	110.79	30.58
Shortfall .....	23.31	7.47
New Control Measures:		

TABLE 3.—SUMMARY OF REVISED 15 PERCENT ROP PLANS—Continued

	Northern New Jersey NAA VOC (tons/day)	Trenton NAA VOC (tons/day)
Mobile Source control measures:		
National Low Emission Vehicle program .....	0.48	0.18
Federal Off highway small engines .....	16.16	5.70
Revisions to Basic I/M program .....	2.47	1.10
Stationary Source control measures:		
NJ Landfill controls .....	0.37	0.12
NJ Architectural Coatings rule .....	4.91	1.51
Federal Architectural Coatings rule .....	3.22	1.15
Federal Autobody Refinishing rule .....	13.23	3.44
VOC reductions from new control measures .....	40.84	13.20
Total VOC reductions from all measures .....	151.63	43.78
Surplus .....	17.53	5.73

### C. Measures Achieving the Projected Reductions

#### (1) Previous 15 Percent ROP Plan Measures

New Jersey included all of the control measures previously contained in its 15 Percent ROP Plan in the new 15 Percent ROP Plans except enhanced inspection and maintenance (I/M). New Jersey assumed that no emission reductions from enhanced I/M would occur by November 15, 1999 and so no credit is being taken for these initially anticipated reductions. These measures are summarized in Table 3. New Jersey is moving forward with implementing the Enhanced I/M program which should start inspecting vehicles in late 1999, thus providing reductions for years beyond 1999. The reader is referred to the original **Federal Register** documents for details on these non-I/M control measures.

#### (2) New Control Measures

##### National Low Emission Vehicle Program

EPA proposed the National Low Emission Vehicle (NLEV) Program in September 1995 and promulgated a supplemental final rule for the NLEV Program on January 7, 1998 (63 FR 925). The program consists of the sale of low emission vehicles (LEVs) beginning with model year 1999 in the Ozone Transport Region (OTR), which includes New Jersey, and model year 2001 for the rest of the country (except California and other states implementing the California LEV program). Under the NLEV program, the emissions from all cars manufactured by an auto maker are averaged together and must meet an average emission standard. This average emission standard gets progressively more stringent, until in 2001 that average would correspond to the emissions that would result if 100

percent of the vehicles met low emission vehicle standards. While the enforceability of the NLEV Program is the responsibility of EPA, New Jersey must make some administrative changes to its SIP. These were proposed in November 1998 and the changes need to be adopted and submitted to EPA by March 1, 1999. The 15 Percent ROP Plans take credit for only one year of the NLEV program, that is, through 1999. EPA agrees with the calculated emission reductions associated with this program. EPA proposes to approve reliance on these reductions, but EPA will not include them in the final action unless New Jersey has submitted them in final form.

##### Federal Nonroad Spark Ignition Engines

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

EPA has determined that the first phase of the new nonroad standards will cause a reduction of VOC emissions by 13.1 percent in 1997, 19.5 percent in 1998 and 23.9 percent in 1999

nationally. New Jersey applied these percentages to New Jersey's specific engine population, and calculated that the resulting VOC emission reductions in 1999 will be 16.16 tons per day in the Northern New Jersey Nonattainment area and 5.70 tons per day in the Trenton Nonattainment area. EPA agrees with the calculated emission reductions associated with this program.

##### Revisions to Basic Inspection and Maintenance Program

Since 1990, New Jersey has made several changes to its basic (I/M) program. These included increased penalties and enforcement for failing to have valid inspection sticker, adding a test for the integrity of a vehicle's gas cap at centralized inspection stations, and adding a visual inspection of the gas cap and evaporative emission control system at decentralized inspection stations. New Jersey also changed the inspection frequency from annual to biennial in order to facilitate installation of test equipment needed for the enhanced I/M program. EPA final approval of this SIP revision is described in 63 FR 45402, August 26, 1998. The changes in the inspection frequency reduces the emission benefits from the original program, but the additional test features, which were added, resulted in a net increase in emission reductions. EPA agrees with the emission reductions calculated by New Jersey. The emission reductions from this control measure have already been achieved.

##### New Jersey Architectural Coatings Rule

New Jersey developed an architectural coatings regulation, Subchapter 23 "Prevention of Air Pollution From Architectural Coatings and Consumer Products" which was originally adopted in 1989 and subsequently revised. EPA

approved Subchapter 23 as part of the SIP on May 23, 1993 (58 FR 29975). The regulation took effect in January 1990 for Group 1 products and March 1990 for Group 2 products. The regulation allowed coatings manufactured before 1990 to be sold until 1993. Because of the uncertainty in determining when the emission reductions occurred, New Jersey treated this source category as uncontrolled in the 1990 base year emission inventory and did not take credit in the original 15 Percent ROP Plans. As part of this SIP revision, New Jersey reassessed the emission reductions which would be achieved from this regulation. For traffic paints and high performance maintenance coatings, New Jersey took no emission reduction credit because they were already included in the 1990 base year. For the remaining categories subject to Subchapter 23 limits, New Jersey calculated the emission reductions since all coatings sold after 1993 were required to comply.

