1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment on the proposed rule rather than filing a petition for review in the Court of Appeals.

List of Subjects in 40 CFR Part 52

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

Dated: February 14, 2000.

Mindy S. Lubber,

Acting Regional Administrator, EPA—New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(81) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(81) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on May 12, 1994.

(i) Incorporation by reference.

(A) ''Clean Fuel Fleet Substitute Plan,'' prepared by the Connecticut Department of Environmental Protection, dated May 12, 1994.

(ii) Additional materials.

(A) Letter from the Connecticut Department of Environmental Protection dated May 12, 1994 submitting a revision to the Connecticut State Implementation Plan.

Subpart OO—Rhode Island

3. In § 52.2070 the table in paragraph (e) is amended by adding a new state citation to the end of the table to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(e) * * *

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
*	*	*	*	*
Letter from RI DEM submitting revision for Clean Fuel Fleet Substitution Plan.	Providence (all of Rhode Island) nonattainment area.	October 5, 1994	March 9, 2000 [Insert FR citation from published date].	

[FR Doc. 00–5200 Filed 3–8–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–054–7213A; A–1–FRL–6545–9]

Approval and Promulgation of Air Quality Implementation Plan; Connecticut, New Hampshire, and Rhode Island; Approval of National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve State Implementation Plan (SIP) revisions submitted individually by the States of Connecticut, New Hampshire and Rhode Island, committing that each State will accept compliance with the National Low Emission Vehicle (National LEV) program requirements as a compliance option for new motor vehicles sold in the State. Connecticut submitted its SIP revision on February 7, 1996 and February 18, 1999. EPA proposed approval of this submittal in a direct final rulemaking action on August 16, 1999 (64 FR 44450), and received

adverse comments. Rhode Island's submittal was made on February 22, 1999 and November 17, 1999. New Hampshire's National LEV submittal was made on August 16, 1999. EPA proposed approval of New Hampshire's and Rhode Island's SIPs on December 22, 1999 (64 FR 71705). EPA received no comments on that proposal. In this action, EPA is responding to the comments received on Connecticut's National LEV SIP commitment, and is approving the National LEV SIP commitments for Connecticut, New Hampshire and Rhode Island.

DATES: This rule is effective on May 8, 2000.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA. In addition, the information for each respective State is available at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630; the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095; and the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 918–1045.

SUPPLEMENTARY INFORMATION:

I. Background

On January 7, 1998, (63 FR 926) the Environmental Protection Agency (EPA) published a final rule outlining a voluntary nationwide clean car program, designed to reduce smog and other pollution from new motor vehicles. The National LEV regulations allow auto manufacturers to commit to meet tailpipe standards for cars and light-duty trucks that are more stringent than EPA can mandate. The regulations provided that the program would come into effect only if northeastern States and the auto manufacturers voluntarily signed up for it. On March 9, 1998 (63 FR 11374), EPA found that nine northeastern States and 23 manufacturers had opted into the National LEV program and that the program is in effect. Now that it is in effect, National LEV is enforceable in the same manner as any other federal new motor vehicle program. National LEV will achieve significant air pollution reductions nationwide. A more complete description of the National LEV program was included in the proposed rulemaking actions, and will not be restated here.

EPA is taking a final action to approve State Implementation Plan (SIP) revisions submitted individually by the States of Connecticut, New Hampshire and Rhode Island, committing that each State will accept automaker's compliance with National LEV program requirements as a compliance option for new motor vehicles sold in the State. Further, for Connecticut and Rhode Island, we are approving the States' backstop California low emission vehicle programs that would apply to any manufacturers not complying with National LEV. Connecticut submitted its SIP revision on February 7, 1996 and February 18, 1999. EPA proposed approval of this submittal in a direct final rulemaking action on August 16, 1999 (64 FR 44411, 64 FR 44450). EPA subsequently withdrew this action on November 12, 1999 (64 FR 61522) because adverse comments were submitted. Rhode Island's submittal was made on February 22, 1999 and November 17, 1999. New Hampshire's National LEV submittal was made on August 16, 1999. EPA proposed approval of New Hampshire's and Rhode Island's SIPs on December 22, 1999 (64 FR 71705). EPA received no comments on that proposal. Below, EPA is responding to the comments received on Connecticut's National LEV SIP commitment, and is approving the National LEV SIP commitments for Connecticut, New Hampshire and Rhode Island.

