

provided they notify us before October 8, 2010. The EPA will make every effort to accommodate all speakers that arrive and register. No lunch break is scheduled. Because this hearing is being held at U.S. government facilities, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building, and demonstrations will not be allowed on federal property for security reasons. The EPA Web site for the rulemaking, which includes the proposal and information about the public hearing, can be found at <http://www.epa.gov/nsr>.

**FOR FURTHER INFORMATION CONTACT:** If you would like to present oral testimony at the public hearing, please contact Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division, (C504-03), Research Triangle Park, NC 27711, telephone (919) 541-0641, fax number (919) 541-5509, e-mail address: [long.pam@epa.gov](mailto:long.pam@epa.gov) (preferred method for registering), no later than 2 business days prior to the public hearing. The last day to register will be October 8, 2010. If using e-mail, please provide the following information: Time you wish to speak (morning, afternoon), name, affiliation, address, e-mail address, and telephone and fax numbers.

Questions concerning the August 24, 2010 (75 FR 51960), proposed rule should be addressed to Mr. David Painter, U.S. EPA, Office of Air Quality Planning and Standards, New Source Review Group, (C504-03), Research Triangle Park, NC 27711, telephone number (919) 541-5515, e-mail at [painter.david@epa.gov](mailto:painter.david@epa.gov).

**SUPPLEMENTARY INFORMATION:** The public hearing is to provide the public with an opportunity to present oral comments regarding EPA's proposed action to clarify the obligation to retain 1-hour nonattainment new source review (NSR) program requirements for certain areas designated nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS). The EPA has proposed to revise the rule for implementing the 1997 8-hour ozone NAAQS to address how NSR requirements that applied by virtue of the area's 1-hour ozone NAAQS classification should apply under the

anti-backsliding provisions of the 1997 8-hour implementation rule. The proposed rule responds to the ruling by the U.S. Court of Appeals for the District of Columbia Circuit that the 1-hour major NSR program, as it applies to areas that were designated 1-hour nonattainment on the date of designation for the 1997 8-hour NAAQS, is a required control to prevent backsliding.

**Public hearing:** The proposal for which EPA is holding the public hearing was published in the **Federal Register** on August 24, 2010 (75 FR 51960), and is available at <http://www.epa.gov/nsr> and also available in the docket identified below. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposal. The EPA may ask clarifying questions during the oral presentations, but will not respond to comments or issues raised in the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments on the proposed rule must be postmarked by October 1, 2010, which is the closing date for the comment period, as specified in the proposal for the rule. However, the record will remain open until November 13, 2010, to allow 30 days after the public hearing for submittal of additional information related to the hearing.

The hearing schedule, including a list of speakers, will be posted on EPA's Web site: <http://www.epa.gov/nsr>. Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearings; however, please plan for the hearing to run either ahead of schedule or behind schedule.

#### **How can I get copies of this document and other related information?**

The EPA has established a docket for the "Proposed Rule to Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: New Source Review Anti-Backsliding Provisions for Former 1-Hour Ozone Standard" under Docket ID No. EPA-HQ-OAR-2008-0462 (available at <http://www.regulations.gov>).

As stated previously, the proposed rule was published in the **Federal Register** on August 24, 2010, and is available at <http://www.epa.gov/nsr> and in the previously cited docket.

Dated: September 14, 2010.

**Mary Henigin,**

*Acting Director, Office of Air Quality Planning and Standards.*

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**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA-R01-OAR-2008-0117; EPA-R01-OAR-2008-0107; EPA-R01-OAR-2008-0445; A-1-FRL-9203-4]

### **Approval and Promulgation of Air Quality Implementation Plans; Connecticut, Massachusetts, and Rhode Island; Reasonable Further Progress Plans and 2002 Base Year Emission Inventories**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve State Implementation Plan revisions submitted by the States of Connecticut, Massachusetts, and Rhode Island. These revisions establish 2002 base year emission inventories and reasonable further progress emission reduction plans for areas within these states designated as nonattainment of EPA's 1997 8-hour ozone standard. The intended effect of this action is to propose approval of these states' 2002 base year inventories and reasonable further progress (RFP) emission reduction plans, and to propose approval of the 2008 motor vehicle transportation budgets and contingency measures associated with the RFP plans. EPA also proposes approval of three rules adopted by Connecticut that will reduce volatile organic compound emissions in the state.

**DATES:** Written comments must be received on or before October 20, 2010.

**ADDRESSES:** Submit your comments, identified by one of the following Docket ID Numbers: EPA-R01-OAR-2008-0117 for comments pertaining to our proposed action for Connecticut, EPA-R01-OAR-2008-0107 for comments pertaining to our proposed action for Massachusetts, or EPA-R01-OAR-2008-0445 for comments pertaining to our proposed action for Rhode Island, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. E-mail: [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov).
3. Fax: (617) 918-0047.

4. *Mail*: “Docket Identification Number EPA–R01–OAR–2008–0117, EPA–R01–OAR–2008–0107, or EPA–R01–OAR–2008–0445, Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code OEP05–2), Boston, MA 02109–3912.

5. *Hand Delivery or Courier*: Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

*Instructions*: Direct your comments to one of the following Docket ID Numbers: EPA–R01–OAR–2008–0117 for comments pertaining to our proposed action for Connecticut, EPA–R01–OAR–2008–0107 for comments pertaining to our proposed action for Massachusetts, or EPA–R01–OAR–2008–0445 for comments pertaining to our proposed action for Rhode Island. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov>, or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA

recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal and EPA’s technical support document are also available for public inspection during normal business hours, by appointment at the respective State Air Agency: The Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630; Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108; Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

**FOR FURTHER INFORMATION CONTACT**: Bob McConnell, Air Quality Planning Unit, U.S. EPA Region 1—New England, 5 Post Office Square, Boston, MA 02109–

3912, phone number: 617–918–1046; e-Mail: [mccconnell.robort@epa.gov](mailto:mccconnell.robort@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. 2002 Base Year Emissions Inventory
  - A. What is a base year inventory, and why are these states required to prepare one?
    - 1. Point Source Emissions
    - 2. Area Source Emissions
    - 3. On-Road Mobile Source Emissions
    - 4. Non-Road Mobile Source Emissions
    - 5. Biogenic Emission Sources
  - B. Summary of 2002 Base Year Inventories
  - C. What action is EPA taking on these inventories?
- III. Reasonable Further Progress Plans
  - A. What is a Reasonable Further Progress plan, and why are these states required to prepare one?
  - B. What action is EPA taking on these plans?
  - C. What emission levels must Connecticut, Massachusetts, and Rhode Island meet by 2008?
  - D. To what extent do the RFP plans reduce ozone precursor emissions?
  - E. Are banked emissions properly accounted for within these RFP plans?
  - F. What are the pollution control programs that accomplish this change in emissions?
  - G. Is EPA proposing approval of any state control measures in this action?
  - H. Have these states met their contingency measure obligation?
  - I. Are transportation conformity budgets contained in these plans?
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

**I. Background and Purpose**

On April 30, 2004, pursuant to the Federal Clean Air Act (the Act, or CAA), 42 U.S.C. 7401 *et seq.*, EPA designated portions of the country as being in nonattainment of the 1997 8-hour ozone national ambient air quality standard (NAAQS) (69 FR 23858).<sup>1</sup> All parts of Connecticut, Massachusetts, and Rhode Island were designated as nonattainment for ozone, and all were classified as moderate. There were five nonattainment areas created that encompassed the entirety of these states, as shown in Table 1.