EPA agrees with the calculated emission reductions. The emission reductions from this control measure have already been achieved.

#### New Jersey Landfill Controls

New Jersey has implemented a landfill closure program which requires the installation of a gas collection system and control system. EPA approved this as part of the SIP on June 29, 1990 (55 FR 26687). The requirements only become applicable upon closure of the landfill and, therefore, the emission reductions from landfills closed after 1990 are creditable for 15 Percent ROP Plan purposes. EPA agrees with the calculated emission reductions. The emission reductions from this control measure have already been achieved.

#### Federal Architectural Coatings Rule

EPA developed national regulations for architectural coatings as part of the

larger requirement to control VOC emissions from certain categories of consumer and commercial products. EPA proposed the "National Volatile Organic Compound Emission Standards for Architectural Coatings" (Architectural rule) on June 25, 1996 (61 FR 32729), and September 3, 1996 (61 FR 46410). On September 11, 1998 (63 FR 48848), EPA promulgated 40 CFR part 59, subpart D—"National Volatile Organic Compound Emission Standards For Architectural Coatings." The reader is referred to these **Federal Registers** for greater detail.

New Jersey is taking credit only for the emission reductions associated with those categories of coatings where EPA's national rule goes beyond New Jersey's rule. EPA agrees with the calculated emission reductions and EPA guidance permits these emission reductions to be used in 15 and 9 Percent ROP Plans.

#### Federal Autobody Refinishing Rule

EPA developed national regulations for Automobile refinish coatings and coating components. These were proposed on April 30, 1996 (61 FR 19005) and on September 11, 1998 (63 FR 48806), EPA promulgated 40 CFR part 59, subpart B—"National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings" (subpart B). The reader is referred to these **Federal Registers** for greater detail. EPA agrees with the calculated emission reductions. The emission reductions from this control measure will be achieved by November 15, 1999.

#### 15 Percent ROP Plan Evaluation

New Jersey has identified control measures necessary for achieving the required emission reductions and in addition, they provided surplus reductions. All the measures have been adopted and are either implemented or will be shortly. EPA is proposing to find that the 15 Percent ROP Plans contain the necessary measures as identified in

Table 3 to achieve the required emission reductions. The original 15 Percent ROP Plans demonstrated that the emission reductions would be achieved by November 15, 1999. The new 15 Percent ROP Plans will also achieve these reductions by November 15, 1999. Therefore, EPA is proposing approval of the 15 Percent ROP Plans.

#### D. The 9 Percent ROP Plans and Transportation Conformity Budgets

EPA's June 30, 1997 (62 FR 35100) approval of New Jersey's 9 Percent ROP Plans was conditioned on the State submitting revised emission reduction calculations. The purpose of these calculations was to ensure that New Jersey correctly accounted for the amount of emission reductions attributable to its enhanced I/M program and appropriately adjusted the ROP plans to make use of the surplus emission reductions that these plans identified in the event that the enhanced I/M program provided less emission reductions than anticipated. Since the enhanced I/M program will not begin operation until late 1999 at the earliest, it was necessary for New Jersey to submit revised emission reduction calculations that removed and replaced all of the emission reductions that had been attributed to the enhanced I/M program for years prior to 2000. New Jersey fulfilled this condition in a July 30, 1998 letter from Commissioner Robert C. Shinn, Jr. to EPA Region 2 Deputy Regional Administrator William J. Muszynski. Table 4, which appears below, summarizes the State's recalculated 9 Percent ROP Plans. As indicated in the table, these recalculations show that New Jersey will still show 9 percent reductions by November 15, 1999, without relying on any credit from enhanced I/M.

TABLE 4.—SUMMARY OF NEW JERSEY'S 9 PERCENT ROP PLANS

	Northern New Jersey NAA (tons/day)		Trenton NAA (tons/day)	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
Required VOC reductions to meet 9 Percent Plan .....	95.91	.....	41.98	.....
Creditable Reductions .....				
Surplus reductions from 15 Percent ROP Plans .....	17.53	.....	5.73	.....
Mobile Source control measures:				
Tier I Vehicles .....		29.53	.....	10.14
National Low Emission Vehicle Program .....		0.44	.....	0.17
Reformulated Gasoline-On highway .....		0.74	.....	0.22
Reformulated Gasoline-Off highway .....				
Enhanced Inspection & Maintenance .....				
Stationary source control measures:				
Barge and Tanker loading .....				
Subchapter 16 & 19—RACT .....		70.92	.....	58.21

TABLE 4.—SUMMARY OF NEW JERSEY'S 9 PERCENT ROP PLANS—Continued

	Northern New Jersey NAA (tons/day)		Trenton NAA (tons/day)	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
Federal CTG—RACT Consumer Products rule—Subchapter 24				
Total Reductions .....	17.53	<sup>1</sup> 101.63	5.73	<sup>1</sup> 68.74
Shortfall .....	78.38		36.25	
VOC equivalents from NO <sub>x</sub> Substitution .....	93.48		54.12	
Surplus reductions from 15 Percent ROP Plans .....	15.1		17.87	
Reductions not credited in today's action Ozone Transport Commission NO <sub>x</sub> MOU2 .....		23.22		0.00

<sup>1</sup> 101.63 tons/day of NO<sub>x</sub> converts to 93.48 tons/day of VOC equivalent in the Northern New Jersey NAA. 68.74 tons/day of NO<sub>x</sub> converts to 54.12 tons/day of VOC equivalent in the Trenton NAA.