Response to Comments: On September 15, 1999, the American Canoe Association, Inc. (ACA), submitted adverse comments on the proposed SIP revision for the Connecticut commitment to accept National LEV. EPA took action to ensure that the Connecticut National LEV SIP commitment was not made part of the SIP by withdrawing that direct final rulemaking in the **Federal Register** (64 FR 61522). EPA stated that it would respond to the comments received and make a final determination on approval of the Connecticut National LEV SIP commitment in the future. As outlined below, some of these issues were addressed and resolved under the National LEV rulemaking, and EPA did not reopen these issues for reconsideration in proposing to approve the Connecticut National LEV SIP commitment.

1. ACA Comment: The proposed SIP revision will result in increased auto emissions in Connecticut which will adversely affect Connecticut residents as well as residents in downwind States. This is based on ACA's observation that average emission standards for both passenger cars and light duty trucks for at least 1999 and 2000 model years for NMOG are lower under the CA LEV program than the National LEV program, and their assertion that air quality would suffer in Connecticut and in downwind states such as Rhode Island and Massachusetts because of this action.

Response: As an initial matter, EPA found in the National LEV rulemaking that National LEV would produce NO_X and VOC emission reductions equivalent to or greater than those from State by State adoption of California LEV throughout the Northeast Ozone Transport Region (63 FR 930). Connecticut's SIP commitment to National LEV is necessary to ensure that the National LEV program remains in effect and continues to produce emission reductions and associated air quality benefits. Thus, EPA disagrees with ACA's assertion regarding air quality benefits (see 63 FR 930–931 and Summary and Analysis of Comments, National Low Emission Vehicle Program, December 12, 1997 for further discussion).

Moreover, when the State of Connecticut originally submitted the California LEV program to EPA in 1996, it stated that it preferred the National LEV program, and asked that EPA not act to approve the California program until issues regarding National LEV were resolved. When the State ultimately submitted its SIP commitment to accept National LEV for approval, the State made clear it intended EPA to approve Connecticut's commitment to National LEV in the SIP with the California LEV program as a backstop program, which would only apply if an automaker were no longer to subject to National LEV. Comparisons between California LEV and National LEV are not relevant for the purposes of this approval because EPA is acting on the SIP revision request that is before EPA. The SIP revision meets all Clean Air Act requirements and will strengthen the existing State Implementation Plan, resulting in federally enforceable emission reductions. ACA's opinion that another measure could have been utilized by the State and would result in more pollution reductions is not relevant to EPA's determination of whether to approve the State's submission under section 110(k) of the Clean Air Act. EPA is approving the State's request.

Further, on June 25, 1998, Connecticut held a public hearing on the SIP submittal to commit to National

LEV. This hearing sought public input on the State's proposal to finalize its commitment to National LEV, and its plan to allow National LEV to be a compliance alternative to the States' California LEV program. No parties submitted adverse comments at that hearing. Thus, on February 18, 1999, Connecticut requested approval of the National LEV program, with the State's previously adopted California LEV program as a backstop.

2. ACA Comment: NLEV is illegal under the Clean Air Act. ACA contends that NLEV is illegal because EPA does not have the authority to amend the current Tier 1 standards until at least 2004. ACA further contends that NLEV is illegal because it requires EPA to illegally surrender discretion over EPA's regulatory responsibilities. Finally, ACA contends that NLEV is illegal because EPA has no authority to decide whether a State may exercise its rights under section 177 of the Clean Air Act.