TABLE 1—8-HOUR OZONE NONATTAINMENT AREAS IN CONNECTICUT, MASSACHUSETTS, AND RHODE ISLAND

State	Area name	Geographic area covered (counties)
CT .....	New York—N. New Jersey—Long Island, NY–NJ–CT (NY–NJ–CT area).	Fairfield, Middlesex, New Haven.

<sup>1</sup> The 1997 8-hour ozone standard itself is codified at 40 CFR 50.10.

TABLE 1—8-HOUR OZONE NONATTAINMENT AREAS IN CONNECTICUT, MASSACHUSETTS, AND RHODE ISLAND—Continued

State	Area name	Geographic area covered (counties)
CT .....	Greater Connecticut area .....	Hartford, Litchfield, New London, Tolland, Windham.
MA .....	Bos-Law-Wor (E. MA) area .....	Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, Worcester.
MA .....	Springfield (W. MA) area .....	Berkshire, Franklin, Hampden, Hampshire.
RI .....	Providence area .....	Statewide.

Sections 182(a)(1) and 182(b)(1) of the CAA compel the preparation and submittal of an emission inventory by states containing ozone nonattainment areas. On November 18, 2002, EPA issued guidance<sup>2</sup> indicating that 2002 was the preferred year for states to use as their base year in development of state implementation plans (SIPs) for the 1997 8-hour ozone standard.

On November 29, 2005, EPA published a final rule in the **Federal Register** identifying, in part, the requirements that areas designated nonattainment for the 1997 8-hour ozone standard must fulfill in order to meet their obligations under the Act. 70 FR 71612, codified at 40 CFR part 51 subpart X. This rule is commonly referred to as the “Phase 2” implementation rule. The Phase 2 rule provides that areas that had previously met the CAA section 182(b)(1) requirement for a 15% volatile organic compound (VOC) emission reduction pursuant to the one-hour ozone standard would be considered to have met this requirement for the 1997 8-hour standard. According to the Phase 2 rule, such areas must meet reasonable further progress (RFP) obligations under the provisions of subpart 1 of the Act, rather than the more stringent RFP obligations of subpart 2.

The Phase 2 rule divides the areas subject to subpart 1 RFP requirements into two categories: Those with attainment dates within 5 years of designation, and those with attainment dates beyond 5 years from designation. Connecticut, Massachusetts, and Rhode Island all fall into the latter category because their attainment dates were 6 years from the date of designation. The Phase 2 rule further provides that areas with an attainment date beyond 5 years from the date of designation would be required to meet their RFP requirement by demonstrating a 15 percent emission reduction between 2002 and 2008 in VOC, nitrogen oxide (NO<sub>x</sub>) or a combination of both of these pollutants such that the total reduction in these

ozone precursor emissions equaled 15 percent.<sup>3</sup>

On February 1, 2008, Connecticut submitted its 2002 to 2008 RFP plan and 2002 base year inventory to EPA as part of its attainment demonstration SIP submittal. Similar submittals were made by Massachusetts on January 31, 2008, and by Rhode Island on April 30, 2008.

## II. 2002 Base Year Emissions Inventory

### A. What is a base year inventory and why are these states required to prepare one?

The Act contains a number of requirements for moderate ozone nonattainment areas. One requirement, found at section 182(a)(1) of the Act and made applicable to moderate ozone nonattainment areas through section 182(b)(1), compels the preparation and submittal of a “comprehensive, accurate, current inventory of actual emissions from all sources.” As mentioned above, EPA’s November 18, 2002 guidance memorandum identified 2002 as the preferred year for states to use as their base year in development of SIPs for the 1997 8-hour ozone standard, and the Phase 2 rule affirms this selection of the 2002 inventory as the baseline for the RFP requirement.

In August, 2005, EPA published supplemental guidance for states to use in development of their base year inventories entitled, “Emission Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulation” (EPA-454/R-05-001). This guidance describes for states the requirements for development of comprehensive emission estimates from stationary point and area sources, and from mobile on-road and non-road sources, such that complete emission inventories are available to support SIP development for the 8-hour ozone standard. The guidance directs states to

prepare their emission estimates on a “typical summer day” basis to reflect emissions that occur during high ozone episodes, which occur predominantly during the warm summer months.

As mentioned above, Connecticut, Massachusetts, and Rhode Island all contain ozone nonattainment areas designated as moderate for the 1997 8-hour ozone standard. Therefore, they were required to develop 2002 base year emission inventories of VOC and NO<sub>x</sub>, as these compounds react in the presence of heat and sunlight to form ozone.

### 1. Point Source Emissions

The point source portion of the inventory consists of emission estimates for the major industrial facilities within the state. The emission estimates are prepared based on facility specific information collected during annual surveys conducted by each state’s air agency. Connecticut and Massachusetts survey all industrial sources that emit 10 tons/year or more of VOC or NO<sub>x</sub>. Rhode Island surveys facilities that emit 10 tons/year or more of VOC, and/or 25 tons/year or more of NO<sub>x</sub>. The emission estimates are prepared for each process operation, fuel combustion process, or other air emitting activity, then summed together to obtain an overall emission estimate for the facility. The states submit these air emission estimates to EPA, and we incorporate them into our national emissions inventory (NEI) database.

### 2. Area Source Emissions

Area source emissions include emissions from small industrial facilities not included in the point source inventory, and from sources whose emissions are, in most circumstances, spread over a wide geographic area from a large number of small sources. Examples include gasoline service stations, small graphic arts facilities, landfills, and emissions from consumer and commercial products. Emission estimates are made for most area source categories by multiplying some indicator of activity level for the sector, such as gasoline consumption data for gasoline stations,

<sup>2</sup>“2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, PM 2.5, and Regional Haze Programs.”

<sup>3</sup>The Phase 2 rule’s application of the CAA’s VOC percentage reduction requirements was challenged before the United States Court of Appeals for the District of Columbia Circuit. However, the court upheld EPA’s interpretation of these requirements. See *NRDC v. EPA*, 571 F.3d 1245 (DC Cir. 2009).

by emission factors that relate air emissions to the activity level. The Connecticut, Massachusetts, and Rhode Island area source inventories provide emission estimates for a large number of source categories, complementing the emission estimates made for individual point sources and completing the estimate of emissions from stationary sources in the state.

