authorize the incidental take of a small number of marine mammals during launches of Titan IV rockets from Vandenberg Air Force Base, California (Vandenberg). Under section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*; MMPA), an authorization under this provision may not exceed 5 years.

On April 30, 1994, the President signed Public Law 103–238, the MMPA Amendments of 1994. One part of this law added a new subsection 101(a)(5)(D) to the MMPA, establishing an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment for a period of up to 1 year. Under this provision, the U.S. Air Force applied on January 24, 1996, for a 1-year authorization to incidentally take by harassment a small numbers of harbor seals, California sea lions, northern elephant seals, northern fur seals, and possibly Guadalupe fur seals in the vicinity of Vandenberg, to replace the authorization expiring on September 24, 1996. These harassment takes would result from launchings of both Titan II and Titan IV rockets. A notice of receipt of the Titan II and IV application and a proposed authorization was published on March 15, 1996 (61 FR 10727) and a 30-day public comment period was provided on the application and proposed authorization.

NMFS anticipates that this 1-year authorization, if issued, along with others issued previously for Lockheed launch vehicles (60 FR 38308, July 26, 1995 and 61 FR 38437, July 24, 1996) and McDonnell Douglas Delta II launch vehicles (60 FR 52653, October 10, 1995; see also 61 FR 45404, August 29, 1996), will be replaced later this year by new regulations, under section 101(a)(5)(A) of the MMPA, authorizing and governing incidental take of marine mammals by launches of all rocket types from Vandenberg. An application for such an authorization is presently under development by the U.S. Air Force.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the Federal Register to the Assistant Administrator for Fisheries, NOAA (AA).

Classification

This final rule is exempt from review under E.O. 12866. Because this rule only removes unnecessary and outdated text, the AA, under section 553(b)(B) and (d) of the Administrative Procedure Act, for good cause finds that it is unnecessary to provide prior notice and opportunity for public comment on this rule or to delay for 30 days its effective date. Because this rule is being issued without prior notice and opportunity for public comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, and none has been prepared. This rule is not expected to result in economic costs to the public.

This action is categorically excluded from the requirement to prepare an environmental assessment by section 6.02b.3(b) (ii) (aa) of NOAA Administrative Order 216–6 as revised.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number. This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: September 25, 1996.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter II are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

§ 902.1 [Amended]

2. In § 902.1, paragraph (b), the table is amended by removing, in the left column under 50 CFR, the entry ''216.125'' and, in the right column, the corresponding OMB control number.

50 CFR Chapter II

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

3. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

Subpart K—[Removed and Reserved]

4. Subpart K (§§ 216.121 through 216.126) is removed and reserved.

[FR Doc. 96–25161 Filed 9–30–96; 8:45 am]

BILLING CODE 3510–22–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II, Docket No. 152, NY21–1–6732a; FRL–5555–2]

Approval and Promulgation of Implementation Plans; Transportation Control Measures, State of New York

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a request submitted on November 15, 1992 by the State of New York to revise its ozone state implementation plan (SIP) which addresses the need for transportation control measures (TCMs) to offset growth in emissions from growth in vehicle miles travelled (VMT) as required by the Clean Air Act (Act). New York has indicated that VMT growth will not result in increased emissions and, therefore, TCMs are not needed for this purpose.

DATES: This action is effective on December 2, 1996 unless adverse or critical comments are received by October 31, 1996. If adverse comments are received, this notice will be withdrawn in the Federal Register prior to the effective date of this rule.