<sup>2</sup> New Jersey has fulfilled the Ozone Transport Commission NO<sub>x</sub> Memorandum of Understanding by adopting Subchapter 31 "Ozone Transport Commission NO<sub>x</sub> Budget Program." New Jersey is in the process of submitting Subchapter 31 as a SIP revision.

In its December 14, 1998 addendum to its proposed 15 Percent ROP plans and proposed 1999 Transportation Conformity Budgets, New Jersey clarified its intention that the revised emission reduction calculations contained in the July 30, 1998 letter from Commissioner Shinn to Deputy Regional Administrator Muszynski be

considered as part of this SIP revision. Therefore, EPA is proposing to approve these revisions to New Jersey's 9 Percent ROP plans.

The submittal also included proposed revised 1999 transportation conformity budgets based on the revised control strategies included in the 15 Percent ROP plans and in the July 30, 1998

version of the 9 Percent ROP plans. Table 5 contains the 1999 conformity budgets in tons/day of VOC and nitrogen oxides (NO<sub>x</sub>) emissions. EPA is proposing to approve these conformity budgets for both the 15 Percent and 9 Percent ROP Plans as replacements for the budgets contained in the previously approved 9 Percent ROP plans for 1999.

TABLE 5.—1999 MOBILE SOURCE ON-ROAD EMISSION BUDGETS FOR CONFORMITY

	VOC (tons/ day)	NO <sub>x</sub> (tons/ day)
North Jersey Transportation Planning Authority .....	182.23	279.14
Delaware Valley Regional Planning Commission (New Jersey Portion) .....	57.97	81.57
South Jersey Transportation Planning Organization .....	21.45	33.86

EPA's December 12, 1997 disapproval of New Jersey's 15 Percent ROP Plans resulted in New Jersey not being able to make conformity determinations or changes to their transportation plans and programs involving non-exempt projects funded by federal transportation funds. This is known as a conformity freeze. On February 10, 1999, EPA informed New Jersey that it had found the conformity budgets adequate and that the conformity freeze was being lifted.

### III. Conclusion

EPA has evaluated this submittal for consistency with the Act, applicable EPA regulations and EPA policy. EPA is proposing approval of the following: (1) Revisions to the New Jersey 1990 base year emission inventories, (2) revisions to the New Jersey 1996 and 1999 projection year emission inventories, (3) the New Jersey 15 Percent ROP Plans, (4) recalculation of the 9 Percent ROP Plans, and (5) the transportation conformity budgets as revised by the 15 Percent ROP Plans and recalculated 9 Percent ROP Plans.

In addition, final approval of this SIP revision would eliminate the shortfall identified in EPA's December 12, 1997 disapproval of New Jersey's 15 Percent ROP Plans and, thereby, terminate the sanction process associated with this deficiency and the requirement for EPA to promulgate a Federal Implementation Plan (FIP). EPA must evaluate any public comments received on this proposal before it can take final approval action.

EPA's proposed FIP was published on January 22, 1999 (64 FR 3465). Should EPA take final action on today's proposed approval of New Jersey's 15 Percent ROP Plans, it would eliminate the need for the January 22, 1999 proposed FIP and the proposed FIP will therefore be withdrawn.

If and when EPA promulgates this proposed action, EPA will make its approval effective upon the date of publication in the **Federal Register**, based upon a finding of good cause. Approval of this action would relieve restrictions that have been placed on the State when EPA disapproved its SIP on

December 12, 1997 and will not adversely affect other parties.

### IV. Administrative Requirements

#### A. Executive Order 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 Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA 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 any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. EPA is proposing approval of New Jersey's 15 Percent Plan which only allocates emission reductions, it does not create any new requirements. Accordingly, the requirements of section 1(a) of Executive Order 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.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This proposed SIP approval is not subject to E.O. 13045 because it proposes approval of a state program implementing a Federal standard, and it is not economically significant under E.O. 12866.

#### D. Executive Order 13084

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

those governments. If EPA 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 Executive Order 13084 do not apply to this rule.

#### E. Regulatory Flexibility Act

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 proposed 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 section 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 annual costs to State, local, or tribal governments in the aggregate; or to 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 proposed approval action does not include a federal mandate that may result in estimated annual 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.

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

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

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

Dated: February 19, 1999.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 372

[OPPTS-400132B; FRL-6066-1]

RIN 2070-AD09

### Persistent Bioaccumulative Toxic (PBT) Chemicals; Amendments to Proposed Addition of a Dioxin and Dioxin-Like Compounds Category; Community Right-to-Know Toxic Chemical Release Reporting; Extension of Comment Period

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

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On January 5, 1999, EPA issued a proposed rule to lower the reporting thresholds for certain