3. On-Road Mobile Source Emissions

Connecticut, Massachusetts, and Rhode Island all used a highway vehicle emission estimation model developed by EPA referred to as the MOBILE 6.2 model to estimate emissions from on-road motor vehicles. Each state obtained estimates of vehicle miles traveled (VMT) from their respective Departments of Transportation. The states also obtained the information necessary to run the MOBILE model accurately for their mix of vehicles, fuel types, and control programs and used this information to obtain VOC and NO<sub>x</sub> emission estimates from the model.

4. Non-Road Mobile Source Emissions

Connecticut, Massachusetts, and Rhode Island estimated emissions for the majority of equipment within the non-road sector using the EPA's NONROAD 2005 model. The NONROAD model estimates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled non-road equipment types. The non-road model does not estimate emissions from aircraft, locomotives, or commercial marine vessels, and so the states used other EPA recommended methods to estimate emissions from these sectors.

5. Biogenic Emission Sources

Biogenic (naturally occurring) emissions occur from plants, trees, grasses and crops. EPA developed a computer model, referred to as the Biogenic Emissions Inventory System (BEIS v. 3.12), to estimate VOC emissions from this source category, and calculates biogenic emissions for all counties in the country. EPA recommends that states use EPA's biogenic emission estimates, and Connecticut, Massachusetts, and Rhode Island all relied on EPA's emission estimates for this sector.

B. Summary of 2002 Base Year Inventories

The 2002 VOC and NO<sub>x</sub> base year inventories prepared by Connecticut, Massachusetts, and Rhode Island are shown below in Tables 2a through 2e. EPA has concluded that these states have adequately derived and

documented the 2002 base year VOC and NO<sub>x</sub> emissions for these areas.

TABLE 2A—2002 BASE YEAR INVENTORY FOR THE NY–NJ–CT AREA

Nonattainment area	2002 VOC missions (tons/day)	2002 NO <sub>x</sub> emissions (tons/day)
NY–NJ–CT area:		
Point .....	11.3	37.7
Area .....	84.1	7.2
On-road .....	48.1	102.7
Non-road .....	66.0	38.7
Biogenics .....	125.6	0.7
Total .....	335.3	187.0

TABLE 2B—2002 BASE YEAR INVENTORY FOR THE GREATER CONNECTICUT AREA

Nonattainment area	2002 VOC emissions (tons/day)	2002 NO <sub>x</sub> Emissions (tons/day)
Greater Connecticut area:		
Point .....	4.6	19.0
Area .....	75.5	6.4
On-road .....	45.1	89.3
Non-road .....	56.2	30.8
Biogenics .....	268.9	1.3
Total .....	450.3	146.8

TABLE 2C—2002 BASE YEAR INVENTORY FOR THE BOS-LAW-WOR (E. MA) AREA

Nonattainment area	2002 VOC emissions (tons/day)	2002 NO <sub>x</sub> Emissions (tons/day)
Bos-Law-Wor (E. MA) area:		
Point .....	13.6	116.6
Area .....	282.0	33.9
On-road .....	127.4	381.4
Non-road .....	196.2	122.1
Biogenics .....	535.7	4.4
Total .....	1,154.9	658.4

TABLE 2D—2002 BASE YEAR INVENTORY FOR THE SPRINGFIELD (W. MA) AREA

Nonattainment area	2002 VOC Emissions (tons/day)	2002 NO <sub>x</sub> Emissions (tons/day)
Springfield (W. MA) area:		
Point .....	2.4	13.0
Area .....	45.5	5.2
On-road .....	24.5	71.7
Non-road .....	27.7	22.4
Biogenics .....	254.6	1.1

TABLE 2D—2002 BASE YEAR INVENTORY FOR THE SPRINGFIELD (W. MA) AREA—Continued

Nonattainment area	2002 VOC Emissions (tons/day)	2002 NO <sub>x</sub> Emissions (tons/day)
Total .....	354.7	113.4

TABLE 2E—2002 BASE YEAR INVENTORY FOR THE PROVIDENCE AREA

Nonattainment area	2002 VOC emissions (tons/day)	2002 NO <sub>x</sub> emissions (tons/day)
Providence area:		
Point .....	10.3	7.0
Area .....	47.9	3.4
On-road .....	32.3	42.4
Non-road .....	26.8	19.7
Biogenics .....	124.2	0.7
Total .....	241.5	73.2

C. What action is EPA taking on these inventories?

We are proposing approval of the 2002 base year inventories listed in Tables 2a through 2e above.

III. Reasonable Further Progress Plans

A. What is a reasonable further progress plan, and why are these states required to prepare one?

A reasonable further progress (RFP) plan illustrates how an ozone nonattainment area will make emission reductions of a set amount over a given time period. Section 182(b)(1) of the CAA required moderate and above ozone nonattainment areas to develop plans to reduce VOC emissions by 15 percent over a six year time period beginning with the date of enactment of the 1990 amendments to the Act, which occurred on November 15, 1990. EPA's Phase 2 rule interpreted how this requirement would apply to areas designated as moderate (or higher) nonattainment of the 1997 8-hour ozone standard, and did so in a number of ways. See 40 CFR part 51 subpart X. Of relevance for Connecticut, Massachusetts, and Rhode Island is what the Phase 2 rule required for areas with attainment dates greater than 5 years from designation that previously accomplished a 15% reduction in VOC emissions pursuant to one-hour ozone nonattainment requirements, as all three of these states meet these criteria. For such areas, the Phase 2 rule indicates that RFP will be met if the area can demonstrate a 15% reduction in ozone precursor emissions (VOC and/or NO<sub>x</sub>)

will occur between 2002 and 2008.<sup>4</sup> See 40 CFR 51.910(b)(2)(ii)(A)–(B). If the area uses NO<sub>x</sub> reductions to meet part or all of this requirement, it must satisfy EPA guidance concerning the conditions under which NO<sub>x</sub> control may be substituted for, or combined with, VOC control in order to maximize the reduction in ozone pollution. The most current such guidance is EPA’s December 1993 “NO<sub>x</sub> Substitution Guidance.” Therefore, the RFP plans submitted by Connecticut, Massachusetts, and Rhode Island were evaluated against these criteria. These states prepared RFP plans for each of the nonattainment areas shown in Table 1 above. We note that Connecticut’s plan for the NY–NJ–CT area only accounts for emission reductions from within the Connecticut portion of the area.