ADDRESSES: All comments should be addressed to: William S. Baker, Chief, Air Programs Branch, Air and Waste Management Division, Environmental Protection Agency, Region II Office, 290 Broadway, 20th Floor, New York, New York 10007–1866

Copies of New York's submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch,

290 Broadway, 20th Floor, New York, New York 10007–1866.
New York Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233–1010
Environmental Protection Agency, Air and Radiation Docket and Information Center (MC 6102), 401 M Street, S.W., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT:

Linda Kareff, Environmental Protection Specialist, Technical Evaluation Section, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4249

SUPPLEMENTARY INFORMATION:

Background

Section 182(d)(1)(A) of the Clean Air Act Amendments of 1990 requires states containing ozone nonattainment areas classified as ''severe'' pursuant to section 181(a) of the Act to adopt transportation control measures (TCMs) and transportation strategies to offset growth in emissions from growth in vehicle miles travelled (VMT) or number of vehicle trips, and to attain reductions in motor vehicle emissions (in combination with other emission requirements) as necessary to comply with the Act's Reasonable Further Progress (RFP) milestone and attainment requirements. The requirements for establishing a VMT offset program are discussed in the April 16, 1992 General Preamble to Title I of the Act (57 FR 13498), in addition to section 182(d)(1)(A) of the Act.

The VMT offset provision requires that states submit by November 15, 1992 specific enforceable TCMs and strategies to offset any growth in emissions from growth in VMT or number of vehicle trips sufficient to allow total area emissions to comply with the RFP and attainment requirements of the Act.

EPA has observed that these three elements (i.e., offsetting growth in mobile source emissions, attainment of the RFP reduction, and attainment of ozone national ambient air quality standards (NAAQS)) create a timing problem of which Congress was perhaps not fully aware. As discussed in EPA's April 16, 1992 General Preamble to Title I, ozone nonattainment areas affected by this provision were not otherwise required to submit SIPs that show attainment of the 1996 15% RFP milestone until November 15, 1993, and likewise are not required to demonstrate post-1996 RFP and attainment of the NAAQS until November 15, 1994. The SIP demonstrations due on November 15, 1993, and on November 15, 1994 are broader in scope than growth in VMT or trips in that they necessarily address emission trends and control measures for non-motor vehicle emission sources and, in the case of attainment demonstrations, complex photochemical modeling studies.

EPA does not believe that Congress intended the VMT offset provision to advance dates for these broader submissions. Further, EPA believes that the November 15, 1992 date would not allow sufficient time for states to have fully developed specific sets of measures that would comply with all of the elements of the VMT offset requirements of section 182(d)(1)(A) over the long term. Consequently, EPA believes it would be appropriate to interpret the Act to provide the following alternative set of staged deadlines for submittal of elements of the VMT offset SIP. Under this interpretation, the three required elements of section 182(d)(1)(A) are separable, and can be divided into three separate submissions on different dates. Section 179(a) of the Act, in establishing how EPA would be required to apply mandatory sanctions if a state fails to submit a full SIP also provides that the sanctions clock starts if a state fails to submit one or more SIP elements, as determined by the Administrator. EPA believes that this language provides EPA the authority to determine that the different elements of a SIP submission are separable. Moreover, given the continued timing problems addressed above, EPA believes it is appropriate to allow states to separate the VMT offset SIP into three elements, each to be submitted at different times: (1) The initial requirement to submit TCMs that offset growth in emissions; (2) the requirement to comply with the 15% Rate of Progress requirement of the Act; and (3) the requirement to comply with the post-1996 periodic reduction and attainment of the ozone NAAQS.

Under this approach, the first element, the emissions offset element was due on November 15, 1992. EPA believes this element is not necessarily dependent on the development of the other elements. A state could submit the emissions growth offset element independent of an analysis of that element's consistency with the periodic reduction and attainment requirements of the Act. Emissions trends from other sources need not be considered to show compliance with the offset requirement. As submitting this element in isolation does not implicate the timing problems of advancing deadlines for RFP and attainment demonstrations, EPA does not believe it is necessary to extend the statutory deadline for submittal of the emissions growth offset element.

