

the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect State-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new requirements. Therefore, I certify that such a disapproval action will not have a significant economic impact on a substantial number of small entities because it would not remove existing requirements nor would it substitute a new Federal requirement.

The EPA's alternative proposed disapproval of the State request under section 110 and subchapter I, part D of the Act would not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements would remain in place after this disapproval. Federal disapproval of the State submittal would not affect State-enforceability. Moreover EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that the proposed disapproval would not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory

requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

Sections 202 and 205 do not apply to the proposed disapproval because the proposed disapproval of the SIP submittal would not, in and of itself, constitute a Federal mandate because it would not impose an enforceable duty on any entity. In addition, the Act does not permit EPA to consider types of analyses described in section 202 in determining whether a SIP submittal meets the CAA. Finally, section 203 does not apply to the proposed disapproval because it would affect only the State of Connecticut, which is not a small government.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, the EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

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

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

Dated: November 30, 1999.

Mindy S. Lubber,

Deputy Regional Administrator, Region I.

[FR Doc. 99–31711 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY38–204, FRL–6502–2]

Approval and Promulgation of Implementation Plans; New York; 1-Hour Ozone Attainment Demonstration State Implementation Plan and 2007 Transportation Conformity Budgets

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve New York's 1-hour Ozone Attainment Demonstration State Implementation Plan (SIP) for the New York-Northern New Jersey-Long Island nonattainment area or in the alternative to disapprove it, depending on whether New York submits the adopted NO_x SIP Call, the revised transportation conformity budgets and necessary enforceable commitments.

First, EPA is proposing to approve New York's Ozone Attainment Demonstration SIP provided New York submits: the adopted NO_x SIP Call program as a SIP revision; an enforceable commitment to adopt sufficient measures to address the required level of emission reductions identified by EPA; revised transportation conformity budgets which reflect the additional emission reductions identified by EPA for attainment; revised transportation conformity budgets to include the Tier 2/Sulfur program benefits, if these benefits have not already been incorporated; an enforceable commitment to revise the Attainment Demonstration SIP, including recalculation of the transportation conformity budgets (if any of the additional emission reductions pertain to motor vehicle measures) to reflect the adopted additional measures needed for attainment; an enforceable commitment to revise the Attainment Demonstration, including transportation conformity budgets, when MOBILE6 (the most recent model for estimating mobile source emissions) is released; and, an enforceable commitment to perform a mid course review and submit the results to EPA by December 31, 2003.

With respect to the NO_x SIP Call, the proposed approval is predicated upon the expectation that New York will submit the NO_x SIP Call program prior to EPA taking final action on today's proposal.

EPA also is proposing to disapprove-in-the-alternative New York's Ozone

Attainment Demonstration SIP if New York does not provide one or more of the identified elements by the required dates.

DATES: Comments must be received on or before February 14, 2000.

ADDRESSES: Written comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

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

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3381.

SUPPLEMENTARY INFORMATION: This section provides background information on Attainment Demonstration SIPs for the 1-hour ozone national ambient air quality standard (NAAQS) and an analysis of the 1-hour Ozone Attainment Demonstration SIP submittal for the New York-Northern New Jersey-Long Island ozone nonattainment area.

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I. Background Information

A. What Is the Basis for the State's Attainment Demonstration SIP?

1. CAA Requirements

The Clean Air Act (CAA) requires EPA to establish national ambient air quality standards (NAAQS or standards) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. CAA sections 108 and 109. In 1979, EPA promulgated the 1-hour 0.12 parts per million (ppm) ground-level ozone standard. 44 FR 8202 (Feb. 8, 1979). Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_x and VOC are referred to as precursors of ozone.