As noted above, Connecticut, Massachusetts, and Rhode Island submitted final, adopted RFP plans to EPA between January 31 and April 30, 2008. Although the Phase 2 rule required that these plans be submitted by June 15, 2007, the states submitted draft plans to EPA shortly after the due date, and as discussed in this document the plans meet EPA’s approval requirements for RFP plans developed to help meet the 1997 8-hour ozone NAAQS.

Each of these state’s RFP plans rely to some degree on NO<sub>x</sub> emission

reductions to achieve the overall 15 percent reduction in ozone precursor emissions. Available modeling indicates that NO<sub>x</sub> emission reductions are clearly beneficial in Connecticut, Massachusetts, and Rhode Island, and so as outlined in EPA’s NO<sub>x</sub> Substitution Guidance, use of NO<sub>x</sub> emission reductions to meet RFP requirements is appropriate.

The manner in which states are to determine the required level of emission reductions is similar to the procedure explained in the guidance document entitled, “Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for the 15% Rate of Progress Plans” (EPA–452/R–92–005). Adjustments to this procedure pertaining to proper accounting of the non-creditable emission reductions from the pre-1990 Federal motor vehicle control program (FMVCP) are noted within Appendix A of the Phase 2 rule (70 FR 71696, as corrected by 71 FR 58498).

*B. What action is EPA taking on these plans?*

We are proposing approval of the RFP plans submitted by Connecticut, Massachusetts, and Rhode Island for the moderate nonattainment areas shown in Table 1 above, as revisions to these states’ implementation plans. Note that regarding the NY–NJ–CT moderate area,

we are proposing action today only on the Connecticut portion of the RFP plan.

*C. What emission levels must Connecticut, Massachusetts, and Rhode Island achieve by 2008?*

Tables 3a–3e below contain a summary of the RFP calculations as performed by Connecticut, Massachusetts, and Rhode Island for their moderate ozone nonattainment areas. Some of the 2002 base year inventory values shown in Step 1 of Tables 3a–3e are slightly higher than those shown in Tables 2a–2e due to adjustments each state made to their RFP SIPs to account for emissions banking and trading programs. These adjustments are described elsewhere in this proposal. The emission target levels are shown in step 6 of Tables 3a–3e. The emission targets represent the maximum amount of emissions that can occur in 2008 given the state’s selected mix of VOC and NO<sub>x</sub> percent reductions as noted in step 4 of the calculations. The RFP plans submitted by Connecticut, Massachusetts, and Rhode Island indicate that the projected, controlled emissions for 2008 shown in Step 7 of Tables 3a–3e are below the 2008 emission target levels shown in step 6, with the exception of Rhode Island’s VOC emissions. To remedy this small shortfall, Rhode Island allocated surplus NO<sub>x</sub> emissions reductions that were available as shown in Table 3e.

TABLE 3a—2008 RFP CALCULATIONS FOR THE NY–NJ–CT AREA

Description	VOC emissions (tons/day)	NO <sub>x</sub> emissions (tons/day)
<i>Step 1: Calculate 2002 base year inventory</i> .....	335.3 .....	189.1.
<i>Step 2: Develop RFP inventory (subtract biogenics)</i> .....	209.7 .....	188.4.
<i>Step 3: Develop adjusted base year inventory by subtracting non-creditable, pre-1990 FMVCP<sup>5</sup> reductions from RFP inventory.</i>	– 4.5 = 205.2 .....	– 11.7 = 176.7.
<i>Step 4: Calculate required reduction (total of VOC and NO<sub>x</sub> reductions must equal 15 percent)</i>	10%; 20.5 tons .....	5%; 8.8 tons.
<i>Step 5: Calculate total expected reduction (add steps 3 &amp; 4 together)</i> .....	4.5 + 20.5 = 24.9 .....	11.7 + 8.8 = 20.5.
<i>Step 6: Set target level for 2008 (subtract step 5 from step 2)</i> .....	209.7 – 24.9 = 184.6	186.3 – 20.4 = 167.9.
<i>Step 7: Projected, controlled 2008 emissions</i> .....	167.6 .....	142.6.

<sup>5</sup>FMVCP is the acronym for the federal motor vehicle control program. Pre-1990 FMVCP reductions are not creditable towards meeting the 15% emission reduction.

TABLE 3b—2008 RFP CALCULATIONS FOR THE GREATER CONNECTICUT AREA

Description	VOC emissions (tons/day)	NO <sub>x</sub> emissions (tons/day)
<i>Step 1: Calculate 2002 base year inventory</i> .....	450.3 .....	147.3.
<i>Step 2: Develop RFP inventory (subtract biogenics)</i> .....	181.4 .....	146.1.
<i>Step 3: Develop adjusted base year inventory by subtracting non-creditable, pre-1990 FMVCP reductions from RFP inventory.</i>	– 4.3 = 177.1 .....	– 9.3 = 136.8.
<i>Step 4: Calculate required reduction (total of VOC and NO<sub>x</sub> reductions must equal 15 percent)</i>	10%; 17.7 tons .....	5%; 6.8 tons.
<i>Step 5: Calculate total expected reduction (add steps 3 &amp; 4 together)</i> .....	4.3 + 17.7 = 22.0 .....	9.3 + 6.8 = 16.1.
<i>Step 6: Set target level for 2008 (subtract step 5 from step 2)</i> .....	181.4 – 22.0 = 159.4	145.5 – 16.1 = 130.0.

<sup>4</sup>If the area wishes to use NO<sub>x</sub> reductions to meet part or all of this 15% requirement, the calculation is not done by measuring the overall percent of

combined VOC and NO<sub>x</sub> reductions, but rather by separately calculating the percent of VOC

reductions and the percent of NO<sub>x</sub> reductions, and adding those percentages together.

TABLE 3b—2008 RFP CALCULATIONS FOR THE GREATER CONNECTICUT AREA—Continued

Description	VOC emissions (tons/day)	NO <sub>x</sub> emissions (tons/day)
Step 7: Projected, controlled 2008 emissions	149.3	107.1.

TABLE 3c—2008 RFP CALCULATIONS FOR THE BOS-LAW-WOR AREA

Description	VOC emissions (tons/day)	NO <sub>x</sub> emissions (tons/day)
Step 1: Calculate 2002 base year inventory	1,157.3	689.0.
Step 2: Develop RFP inventory (subtract biogenics)	621.6	684.6.
Step 3: Develop adjusted base year inventory by subtracting non-creditable, pre-1990 FMVCP reductions from RFP inventory.	- 15.3 = 606.3	- 45.2 = 639.4.
Step 4: Calculate required reduction (total of VOC and NO <sub>x</sub> reductions must equal 15 percent)	3%; 18.2 tons	12%; 76.7 tons.
Step 5: Calculate total expected reduction (add steps 3 & 4 together)	15.3 + 18.2 = 33.5	45.2 + 76.7 = 121.9.
Step 6: Set target level for 2008 (subtract step 5 from step 2)	621.6 - 33.5 = 588.1	684.6 - 121.9 = 562.7.
Step 7: Projected, controlled 2008 emissions	525.7	440.6.