The second element, which requires the VMT offset SIP to comply with the 15% RFP requirement of the Act was due on November 15, 1993 which is the same date on which the 15% RFP SIP itself was due under section 182(b)(1) of the Act. EPA believes it is reasonable to extend the deadline for this VMT offset element from November 15, 1992 to the date on which the entire 15% SIP was due, as this allows states to develop the comprehensive strategy to address the 15% requirement and assure that the TCM elements required under section 182(d)(1)(A) are consistent with the remainder of the 15% demonstration. Indeed, EPA believes that only upon submittal of the broader 15% plan can a state have had the necessary opportunity to coordinate its VMT strategy with its 15% plan.

The third element, which requires the VMT offset SIP to comply with the post-1996 RFP and attainment requirements of the Act was due on November 15, 1994, the statutory deadline for those broader submissions. EPA believes it is reasonable to similarly extend the deadline for this VMT element to the date on which the post-1996 RFP and attainment SIPs are due for the same reason it is reasonable to extend the deadline for the second element. First, it is arguably impossible for a state to make the showing required by section 182(d)(1)(A) for the third element until the broader demonstrations have been developed by the State. Moreover, allowing states to develop the comprehensive strategy to address post-1996 RFP and attainment by providing a fuller opportunity to assure that the TCM elements comply with the broader RFP and attainment demonstrations, will result in a better program for reducing emissions in the long term.

State Submittal

On November 15, 1992, the State of New York submitted its ozone SIP revision dealing with, in part, whether TCMs are needed to offset growth in emissions. The submittal was found to be incomplete and was resubmitted with additional information on September 9, 1993. The EPA found the SIP complete with the supplemental information on November 5, 1993. In this submittal, the State has indicated that it does not need to submit a revision adopting specific TCMs under the first element of the VMT offset requirement because it has determined that it will not need to offset growth in emissions from growth in VMT into the next century. EPA's independent analysis (included in the technical support document) supports this finding and demonstrates that New York will

not need to offset growth in emissions until at least the year 2007, the year New York is required to demonstrate attainment. The second and third TCM elements will be addressed in future rulemaking when EPA evaluates New York's 15% Rate of Progress requirement to be resubmitted by New York and the post-1996 attainment SIP submittals.

Conclusion

Section 182(d)(1)(A) of the Act requires the State to offset any growth in emissions from growth in VMT. As discussed in the General Preamble, the purpose is to prevent a growth in motor vehicle emissions from canceling out the emission reduction benefits of the federally mandated programs in the Act. EPA interprets this provision to require that sufficient measures must be adopted so that projected motor vehicle volatile organic compound (VOC) emissions will never be higher during the ozone season in one year than during the ozone season in the year before. When growth in VMT and vehicle trips would otherwise cause a vehicle upturn in emissions from motor vehicles, this upturn must be prevented. The emissions level at the point of upturn becomes a ceiling on motor vehicle emissions. This requirement applies to projected emissions in the years between the submission of the SIP revision and the attainment demonstrations. The ceiling level is defined, therefore, up to the point of upturn, as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented by the Act. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value. The ceiling line would include the effects of federal measures such as new motor vehicle standards, phase II Reid vapor pressure (RVP) controls, and reformulated gasoline, as well as the Act-mandated SIP requirements.

The State of New York has indicated in its submittal on November 15, 1992 that the predicted growth in VMT is not expected to result in an increase in motor vehicle emissions that will negate the effects of the reductions mandated by the Act. Because the current modelling does not indicate a need for TCMs to offset growth in emissions before 2007, the year New York State is to demonstrate attainment, we are approving the part of the ozone state implementation plan that determines that New York is not required to adopt specific, enforceable TCMs to meet the first element of the offset requirement. EPA is therefore approving the New York State SIP revision submittals as satisfying the first of the three VMT offset plan requirements. With respect to the second element, EPA will address this element when New York's 15% Rate of Progress plan is resubmitted to EPA. With respect to the third element, New York will periodically be updating its emissions projections as a part of its post-1996 RFP and attainment SIPs. Upon review of the updated projections, EPA will determine if revised emissions estimates have changed creating a necessity for TCMs.

Nothing in this rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, this direct final action will be effective December 2, 1996, unless, by October 31, 1996, adverse or critical comments are received.