An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.124 ppm. An area is violating the standard if, over a consecutive three-year period, more than three exceedances are expected to occur at any one monitor. The CAA, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the three-year period from 1987-1989. CAA section 107(d)(4); 56 FR 56694 (Nov. 6, 1991). The CAA further classified these areas, based on the area's design value, as marginal, moderate, serious, severe or extreme. CAA section 181(a). Marginal areas were suffering the least significant air pollution problems while the areas classified as severe and extreme had the most significant air pollution problems.

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas are required to attain the 1-hour standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The New York-Northern New Jersey-Long Island nonattainment area is classified as severe and its attainment date is November 15, 2007. This area includes most of northern New Jersey, southeastern New York, and southwest Connecticut. The New York portion of the New York-Northern New Jersey-

Long Island Area is composed of New York City and the counties of Nassau, Suffolk, Westchester and Rockland and the towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick and Woodbury in Orange County (40 CFR 81.333). This nonattainment area will be referred to as the New York Metro Area. Elsewhere in this **Federal Register**, EPA is today proposing to take action on the New Jersey and Connecticut portions of the New York-Northern New Jersey-Long Island nonattainment area.

Under section 182(c)(2) and (d) of the CAA, serious and severe areas were required to submit by November 15, 1994 demonstrations of how they would attain the 1-hour standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year (rate-of-progress or ROP). In some cases, NO_x emission reductions can be substituted for the required VOC emission reductions. Today, in this proposed rule, EPA is proposing action on the Attainment Demonstration SIP submitted by New York for the New York Metro Area. EPA will take action on New York's post 1999 ROP plan in a separate rulemaking action. In addition, elsewhere in this **Federal Register**, EPA is today proposing to take action on nine other serious or severe 1-hour ozone Attainment Demonstration and, in some cases, ROP SIPs. The additional nine areas are Greater Connecticut (CT), Springfield (Western Massachusetts) (MA), Baltimore (MD), Philadelphia-Wilmington-Trenton (PA-NJ-DE-MD), Metropolitan Washington, D.C. (DC-MD-VA), Atlanta (GA), Milwaukee-Racine (WI), Chicago-Gary-Lake County (IL-IN), and Houston-Galveston-Brazoria (TX).

In general, an Attainment Demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the control measures necessary to achieve those reductions. Another component of the Attainment Demonstration SIP is a motor vehicle emissions budget for transportation conformity purposes. Transportation conformity is a process for ensuring that states consider the effects of emissions associated with new or improved federally-funded roadways on attainment of the standard. As described in section 176(c)(2)(A), attainment demonstrations necessarily include the estimates of motor vehicle emissions that are consistent with attainment, which then act as a budget or ceiling for the purposes of determining whether transportation

plans and projects conform to the attainment SIP.

2. History and Time Frame for the State's Attainment Demonstration SIP

Notwithstanding significant efforts by the states, in 1995 EPA recognized that many states in the eastern half of the United States could not meet the November 1994 time frame for submitting an Attainment Demonstration SIP because emissions of NO_x and VOCs in upwind states (and the ozone formed by these emissions) affected these nonattainment areas and the full impact of this effect had not yet been determined. This phenomenon is called ozone transport.

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by states but noting the remaining difficulties in making Attainment Demonstration SIP submittals.¹ Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the states in the eastern half of the country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)² and provided for the states to submit the Attainment Demonstration SIPs in two phases based on the expected time frames for OTAG to complete its evaluation of ozone transport.

In June 1997, OTAG concluded and provided EPA with recommendations regarding ozone transport. The OTAG generally concluded that transport of ozone and the precursor NO_x is significant and should be reduced regionally to enable states in the eastern half of the country to attain the ozone NAAQS.