TABLE 3d—2008 RFP CALCULATIONS FOR THE SPRINGFIELD AREA

Description	VOC emissions (tons/day)	NO <sub>x</sub> emissions (tons/day)
Step 1: Calculate 2002 base year inventory	354.8	114.2.
Step 2: Develop RFP inventory (subtract biogenics)	100.2	113.1.
Step 3: Develop adjusted base year inventory by subtracting non-creditable, pre-1990 FMVCP reductions from RFP inventory.	- 2.9 = 97.3	- 8.5 = 104.6.
Step 4: Calculate required reduction (total of VOC and NO <sub>x</sub> reductions must equal 15 percent)	3%; 2.9 tons	12%; 12.6 tons.
Step 5: Calculate total expected reduction (add steps 3 & 4 together)	2.9 + 2.9 = 5.8	8.5 + 12.6 = 21.1.
Step 6: Set target level for 2008 (subtract step 5 from step 2)	2.9 + 2.9 = 5.8	8.5 + 12.6 = 21.1.
Step 7: Projected, controlled 2008 emissions	84.2	66.9.

TABLE 3e—2008 RFP CALCULATIONS FOR THE PROVIDENCE AREA

Description	VOC Emissions (tons/day)	NO <sub>x</sub> emissions (tons/day)
Step 1: Calculate 2002 base year inventory	243.4	73.2.
Step 2: Develop RFP inventory (subtract biogenics)	119.2	72.5.
Step 3: Develop adjusted base year inventory by subtracting non-creditable, pre-1990 FMVCP reductions from RFP inventory.	- 5.5 = 113.7	- 3.2 = 69.3.
Step 4: Calculate required reduction (total of VOC and NO <sub>x</sub> reductions must equal 15 percent)	0%	15%.
Step 5: Calculate total expected reduction (add steps 3 & 4 together)	5.5 + 0 = 5.5	3.2 + 10.4 = 13.6.
Step 6: Set target level for 2008 (subtract step 5 from step 2; also, the Providence area NO <sub>x</sub> target includes additional 1.1 ton reduction to cover VOC shortfall).	119.2 - 5.5 = 113.7	72.5 - 3.6 - 1.1 = 57.8.
Step 7: Projected, controlled 2008 emissions	115.4	55.3.

Note that in Tables 3a–3e above, all of the projected, controlled 2008 emission levels shown in step 7 are lower than the corresponding 2008 emission target levels shown in step 6, with the exception of the Providence area’s VOC emissions which are 1.5% higher than the 2008 VOC target. In light of this, Rhode Island allocated an additional 1.5% NO<sub>x</sub> reduction (which translates to 1.1 tons) to cover this shortfall. Thus, Rhode Island has set its 2008 NO<sub>x</sub> target to 57.8 tons/day rather than 58.9 tons/day. In essence, Rhode Island has selected a 16.6% reduction in NO<sub>x</sub> emissions and a 1.5% increase in VOC emissions, resulting in a combined reduction of 15.1%.

EPA’s guidance to states on the development of RFP plans does not directly address the situation found in Rhode Island’s RFP plan, where surplus reductions for one ozone precursor were used to cover an increase in emissions for the other precursor. For example, EPA’s Phase 2 implementation rule provides that moderate areas such as Rhode Island with attainment dates more than 5 years from the date of designation, “(A) Shall provide for a 15 percent emission reduction from the baseline year within 6 years after the baseline year. (B) May use either NO<sub>x</sub> or VOC emissions reductions (or both) to achieve the 15 percent emission reduction requirement. Use of NO<sub>x</sub>

emissions reductions must meet the criteria in section 182(c)(2)(C) of the Act.” 40 CFR 51.910(b)(2)(ii). EPA’s NO<sub>x</sub> Substitution Guidance, which EPA issued pursuant to section 182(c)(2)(C), does not specifically address offsetting an increase in one precursor with surplus reductions from another precursor. Thus, we reviewed the facts of this specific case and, as explained below, have determined that the submitted plan is consistent with the CAA requirements.

First, EPA’s December 1993 NO<sub>x</sub> substitution guidance provides the criteria that must be met in order for NO<sub>x</sub> emission reductions to be used in RFP plans as provided by section

182(c)(2)(C) of the Act. The guidance directs states to ensure that such substitution is done only to the extent that the modeled attainment demonstration for the area indicates that this substitution is appropriate. For example, section 2 of the guidance provides that, "This linkage provides assurance that the RFP reductions are consistent with the SIP attainment demonstration. States are required to justify substitution by illustrating "consistency" between the cumulative emission changes emerging from the RFP/substitution proposal and the emission reductions in the modeled attainment demonstration."

Rhode Island worked in conjunction with the other states within the ozone transport region (OTR) to perform the urban airshed modeling that the state included within its attainment demonstration, and on development of recommended control strategies to reduce VOC and NO<sub>x</sub> emissions in the Northeast such that the ozone NAAQS would be met by 2009. This modeling exercise showed that both VOC and NO<sub>x</sub> emission reductions would be needed to reach the area's attainment goals. The resulting suite of federal and state control measures indicate that NO<sub>x</sub> emission reductions figured prominently in the area's attainment strategy. This is most clearly seen by the fact that NO<sub>x</sub> emissions were projected to decline by a greater extent than VOC emissions between the base year and attainment year across the OTR. This illustrates that Rhode Island's use of NO<sub>x</sub> emission reductions within its RFP plan is appropriate.

Second, the increase in VOC emissions between 2002 and 2008 is an artifact of EPA's RFP calculation procedure; the state's actual VOC emissions in 2008 were predicted to be lower than they were in 2002. In explanation, as shown in step 2 of Table 3e above, Rhode Island's 2002 anthropogenic VOC emissions were 119.2 tons per summer day (tpsd). However, EPA's RFP calculation procedure requires that emission reductions from the pre-1990 federal motor vehicle control program (FMVCP) that will accrue between 2002 and 2008 be subtracted from the 2002 anthropogenic baseline because the Act, at section 182(b)(1)(D)(i), provides such reductions are not creditable for purposes of meeting RFP requirements. This subtraction is shown in step 3 of Table 3e above, and resulted in the 2002 baseline being lowered by 5.5 tpsd to 113.7 tpsd. Since no VOC reductions were planned for in the RFP plan, 113.7 tpsd is also the state's target level of emissions for VOCs. As shown in step

7 of Table 3e, Rhode Island's 2008 VOC emissions were estimated to be 115.4 tpsd. This is higher than the VOC target emission level of 113.7 tpsd by 1.7 tpsd, but is lower than the state's actual 2002 anthropogenic baseline emissions of 119.2 tpsd by 3.8 tpsd. The preceding comparison is not intended to diminish the significance of the Act's prohibition against crediting reductions due to the pre-1990 FMVCP towards RFP. Rather, this analysis simply clarifies that this is not a situation where a state proposes to rely on a larger-than-15% decrease in NO<sub>x</sub> emissions to offset an actual increase in VOC emissions; rather, here Rhode Island has in fact reduced its VOC emissions from the baseline.