Response: These issues were raised and resolved in the final National LEV rule (See 62 FR 31202–31208; 31221–31223, June 6, 1997; 63 FR 935–945, 956, January 7, 1998; Summary and Analysis of Comments, National Low Emission Vehicle Program, May 1, 1997, 27–35, 71–74; Summary and Analysis of Comments, National Low Emission Vehicle Program, December 12, 1997, 21–24). Thus, all three of these issues relating to the legality of the National LEV program were closed upon promulgation of the final National LEV rule. EPA did not reopen in its proposed SIP approval rulemaking any issues related to the legality of the underlying federal program that States are committing to accept. Thus, these issues relating to the legality of the National LEV program were already closed for purposes of this SIP approval.

3. ACA Comment: The Clean Air Act does not allow a State to use, or EPA to approve, a ''compliance alternative'' in a State that has adopted California's emission standards. ACA argues that section 177 is clear that no third set of vehicle emission standards is permitted. The standards that can be adopted are either CA LEV programs under section 177, or the federal emission standards.

Response: EPA also resolved in the final National LEV rule the issue of whether States may accept compliance with the National LEV program in lieu of compliance with State section 177 programs, and whether EPA may approve SIP revisions committing to accept National LEV in this way. EPA did not reopen this issue in this rulemaking by proposing to approve SIP revisions committing to accept National LEV as a compliance alternative.

The entire National LEV program is premised on the concept that it will provide motor vehicle manufacturers an alternative to compliance with State section 177 programs in States that opt into the National LEV program. Moreover, the National LEV regulations provide detailed requirements that States must meet to opt into National LEV, including language for SIP revisions committing the State to accept compliance with the program. 40 CFR 86.1705–99(e). These provisions of the National LEV rule were premised on EPA's interpretation that neither section 177 nor section 209 bar a State from exempting motor vehicles from compliance with a State section 177 program if those vehicles complied with federal standards. The provisions were also premised on EPA's interpretation that sections 177 and 209 also do not bar EPA approval of a SIP committing the State to accept such compliance with federal standards. It was clear that sections 177 and 209 would bar a State from adopting the National LEV standards itself and requiring motor vehicle manufacturers to comply with such standards. However, EPA believed that sections 177 and 209 would in no way prevent a State from committing that it would not apply its section 177 requirements to motor vehicle manufacturers that chose to comply with a specified federal regulatory program. This interpretation distinguished between a State adopting new motor vehicle requirements that apply to manufacturers and are different from California's program, and a State providing that its State requirements under section 177 will not apply to manufacturers, as long as they comply with federal requirements. EPA promulgated the National LEV regulations based on this interpretation. Moreover, EPA did not reopen for consideration this fundamental legal interpretation, which supports the validity of the entire structure of the National LEV program, in this direct final rulemaking to approve Connecticut's SIP revision. EPA explained in the preamble to the National LEV final rule that EPA would be able to approve a SIP submission containing the specified language even without further notice-and-comment rulemaking. Here EPA chose to conduct notice-and-comment rulemaking to address any other possible issues regarding the approvability of Connecticut's submission under section 110 of the CAA. 63 FR 935–939. EPA did not reopen the compliance alternative issue in this rulemaking.

Final Action: EPA has evaluated the SIP revisions submitted by Connecticut, New Hampshire, and Rhode Island and has determined that each is consistent with the EPA National LEV regulations and meet the section 110 requirements for SIP approvals. Therefore, EPA is approving the Connecticut SIP revision submitted on February 7, 1996 and February 18, 1999; Rhode Island's SIP revision submitted on February 22, 1999 and November 17, 1999; and New Hampshire's SIP revision submitted on August 16, 1999, which commit each State to the National LEV program.

Nothing in this action should be construed as permitting or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state laws as meeting federal requirements and imposes no additional requirements beyond those imposed by those state laws. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule allowing entities to comply with a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean

Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 8, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: February 17, 2000.

Mindy S. Lubber,

Acting Regional Administrator, Region I.

PART 52—[AMENDED]

40 CFR part 52 is amended as follows:

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

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

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(79) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(79) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on February 7, 1996 and February 18, 1999.

(i) Incorporation by reference.

(A) Connecticut regulation section 22a–174–36, entitled ''Low Emission Vehicles'' as dated and effective by determination of the Secretary of State on December 23, 1994.