In recognition of the length of the OTAG process, in a December 29, 1997 memorandum, Richard Wilson, EPA's then Acting Assistant Administrator for Air and Radiation, provided until April 1998 for states to submit the following elements of their Attainment Demonstration SIPs for serious and severe nonattainment areas: (1) Evidence that the applicable control measures in subpart 2 of part D of title I of the CAA were adopted and

implemented or were on an expeditious course to being adopted and implemented; (2) a list of measures needed to meet the remaining ROP emissions reduction requirement and to reach attainment; (3) for severe areas only, a commitment to adopt and submit target calculations for post-1999 ROP and the control measures necessary for attainment and ROP plans through the attainment year by the end of 2000; (4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the state submittal.³ This submission is sometimes referred to as the Phase 2 submission. Motor vehicle emissions budgets can be established based on a commitment to adopt the measures needed for attainment and identification of the measures needed. Thus, state submissions due in April 1998 under the Wilson policy should have included a motor vehicle emissions budget.

Building upon the OTAG recommendations and technical analyses, in November 1997, EPA proposed action addressing the ozone transport problem. In its proposal, the EPA found that current SIPs in 22 states and the District of Columbia (23 jurisdictions) were insufficient to provide for attainment and maintenance of the 1-hour ozone standard because they did not regulate NO_x emissions that significantly contribute to ozone transport. 62 FR 60318 (Nov. 7, 1997). The EPA finalized that rule in September 1998, calling on the 23 jurisdictions to revise their SIPs to require NO_x emissions reductions within the state to a level consistent with a NO_x emissions budget identified in the final rule. 63 FR 57356 (Oct. 27, 1998). This final rule is commonly referred to as the NO_x SIP Call.

3. Time Frame for Taking Action on Attainment Demonstration SIPs for 10 Serious and Severe Areas

The states generally submitted the SIPs between April and October of 1998; some states are still submitting additional revisions as described below. Under the CAA, EPA is required to approve or disapprove a state's submission no later than 18 months following submission. (The statute provides up to 6 months for a completeness determination and an additional 12 months for approval or disapproval.) The EPA believes that it is

¹ Memorandum, "Ozone Attainment Demonstrations," issued March 2, 1995. A copy of the memorandum may be found on EPA's web site at <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

² Letter from Mary A. Gade, Director, State of Illinois Environmental Protection Agency to Environmental Council of States (ECOS) Members, dated April 13, 1995.

³ Memorandum, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM 10 NAAQS," issues December 29, 1997. A copy of this memorandum may be found on EPA's web site at <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

important to keep the process moving forward in evaluating these plans and, as appropriate, approving them. Thus, in today's **Federal Register**, EPA is proposing to take action on the 10 serious and severe 1-hour ozone Attainment Demonstration SIPs (located in 13 states and the District of Columbia) and intends to take final action on these submissions over the next 6–12 months. The reader is referred to individual dates in this document for specific information on actions leading to EPA's final rulemaking on these plans.

4. Options for Action on a State's Attainment Demonstration SIP

Depending on the circumstances unique to each of the 10 area SIP submissions on which EPA is proposing action today, EPA is proposing one or more of these types of approval or disapproval in the alternative. In addition, these proposals may identify additional action that will be necessary from the state.

The CAA provides for EPA to approve, disapprove, partially approve or conditionally approve a state's plan submission. CAA section 110(k). The EPA must fully approve the submission if it meets the attainment demonstration requirement of the CAA. If the submission is deficient in some way, EPA may disapprove the submission. In the alternative, if portions of the submission are approvable, EPA may partially approve and partially disapprove, or may conditionally approve based on a commitment to correct the deficiency by a date certain, which can be no later than one year from the date of EPA's final conditional approval.

The EPA may partially approve a submission if separable parts of the submission, standing alone, are consistent with the CAA. For example, if a state submits a modeled attainment demonstration, including control measures, but the modeling does not demonstrate attainment, EPA could approve the control measures and disapprove the modeling for failing to demonstrate attainment.