If the EPA receives such comments, this rule will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this rule should do so at this time. If no adverse comments are received, the public is advised that this rule will be effective December 2, 1996. (See 47 FR 27073 and 59 FR 24059).

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

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

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

Through submission of this state implementation plan or plan revision, the state and any affected local or tribal governments have elected to adopt the program provided for under section 182(d)(1)(A) of the Clean Air Act. These rules may bind state, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose any mandate upon the state, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated annual costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule 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 rule must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. 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 rule may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: July 29, 1996.

William Muszynski,

Acting Regional Administrator.

Part 52, 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. 7401–7671q.

Subpart HH—New York

2. Section 52.1683 is amended by adding new paragraph (c) to read as follows:

§ 52.1683 Control Strategy; Ozone

* * * * *

(c) EPA approves on December 2, 1996, a request submitted by the State of New York to revise its ozone state implementation plan (SIP) which addresses the need for transportation control measures (TCMs) to offset growth in emissions from growth in vehicle miles travelled (VMT) as required by the Clean Air Act (Act). New York has indicated that VMT growth will not result in increased emissions and, therefore, TCMs are not needed for this purpose.

[FR Doc. 96–24534 Filed 9–30–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412, 413, and 489

[BPD–847–N]

RIN 0938–AH34

Medicare Program; Notice of Effective Date for Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1997 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of effective date.

SUMMARY: On August 30, 1996, we published a final rule—Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1997 Rates—at 61 FR 46166 *et seq.* At that time, we indicated that, by operation of section 801(a)(3) of title 5, United States Code, the final rule might not take effect until October 29, 1996. On September 17, 1996, the Senate voted to reject a joint resolution of disapproval of the final rule under section 802 of title 5, United States Code. Accordingly, pursuant to section 801(a)(5) of title 5, United States Code, the provisions of the August 30, 1996 final rule are effective on October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Edwards (410) 786–4531.

(Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 23, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: September 27, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–25275 Filed 9–30–96; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AC40

National Flood Insurance Program; Audit Program Revision

AGENCY: Federal Insurance Administration (FEMA).

ACTION: Final rule.

SUMMARY: The Federal Insurance Administration (FIA) has amended its regulations regarding the manner in which its audits are conducted under the National Flood Insurance Program's (NFIP) Write Your Own (WYO) Program. The regulations develop a comprehensive, less burdensome, more efficient audit program. FIA anticipates that these revisions will result in greater economy of resources and new savings to the NFIP public.

EFFECTIVE DATE: October 31, 1996.

FOR FURTHER INFORMATION CONTACT: Roland E. Holland, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (tel.) (202) 646–3439.

SUPPLEMENTARY INFORMATION: Recently, after reviewing the programs and services provided to the NFIP public, the Federal Insurance Administrator concluded that the services currently being provided could be enhanced and improved by revising the audit procedures. As a result, FIA will discontinue the self-audit program, as well as the triennial claims and underwriting operations reviews. The triennial audit will be revised to be conducted on a biennial basis, and expanded to encompass greater claims and underwriting audits that Certified Public Accountant (CPA) firms, selected by the WYO companies, will conduct at the companies' expense. These changes are being made to facilitate improved management control over the audit process. FIA believes these efforts will result in appreciable program savings to both the WYO companies and the FIA. FIA published in the Federal Register a proposed rule to implement these changes on February 1, 1996, 61 FR 3635–3644. A 45-day public comment period expired on March 18, 1996. However, because FIA only received one set of comments, the comment period was kept open to allow other interested parties additional time to respond. Since that time, we have not received any further comments. We concur with the six comments received and, therefore, the final rule reflects these changes, as well as other changes made for consistency and for continuity.

Reference in proposed rule: § 62.23(h)(1). ''To expedite business growth, the WYO Company will encourage its present property insurance policyholders to purchase flood insurance and to transfer to the WYO company, at the time of policy renewal, business placed by its producers with the NFIP Bureau and Statistical Agent.''