Third, in 2009, Rhode Island adopted and implemented VOC control measures on consumer and commercial products and architectural and industrial maintenance coatings. The effective date for these two rules was June 4, 2009, and since the RFP plan covers the time period between 2003 to 2008 Rhode Island did not factor reductions from these rules into their RFP analysis. However, these rules are now in effect and are currently acting to lower VOC emissions beyond that shown in the RFP analysis. Thus, while Rhode Island could not take credit for these emission reductions as part of the RFP plan for 2003 to 2008, additional reductions in VOC emissions have occurred in the state since then.

Last, but by no means of least importance, Rhode Island is currently in attainment of the 1997 8-hour ozone standard, and EPA published a clean data determination for the area on June 3, 2010 (75 FR 31288). In addition, on July 28, 2010 (75 FR 44179), EPA published a notice of proposed rulemaking indicating that this area attained the 1997 8-hour ozone standard by its attainment date of June 15, 2010. Thus, our primary basis for approving the RFP plan is to approve the 2008 motor vehicle emission budgets contained within the plan as the plan is not necessary to ensure that the state makes reasonable further progress towards the 1997 standard it has already attained.

In light of these circumstances, EPA has determined that it is appropriate to propose approval of Rhode Island's RFP plan.

#### *D. To what extent do the RFP plans reduce ozone precursor emissions?*

The Connecticut, Massachusetts, and Rhode Island RFP plans indicate that ozone precursor emissions will be substantially reduced between 2002 and 2008, allowing each state to exceed the 15% ozone precursor emission

reduction obligation over this time frame. Compared to 2002 emission levels, the RFP plans and associated modeling showed that VOC emissions were expected to decline by 19% in Connecticut, 16% in Massachusetts, and 3% in Rhode Island by 2008. Additionally, NO<sub>x</sub> emissions were expected to decline by 25% in Connecticut, 37% in Massachusetts, and 24% in Rhode Island over this timeframe. These percent reductions include reductions from the pre-1990 FMVCP program shown in step 3 of Tables 3a–3e.

#### *E. Are banked emissions properly accounted for within these RFP plans?*

Although the initial RFP plan submittals made by Connecticut, Massachusetts, and Rhode Island did not account for banked emissions, each state made subsequent amendments to their plans that incorporated banked emissions into the RFP analysis.

Many states operate emissions banking and trading programs. These programs allow facilities that agree to permanently cease, or alternatively agree to permanently reduce their emissions to levels below allowable levels, to generate emission reduction credits (ERCs) that can be sold or traded to other facilities. ERCs are often purchased by facilities seeking emission offsets to meet the requirements of the new source review (NSR) program. State air agencies facilitate and monitor these transactions by creating and maintaining an emissions bank where ERCs are stored until they are purchased. Since ERCs represent emissions that may occur at some point in the future, and RFP plans contain both base year and future year emission estimates as well as maximum allowable (target level) emissions for the nonattainment area as a whole, banked emissions need to be accounted for in a state's RFP analysis.

On October 14, 2009, Connecticut submitted a revision to the RFP plan which it had originally submitted to EPA on February 1, 2008. The revision consisted of the incorporation of a small number of banked NO<sub>x</sub> ERCs into the state's RFP analysis. The inclusion of the banked ERCs into the RFP analysis did not alter the state's conclusion that it easily meets RFP requirements. The emission estimates within Tables 3a and 3b above reflect the revised calculations contained within Connecticut's October 14, 2009 submittal to EPA.

On October 23, 2009, Massachusetts submitted a revision to the RFP plan which it had originally submitted to EPA on January 31, 2008. The revision consisted of the incorporation of a small

amount of banked VOC, and a larger amount of banked NO<sub>x</sub> ERCs into the state's RFP analysis. As with Connecticut, the inclusion of Massachusetts' banked ERCs into the RFP analysis did not change the state's conclusion that it readily meets RFP. Tables 3c and 3d above contains the revised RFP calculations contained within Massachusetts' October 23, 2009 submittal.

On October 19, 2009, Rhode Island submitted a revision to the RFP plan which it had submitted to EPA on April 30, 2008. The revision consisted of the incorporation of banked VOC ERCs into the state's RFP analysis. As with the above mentioned submittals from Connecticut and Massachusetts, Rhode Island's revised plan continues to show that the state meets its RFP emission reduction obligations, and these revised estimates are reflected in Table 3e above.

*F. What are the pollution control programs that accomplish this change in emissions?*

Many post-1990 Federal mobile source control programs which are creditable towards meeting RFP took effect between 2002 and 2008, and they are responsible for the bulk of the VOC and NO<sub>x</sub> emission reductions that occurred over this time frame in Connecticut, Massachusetts, and Rhode Island. For example, within the on-road mobile sector the Federal Tier 2 motor vehicle control program and controls for heavy duty diesel vehicles and fuels were significant programs that helped to reduce emissions during this period of time. Within the non-road sector, Federal controls on diesel engines and the Phase 2 standards for gasoline powered handheld and non-handheld equipment began, which helped reduce emissions from that sector.

In addition to Federal measures for mobile source emissions, state-adopted control measures also acted to reduce VOC and NO<sub>x</sub> emissions between 2002 and 2008. In Connecticut, state-adopted rules limiting emissions from portable fuel containers, architectural and industrial maintenance (AIM) coatings, pressure-vacuum (PV) valves at gasoline service stations, and requirements for solvent cleaning fluids were adopted between 2002 and 2008, and will help to reduce VOC emissions in the state. The portable fuel container and PV valves at gasoline station rules have been approved by EPA into the state's SIP. (See 71 FR 51761). The AIM and solvent cleaning rules have not yet been approved by EPA into the State's SIP, but we are proposing approval of them in other parts of this document and

intend to approve them prior to, or in conjunction with, our final rulemaking action on Connecticut's RFP plan. Additionally, in May of 2003, Phase 2 of the state's limits for emissions from municipal waste combustors began, and this program will reduce NO<sub>x</sub> emissions from that sector. This program has also been approved into the state's SIP. (See 66 FR 63311).