The EPA may issue a conditional approval based on a state's commitment to expeditiously correct a deficiency by a date certain that can be no later than one year following EPA's conditional approval. Such commitments do not need to be independently enforceable because, if the state does not fulfill its commitment, the conditional approval is converted to a disapproval. For example, if a state commits to submit additional control measures and fails to submit them or EPA determines the

state's submission of the control measures is incomplete, the EPA will notify the state by letter that the conditional approval has been converted to a disapproval. If the state submits control measures that EPA determines are complete or that are deemed complete, EPA will determine through rulemaking whether the state's Attainment Demonstration SIP is fully approvable or whether the conditional approval of the Attainment Demonstration SIP should be converted to a disapproval.

Finally, EPA has recognized that in some limited circumstances, it may be appropriate to issue a full approval for a submission that consists, in part, of an enforceable commitment. Unlike the commitment for conditional approval, such an enforceable commitment can be enforced in court by EPA or citizens. In addition, this type of commitment may extend beyond one year following EPA's approval action. Thus, EPA may accept such an enforceable commitment where it is infeasible for the state to accomplish the necessary action in the short term.

B. What Are The Components of a Modeled Attainment Demonstration?

The EPA provides that states may rely on a modeled attainment demonstration supplemented with additional evidence to demonstrate attainment.⁴ In order to have a complete modeling demonstration submission, states should have submitted the required modeling analysis and identified any additional evidence that EPA should consider in evaluating whether the area will attain the standard.

1. Modeling Requirements

For purposes of demonstrating attainment, the CAA requires serious and severe areas to use photochemical grid modeling or an analytical method EPA determines to be as effective. The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values and to predict air quality changes

in the attainment year due to the emission changes which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted concentrations inside the modeling domain are at or below the NAAQS or at an acceptable upper limit above the NAAQS permitted under certain conditions by EPA's guidance. When the predicted concentrations are above the NAAQS, an optional weight of evidence determination which incorporates, but is not limited to, other analyses, such as air quality and emissions trends, may be used to address uncertainty inherent in the application of photochemical grid models.

The EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results. First, the state must develop and implement a modeling protocol. The modeling protocol describes the methods and procedures to be used in conducting the modeling analyses and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (state and local agencies, EPA Regional offices, the regulated community, and public interest groups). Second, for purposes of developing the information to put into the model, the state must select air pollution days, i.e., days in the past with bad air quality, that are representative of the ozone pollution problem for the nonattainment area. Third, the state needs to identify the appropriate dimensions of the area to be modeled, i.e., the domain size. The domain should be larger than the designated nonattainment area to reduce uncertainty in the boundary conditions and should include large upwind sources just outside the nonattainment area. In general, the domain is considered the local area where control measures are most beneficial to bring the area into attainment. Fourth, the state needs to determine the grid resolution. The horizontal and vertical resolutions in the model affect the dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids) may dilute concentrations and may not properly consider impacts of complex terrain, complex meteorology, and land/water interfaces. Fifth, the state needs to generate meteorological data that describe atmospheric conditions and emissions inputs. Finally, the state needs to verify that the model is properly simulating the chemistry and

⁴The EPA issued guidance on the air quality modeling that is used to demonstrate attainment with the 1-hour ozone NAAQS. See U.S. EPA, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA-450/4-91-013, (July 1991). A copy may be found on EPA's web site at <http://www.epa.gov/ttn/scram/> (file name: "UAMREG"). See also U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA-454/B-95-007, (June 1996). A copy may be found on EPA's web site at <http://www.epa.gov/ttn/scram/> (file name: "O3TEST").

atmospheric conditions through diagnostic analyses and model performance tests. Once these steps are satisfactorily completed, the model is ready to be used to generate air quality estimates to support an attainment demonstration.

The modeled attainment test compares model-predicted 1-hour daily maximum concentrations in all grid cells for the attainment year to the level of the NAAQS. A predicted concentration above 0.124 ppm ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to attain the standard. This type of test is often referred to as an exceedance test. The EPA's guidance recommends that states use either of two modeled attainment or exceedance tests for the 1-hour ozone NAAQS: a deterministic test or a statistical test.