(B) Connecticut regulation section 22a–174–36(g), entitled ''Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program'' as dated and effective by determination of the Secretary of State on January 29, 1999.

(ii) Additional material.

(A) Letter from the Connecticut Department of Environmental Protection dated February 7, 1996 submitting a revision to the Connecticut State Implementation Plan for the Low Emission Vehicle program.

(B) Letter from the Connecticut Department of Environmental Protection dated February 18, 1999 submitting a revision to the Connecticut State Implementation Plan for the National Low Emission Vehicle program to be a compliance option under the State's Low Emission Vehicle Program.

3. In § 52.385, Table 52.385 is amended by adding new entries for section 22a–174–36, entitled ''Low Emission Vehicles'' and section 22a–174–36(g), entitled ''Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program'' to read as follows:

§ 52.385 - EPA—approved Connecticut Regulations

* * * * *

TABLE 52.385.—EPA-APPROVED RULES AND REGULATIONS

Connecticut State citation	Title/subject	Dates		Federal Register citation	52.370	Comments/description
		Date adopted by State	Date approved by EPA			
*	*	*	*	*	*	*
22a–174–36	Low Emission Vehicles	12/23/94	3/9/00	[Insert FR citation from published date].	(c)(79)	Approval of Low Emission Vehicle Program.
22a–174–36(g)	Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program.	1/29/99	3/9/00	[Insert FR citation from published date].	(c)(79)	Approval of Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program for the ''California'' low emission vehicle program adopted above.
*	*	*	*	*	*	*

Subpart EE—New Hampshire

4. Section 52.1520 is amended by adding paragraph (c)(65) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(65) Revisions to the State Implementation Plan submitted by the New Hampshire Department of Environmental Services on August 16, 1999.

(i) Incorporation by reference.

New Hampshire regulation Chapter Env-A 3600, entitled ''National Low Emission Vehicle (National LEV) Program'' adopted July 21, 1999.

(ii) Additional material.

Letter from the New Hampshire Department of Environmental Services dated August 16, 1999 submitting the Low Emission Vehicle program as a revision to the State Implementation Plan.

5. In § 52.1525, Table 52.1525 is amended by adding new entries to existing state citations for Chapter Env-A 3600, entitled ''National Low Emission Vehicle (National LEV) Program'' to read as follows:

§ 52.1525—EPA-approved New Hampshire state regulations

* * * * *

TABLE 52.1525.—EPA-APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Comments
*	*	*	*	*	*	*
National Low Emission Vehicle Program.	CH air 3600	7/21/99		[Insert FR citation from published date].	(c)(65)	Approval of commitment to National Low Emission Vehicle Program.
*	*	*	*	*	*	*

Subpart OO—Rhode Island

§ 52.2070 Identification of plan.

6. In § 52.2070 the Table in paragraph (c) is amended by adding new state citations for Regulation Number 37, entitled ''Rhode Island's Low Emission Vehicle Program'' and in the Table in paragraph (e) by adding a new entry at the end of the Table in the non-regulatory SIP provision to read as follows:

(c) EPA approved regulations.

EPA APPROVED RHODE ISLAND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
* *	*	*	*	* *
Air Pollution Control Regulation 37.	Rhode Island's Low Emission Vehicle Program.	12/7/99	[Insert FR citation from published date].	Includes National LEV as a compliance alternative.

(d) * * *

(e) Nonregulatory.

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approved date	Explanations
* *	*	*	*	* *
Letter outlining commitment to National LEV.	Statewide	2/22/99	[Insert FR citation from published date].	Includes details of the State's commitment to National LEV.

[FR Doc. 00–5630 Filed 3–9–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE046–1022a; FRL–6547–9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Regulation Number 37—NO_X Budget Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking a direct final rule to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision implements Phase II of the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) which describes a regional nitrogen oxides (NO_X) cap and trade program that will significantly reduce NO_X emissions generated within the ozone transport region. The intended effect of this action is to approve the Delaware Regulation Number 37, NO_X Budget Program.