Connecticut's NO<sub>x</sub> budget program began in 2002 and so emission reductions from the program are reflected in the state's 2002 base year inventory. Connecticut's Clean Air Interstate Rule (CAIR) rule has taken the place of its NO<sub>x</sub> budget program beginning in 2009. On July 11, 2008, the United States Court of Appeals for the District of Columbia issued an opinion vacating and remanding EPA's CAIR rule. See *North Carolina v EPA*, 531 F.3d 896 (DC Cir. 2008). However, on December 23, 2008, the court granted rehearing in part and remanded the rule back to EPA for revision without vacatur. 550 F.3d 1176 (DC Cir. 2008). Accordingly, CAIR is to be implemented as it was originally intended until EPA revises the rule to address the court's remand.<sup>6</sup> Therefore, the NO<sub>x</sub> reductions achieved by Connecticut's NO<sub>x</sub> budget program continue as the state has transitioned to its CAIR program. Connecticut's CAIR program was approved by EPA on January 24, 2008 (73 FR 4105).

For the on-road mobile sector, in 2004, Connecticut adopted an enhanced motor vehicle inspection and maintenance (I&M) program including on-board diagnostics (OBD-2) requirements. EPA approved Connecticut's I&M program with OBD-2 requirements into the state's SIP on December 5, 2008 (73 FR 74019).

Massachusetts claimed emission reduction credit within its RFP plan for the NO<sub>x</sub> emission reductions achieved by the state's NO<sub>x</sub> SIP Call Trading program, as that program's implementation date was in 2003. Massachusetts submitted its "NO<sub>x</sub> Allowance Trading Program" (also referred to as the NO<sub>x</sub> Budget or the NO<sub>x</sub> SIP Call trading program) to EPA as a SIP revision request, and EPA approved the rule into the Commonwealth's SIP. Amendments to the rule were incorporated into the state's SIP on December 3, 2007. (72 FR 67854). EPA's December 3, 2007 action also approved the Commonwealth's CAIR, which replaced the state's NO<sub>x</sub> Budget program beginning in 2009.

<sup>6</sup> On August 2, 2010 (75 FR 45210), EPA proposed the Transport Rule to address the flaws in CAIR noted by the Court.

Therefore, NO<sub>x</sub> emissions from sources covered by the Commonwealth's NO<sub>x</sub> Allowance trading program will remain constrained after 2008 as the state implements its CAIR control program.

Massachusetts expects to reduce on-road mobile source emissions by its state-run Low Emissions Vehicle (LEV) program. Massachusetts submitted the adopted LEV program to EPA, and EPA approved it into the state's SIP on December 23, 2002 (67 FR 78179).

At the time Rhode Island developed its RFP SIP, it was in the process of adopting a number of control measures for stationary sources of VOC emissions that were set to take effect in 2009, and so emission reductions from these measures were not incorporated into the state's RFP plan because measures in such plans need to have an impact by 2008. Rhode Island was not required to participate in EPA's CAIR program. Accordingly, Rhode Island's RFP plan shows that it meets the 15% emission reduction obligation by relying exclusively on emission reductions between 2002 and 2008 in the mobile source sector. Additionally, the state shows that it can meet its obligation by relying only upon NO<sub>x</sub> emission reductions. These emission reductions occur as a result of the post-1990 Federal mobile source control measures, as mentioned above, the state's adoption of a motor vehicle I&M Program, and the state-adopted Low Emissions Vehicle program. EPA has approved both of these programs into the Rhode Island SIP. (See 66 FR 9661, and 65 FR 12476, respectively.)

*G. Is EPA proposing approval of any state control measures in this action?*

We are proposing to approve three VOC control measures from Connecticut, two of which were included in the state's February 1, 2008 SIP submittal to EPA. These rules consist of a solvent metal cleaning rule, an architectural and industrial maintenance (AIM) coatings rule, and an asphalt paving rule submitted on January 8, 2009. The solvent metal cleaning and AIM coatings rules have compliance dates in May of 2008, and so achieve emission reductions that help Connecticut demonstrate compliance with its RFP obligation. The asphalt paving rule has a May 1, 2009 compliance date and was submitted to help the state demonstrate that it meets the Clean Air Act section 182(b)(2) requirement that sources in the state use reasonably available control technology (RACT) to control air pollution. We are not proposing action on Connecticut's overall RACM or RACT submittals at

this time. Additional information about each of these rules is provided below.

**Metal cleaning rule.** Connecticut's February 1, 2008 SIP submittal to EPA included an amendment to its existing SIP approved metal cleaning rule, located at section 22a-174-20 of the Regulations of Connecticut State Agencies ("Control of organic compound emissions, loading of gasoline and other volatile organic compounds"), paragraph (l) ("Metal cleaning"). The amended rule adds a limit on the vapor pressure of solvents used in cold cleaning and other requirements to further limit emissions of VOCs from metal cleaning operations. These requirements are consistent with the Ozone Transport Commission's (OTC's) 2001 model rule for solvent cleaning. The compliance date for the rule was May 1, 2008.

**AIM coatings rule.** Connecticut's February 1, 2008 SIP submittal included a new rule, section 22a-174-41 ("Architectural and industrial maintenance coatings"), that limits VOC emissions from AIM coatings. The state's rule establishes VOC content limits consistent with those developed in 2001 within a model rule created by the OTC. The limits in the state's rule are as stringent as, or more stringent than, those contained in the Federal AIM rule adopted by EPA in December 1998 (40 CFR part 59, subpart D). The compliance date for most of the regulated product categories was May 1, 2008. EPA notes that we are relying on the federal enforceability of section (g)(3)(A)(iii) referenced in that section of the rule.

**Asphalt paving rule.** On January 8, 2009, Connecticut submitted an amendment to its existing SIP-approved section 22a-174-20 ("Control of organic compound emissions, loading of gasoline and other volatile organic compounds"), paragraph (k) ("Restrictions on VOC emissions from cutback and emulsified asphalt"). The amended regulation includes a seasonal ban on the use of cutback asphalt and a reduction in the acceptable VOC content of emulsified asphalt. The compliance date for the rule was May 1, 2009.

Connecticut held a public hearing on the first two rules mentioned above on June 27, 2006, and held a hearing on the asphalt paving rule on May 1, 2007. EPA reviewed draft versions of these rules and provided comments to Connecticut during the public hearing process, and Connecticut responded adequately to our comments. We are proposing approval of Connecticut's revised solvent metal cleaning and asphalt paving rules, and its new AIM coatings rule, so that they may become

part of the state's federally enforceable SIP.

#### *H. Have these states met their contingency measure obligation?*

Section 172(c)(9) of the CAA requires, in part, that nonattainment areas provide for contingency measures "to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part." EPA has long interpreted the Act to require that contingency measures must provide reductions of 3 percent of the emissions from the adjusted base year inventory (57 FR 13498, 13510-13511). States may choose to meet this requirement by consuming surplus emission reductions shown in their RFP target level calculations, if a surplus exists. However, pursuant to a guidance memorandum issued by EPA on November 8, 1993,<sup>7</sup> any measures that are already required are not creditable as contingency measures. Connecticut, Massachusetts, and Rhode Island each chose to meet the contingency obligation using surplus emission reductions as noted in the target level calculations.