The deterministic test requires the state to compare predicted 1-hour daily maximum ozone concentrations for each modeled day⁵ to the attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

The statistical test takes into account the fact that the form of the 1-hour ozone standard allows exceedances. If, over a three-year period, the area has an average of one or fewer exceedances per year, the area is not violating the standard. Thus, if the state models a very extreme day, the statistical test provides that a prediction above 0.124 ppm up to a certain upper limit may be consistent with attainment of the standard. (The form of the 1-hour standard allows for up to three readings above the standard over a three-year period before an area is considered to be in violation.)

The acceptable upper limit above 0.124 ppm is determined by examining the size of exceedances at monitoring sites which meet the 1-hour NAAQS. For example, a monitoring site for which the four highest 1-hour average concentrations over a three-year period are 0.136 ppm, 0.130 ppm, 0.128 ppm and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration observed at a location on a single day and it would be the only reading above the standard that would be expected to occur no more than an

average of once a year over a three-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

2. Additional Analyses Where Modeling Fails to Show Attainment

When the modeling does not conclusively demonstrate attainment, additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in some of the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely. The process by which this is done is called a weight of evidence (WOE) determination.

Under a WOE determination, the state can rely on and EPA will consider factors such as other modeled attainment tests, e.g., a rollback analysis; other modeled outputs, e.g., changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value; actual observed air quality trends; estimated emissions trends; analyses of air quality monitored data; the responsiveness of the model predictions to further controls; and, whether there are additional control measures that are or will be approved into the SIP but were not included in the modeling analysis. This list is not an exclusive list of factors that may be considered and these factors could vary from case to case. The EPA's guidance contains no limit on how close a modeled attainment test must be to passing to conclude that other evidence besides an attainment test is sufficiently compelling to suggest attainment. However, the further a modeled attainment test is from being passed, the more compelling the WOE needs to be.

The EPA's 1996 modeling guidance also recognizes a need to perform a mid-course review as a means for addressing uncertainty in the modeling results. Because of the uncertainty in long term

projections, EPA believes a viable attainment demonstration that relies on WOE needs to contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. The mid-course review is discussed in section C.6.

C. What Is The Frame Work For Proposing Action On The Attainment Demonstration SIPs?

In addition to the modeling analysis and WOE support demonstrating attainment, the EPA has identified the following key elements which must be present in order for EPA to approve or conditionally approve the 1-hour Attainment Demonstration SIPs. These elements are listed below and then described in detail.

—CAA measures and measures relied on in the modeled Attainment Demonstration SIP. This includes adopted and submitted rules for all previously required CAA mandated measures for the specific area classification. This also includes measures that may not be required for the area classification but that the state relied on in the SIP submission for attainment and ROP plans on which EPA is proposing to take action on today.

—NO_x reductions affecting boundary conditions.

—Motor vehicle emissions budget. A motor vehicle emissions budget which can be determined by EPA to be adequate for conformity purposes.

—Tier 2/Sulfur program benefits where needed to demonstrate attainment. Inclusion of reductions expected from EPA's Tier 2 tailpipe and low sulfur-in-fuel standards in the Attainment Demonstration SIP and the motor vehicle emissions budget.

—In certain areas, additional measures to further reduce emissions to support the attainment test. Additional measures, may be measures adopted regionally such as in the Ozone Transport Region (OTR), or locally (intrastate) in individual states.

—Mid-course review. An enforceable commitment to conduct a mid-course review and evaluation based on air quality and emission trends. The mid-course review would show whether the adopted control measures are sufficient to reach attainment by the area's attainment date, or that additional control measures are necessary.

⁵ The initial, "ramp-up" days for each episode are excluded from this determination.

1. CAA Measures and Measures Relied on in the Modeled Attainment Demonstration SIP

The states should have adopted the control measures already required under the CAA for the area classification. Since these 10 serious and severe areas need to achieve substantial reductions from their 1990 emissions levels in order to attain, EPA anticipates that these areas need all of the measures required under the CAA to attain the 1-hour ozone NAAQS.