DATES: This rule is effective on May 8, 2000, without further notice, unless EPA receives adverse written comment by April 10, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Delaware Department of Natural Resources & Environmental Control, Richardson & Robins Building, 89 Kings Highway, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at quinto.rose@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On December 20, 1999, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of Delaware Regulation Number 37, NO_X Budget Program.

I. Background

The Ozone Transport Commission (OTC) adopted a Memorandum of Understanding (MOU) on September 27, 1994, committing the signatory states to the development of a two phase region-wide reduction in NO_X emissions by 1999 and by 2003, respectively. As reasonably available control technology (RACT) to reduce NO_X emissions was required to be implemented by May of 1995, the MOU refers to the NO_X reductions to be achieved by 1999 as Phase II; and the NO_X reductions to be achieved by 2003 as Phase III. The OTC states include Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, the northern counties of Virginia, and the District of Columbia. All OTC member states and the District of Colombia, with the exception of the Commonwealth of Virginia, signed the September 27, 1994 MOU. The OTC MOU requires reductions of NO_X emissions, during the ozone season, from utility and large industrial combustion facilities within the Ozone Transport Region (OTR) in order to further the effort to achieve the health-based National Ambient Air Quality Standard (NAAQS) for ozone.

In the MOU, the OTC states agreed to propose regulations for the control of NO_X emissions in accordance with the following guidelines:

1. The level of NO_X required would be established from a 1990 baseline emissions level.

2. The reduction would vary by location, or zone, and would be implemented in two phases utilizing a region wide trading program.

3. The reduction would be determined based on the less stringent of each of the following:

a. By May 1, 1999, the affected facilities in the inner zone shall reduce their rate of NO_X emissions by 65% from baseline, or emit NO_X at a rate no greater than 0.20 pound per million Btu. (This is referred to as a Phase II requirement).

b. By May 1, 1999, the affected facilities in the outer zone shall reduce their rate of NO_X emissions by 55% from baseline, or shall emit NO_X at a rate no greater than 0.20 pounds per million Btu. (This is referred to as a Phase II requirement).

c. By May 1, 2003, the affected facilities in the inner and outer zone shall reduce their rate of NO_X emissions by 75% from baseline, or shall emit NO_X at a rate of no greater than 0.15 pounds per million Btu. (This is referred to as a Phase III requirement).

d. By May 1, 2003, the affected facilities in the Northern zone shall reduce their rate of NO_X emissions by 55% from baseline, or shall emit NOx at a rate no greater than 0.20 pounds per million Btu. (This is referred to as a Phase III requirement).

A task force of representatives from the OTC states, organized through the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA), were charged with the task of developing a model rule to implement the program defined by the OTC MOU. During 1995 and 1996, the NESCAUM/MARAMA NO_X Budget Task Force worked with EPA and developed a model rule as a template for OTC states to adopt their own rules to implement the OTC MOU. The model rule was issued May 1, 1996. The model rule was developed for the OTC states to implement the Phase II reduction called for in the MOU to be achieved by May 1, 1999. The model rule does not include the implementation of Phase III.

II. Summary of SIP Revision

Delaware's Regulation Number 37 is based solely and completely upon the ''NESCAUM/MARAMA NO_X Budget Rule'' issued in May 1, 1996. The model rule was developed by the states in the Ozone Transport Region (OTR) using the EPA's economic incentive rules (67 FR 16690) which were published on April 7, 1994, as the general regulatory framework.

The Delaware NO_X Budget Program establishes NO_X emission allowances for each ozone season which falls between May 1, 1999 and September 30, 2002. This program identifies the budgeted sources and identifies the number of allowances each budgeted source is allocated.

The Delaware NO_X Budget Program is divided into twenty sections: (1) General Provisions—purpose and scope of the program; (2) Applicability—any owner or operator of a budget source where the source is located in the State of Delaware; (3) Definitions—defines terms used in the program; (4) Allowance Allocation—the total number of NO_X allowances (tons) which Delaware has been allotted from the regional program to divide among the sources subject to the program during the 1999–2002 ozone seasons; (5) Permits—requirements for revisions and amendments; (6) Establishment of Compliance Accounts; (7) Establishment of General Accounts; (8) Opt-in