Connecticut and Massachusetts can both readily show that ample surplus emission reductions exist, and that they have implemented controls not otherwise required. In Connecticut's case, 2008 VOC emissions are projected to be 5.7% lower than the target, and NO<sub>x</sub> emissions 16.5% lower than the target in the Greater Connecticut area. For the Connecticut portion of the NY-NJ-CT area, these surpluses are 8.3% for VOC, and 14.5% for NO<sub>x</sub>. Connecticut has adopted a number of rules that are not otherwise required by the CAA that it could count towards its contingency obligation, such as its AIM coatings, automobile refinishing, and solvent cleaning rules. For Massachusetts, 2008 VOC emissions are projected to be 10.6% lower than the target, and NO<sub>x</sub> emissions 22.6% lower in the Eastern Massachusetts area. For the Western Massachusetts area, these surpluses are 10.8% for VOC, and 27.6% for NO<sub>x</sub>. The state's low emission vehicle program, which achieves both VOC and NO<sub>x</sub> emission reductions, is an example of a rule the state adopted that was not otherwise required by the CAA.

Rhode Island projects that it will have a 3.6% NO<sub>x</sub> surplus that it claims can be devoted towards meeting the RFP

contingency requirement. Given the state's reliance on Federal measures to reduce emissions between 2002 and 2008, the state has not demonstrated that it can meet the contingency requirement via reductions from already-adopted NO<sub>x</sub> rules not otherwise required by the CAA. However, Rhode Island could remedy this by relying on the additional VOC control programs for stationary sources that it adopted in 2009, which included rules establishing emission limits for consumer and commercial products, and on architectural and industrial maintenance coatings. A public hearing on these proposed rules was held on February 20, 2009, and they were promulgated as final state regulations May 15, 2009, with an effective date of June 4, 2009. Rhode Island submitted these regulations to EPA as SIP revisions, but EPA has not yet approved into the Rhode Island SIP. Section 8.3 of Rhode Island's attainment demonstration submittal alludes to the possibility of using reductions from these measures as an alternative means of meeting the RFP contingency obligation. We are therefore proposing to approve use of emission reductions from these stationary source measures (which, as noted above, have taken effect under state law but have not yet been approved into Rhode Island's SIP) as meeting the state's contingency plan requirement. Section 8.3 of Rhode Island's attainment demonstration submittal stated that reductions from these regulations were expected to reduce VOC emissions by 2009 by 5.0 tons/day. This would cover the 3% contingency obligation, as 3% of the state's 2002 RFP inventory for VOCs, which is 119.2 tons/day, equals 3.6 tons/day. EPA would need to approve these two rules into Rhode Island's SIP prior to, or in conjunction with, our taking final action on the state's RFP plan.

#### *I. Are transportation conformity budgets contained in these plans?*

Section 176(c) of the CAA, and EPA's transportation conformity rule at 40 CFR part 93 subpart A, require that transportation plans, programs, and projects conform to state air quality implementation plans. Conformity to a SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. States are required to establish motor vehicle emission budgets in any control strategy SIP that is submitted for attainment and maintenance of the NAAQS. The RFP plans submitted by Connecticut,

<sup>7</sup> "Clarification of Issues Regarding the Contingency Measures that are due November 15, 1993 for Moderate and Above Ozone Nonattainment Areas."

Massachusetts, and Rhode Island are control strategy SIPs, and they contain 2008 motor vehicle budgets for VOCs and NO<sub>x</sub> by nonattainment area. Table 4 contains these VOC and NO<sub>x</sub> transportation conformity budgets in units of tons per summer day:

TABLE 4.—CONFORMITY BUDGETS IN THE CONNECTICUT, MASSACHUSETTS, AND RHODE ISLAND RFP PLANS

Area name	2008 Transportation conformity budgets (tons/day)	
	VOC	NO <sub>x</sub>
NY–NJ–CT area (CT portion) .....	29.7	60.5
Greater Connecticut .....	28.5	54.3
Bos-Law-Wor (E. MA) area .....	68.30	191.30
Springfield (W. MA) area .....	11.80	31.30
Providence .....	24.64	28.26

EPA issued letters on June 2, 2008 to Connecticut, March 7, 2008 to Massachusetts, and June 16, 2008 to Rhode Island in which we stated these budgets were adequate for use in transportation conformity determinations. Additionally, EPA published announcements of these adequacy findings in the **Federal Register** on June 12, 2008 for Connecticut (73 FR 33428), March 18, 2008 for Massachusetts (73 FR 14466), and June 30, 2008 for Rhode Island (36862). In today's action, we are proposing approval of the 2008 conformity budgets for VOC and NO<sub>x</sub> for the areas shown in Table 4 above.

Connecticut and Rhode Island increased their projected 2008 motor vehicle emission estimates slightly to provide a buffer to their transportation conformity budgets. Connecticut increased its 2008 motor vehicle emission estimates by 2 percent, and Rhode Island by 0.5 tons/day. Doing so made meeting the 2008 RFP emission target slightly more difficult to achieve. However, both of these states were able to meet their respective RFP targets even after increasing their projected 2008 motor vehicle emission estimates. These increases are reflected in the budgets shown above in Table 4, and were also used in the projected, controlled 2008 emission estimates shown in step 7 of Tables 3 a, b, and e. The Connecticut and Rhode Island 2008 motor vehicle conformity budgets are approvable because these states were able to show that they can meet their 2008 RFP

emission target levels even after providing these buffers to their budgets.

#### IV. Proposed Action

EPA's review indicates that the 2002 base year emission inventories, RFP plans, transportation conformity budgets, and contingency plans submitted by Connecticut on February 1, 2008, Massachusetts on January 31, 2008, and Rhode Island on April 30, 2008 to meet, in part, their obligations under EPA's 1997 8-hour ozone standard meet the requirements for these programs. Therefore, EPA is proposing to approve these listed components of the state's submittals as revisions to each state's SIP. Additionally, EPA is proposing approval of three rules adopted by Connecticut that will reduce VOC emissions in the state. It should be noted that each state's submittal also included other SIP elements, most notably attainment demonstrations for EPA's 1997 8-hour ozone standard, but EPA is not acting on those other components at this time. Additional details regarding the state's submittals and EPA's review of these submittals is contained in the technical support document (TSD) prepared for this action. The TSD is available in the docket for this action. EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

#### V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
  - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
  - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
  - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
  - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
  - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
  - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

Dated: September 9, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Chapter I

#### 340B Drug Pricing Program Manufacturer Civil Monetary Penalties

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Advance notice of proposed rulemaking and request for comments.

**SUMMARY:** Section 602 of Public Law 102-585, the "Veterans Health Care Act