In addition, the states may have included control measures in its attainment strategy that are in addition to measures required in the CAA. (For serious areas, these should have already been identified and adopted, whereas severe areas have until December 2000 to submit measures necessary to achieve ROP through the attainment year and to attain.) For purposes of fully approving the state's SIP, the state will need to adopt and submit all VOC and NO_x controls within the local modeling domain that were relied on for purposes of the modeled attainment demonstration.

The following tables present a summary of the CAA requirements that need to be met for each serious and severe nonattainment area for the 1-hour ozone NAAQS. These requirements are specified in section 182 of the CAA. Information on more measures that states may have adopted or relied on in their current SIP submissions is not shown in the tables. EPA will need to take final action approving all measures relied on for attainment, including the required ROP control measures and target calculations, before EPA can issue a final full approval of the attainment demonstration as meeting CAA section 182(c)(2) (for serious areas) or (d) (for severe areas).

CAA REQUIREMENTS FOR SERIOUS AREAS

- NSR for VOC and NO_x¹, including an offset ratio of 1.2:1 and a major VOC and NO_x source cutoff of 50 tons per year (tpy).
- Reasonable Available Control Technology (RACT) for VOC and NO_x¹.
- Enhanced Inspection and Maintenance (I/M) program.
- 15% volatile organic compound (VOC) plans.
- Emissions inventory.
- Emission statements.
- Periodic inventories.
- Attainment demonstration.
- 9 percent ROP plan through 1999.
- Clean fuels program or substitute.
- Enhanced monitoring Photochemical Assessment Monitoring Stations (PAMS).

CAA REQUIREMENTS FOR SERIOUS AREAS—Continued

—Stage II vapor recovery.

¹ Unless the area has in effect a NO_x waiver under section 182(f). The New York-Northwestern New Jersey-Long Island is not such an area.

CAA REQUIREMENTS FOR SEVERE AREAS

- All of the nonattainment area requirements for serious areas.
- NSR, including an offset ratio of 1.3:1 and a major VOC and NO_x source cutoff of 25 tons per year (tpy).
- Reformulated gasoline.
- 9 percent ROP plan through attainment year.
- Requirement for fees for major sources for failure to attain.

2. NO_x Reductions Affecting Boundary Conditions

The EPA completed final rulemaking on the NO_x SIP Call on October 27, 1998, which required states to address transport of NO_x and ozone to other states. To address transport, the NO_x SIP Call established emissions budgets for NO_x that 23 jurisdictions were required to show they would meet through enforceable SIP measures adopted and submitted by September 30, 1999. The NO_x SIP Call is intended to reduce emissions in upwind states that significantly contribute to nonattainment problems. The EPA did not identify specific sources that the states must regulate nor did EPA limit the states' choices regarding where to achieve the emission reductions. Subsequently, a three-judge panel of the Court of Appeals for the District of Columbia Circuit issued an order staying the portion of the NO_x SIP Call rule requiring States to submit rules by September 30, 1999.

The NO_x SIP Call rule establishes budgets for the states in which 9 of the nonattainment areas for which EPA is proposing action today are located. The 9 areas are: Greater Connecticut, Springfield MA, New York-North New Jersey-Long Island (NY-NJ-CT), Baltimore MD, Philadelphia-Wilmington-Trenton (PA-NJ-DE-MD), Metropolitan Washington, D.C. (DC-MD-VA), Atlanta GA, Milwaukee-Racine WI, and Chicago-Gary-Lake County (IL-IN).

Emission reductions that will be achieved through EPA's NO_x SIP Call will reduce the levels of ozone and ozone precursors entering nonattainment areas at their boundaries. For purposes of developing attainment demonstrations, states define local

modeling domains that include both the nonattainment area and nearby surrounding areas. The ozone levels at the boundary of the local modeling domain are reflected in modeled attainment demonstrations and are referred to as boundary conditions. With the exception of Houston, the 1-hour attainment demonstrations on which EPA is proposing action have relied, in part, on the NO_x SIP Call reductions for purposes of determining the boundary conditions of the modeling domain. Emission reductions assumed in the attainment demonstrations are modeled to occur both within the state and in upwind states; thus, intrastate reductions as well as reductions in other states impact the boundary conditions. Although the court has indefinitely stayed the SIP submission deadline, the NO_x SIP Call rule remains in effect. Therefore, EPA believes it is appropriate to allow states to continue to assume the reductions from the NO_x SIP Call in areas outside the local 1-hour modeling domains. If states assume control levels and emission reductions other than those of the NO_x SIP Call within their state but outside of the modeling domain, states must also adopt control measures to achieve those reductions in order to have an approvable plan.

Accordingly, states in which the nonattainment areas are located will not be required to adopt measures outside the modeling domain to achieve the NO_x SIP Call budgets prior to the time that all states are required to comply with the NO_x SIP Call. If the reductions from the NO_x SIP Call do not occur as planned, states will need to revise their SIPs to add additional local measures or obtain interstate reductions, or both, in order to provide sufficient reductions needed for attainment.

As provided in section 1 above, any controls assumed by the state inside the local modeling domain⁶ for purposes of the modeled attainment demonstration must be adopted and submitted as part of the state's 1-hour attainment demonstration SIP. It is only for reductions occurring outside the local modeling domain that states may assume implementation of NO_x SIP Call measures and the resulting boundary conditions.

⁶For the purposes of this document, "local modeling domain" is typically an urban scale domain with horizontal dimensions less than about 300 km on a side, horizontal grid resolution less than or equal to 5 x 5 km or finer. The domain is large enough to ensure that emissions occurring at 8 am in the domain's center are still within the domain at 8 pm the same day. If recirculation of the nonattainment area's previous day's emissions is believed to contribute to an observed problem, the domain is large enough to characterize this.

3. Motor Vehicle Emissions Budget

The EPA believes that Attainment Demonstration SIPs must necessarily estimate the motor vehicle emissions that will be produced in the attainment year and demonstrate that this emissions level, when considered with emissions from all other sources, is consistent with attainment. The estimate of motor vehicle emissions is used to determine the conformity of transportation plans and programs to the SIP, as described by CAA section 176(c)(2)(A). For transportation conformity purposes, the estimate of motor vehicle emissions is known as the motor vehicle emissions budget. The EPA believes that appropriately identified motor vehicle emissions budgets are a necessary part of an Attainment Demonstration SIP. A SIP cannot effectively demonstrate attainment unless it identifies the level of motor vehicle emissions that can be produced while still demonstrating attainment.

The EPA has determined that except for the Western MA (Springfield) Attainment Demonstration SIP, the motor vehicle emission budgets for all areas in today's proposals are inadequate or missing from the attainment demonstration. Therefore, EPA is proposing to disapprove the Attainment Demonstration SIPs for those nine areas if the states do not submit motor vehicle emissions budgets that EPA can find adequate by May 31, 2000.⁷ In order for EPA to complete the adequacy process by the end of May, states should submit a budget no later than December 31, 1999.⁸ If an area does not have a motor vehicle emissions budget that EPA can determine adequate for conformity purposes by May 31, 2000, EPA plans to take final action at that time disapproving in full or in part the area's attainment demonstration. The emissions budget should reflect all the motor vehicle control measures contained in the attainment demonstration, i.e., measures already adopted for the nonattainment area as well as those yet to be adopted.

⁷ For severe areas, EPA will determine the adequacy of the emissions budgets associated with the post-1999 ROP plans once the states submit the target calculations, which are due no later than December 2000.

⁸ A final budget is preferred; but, if the state public hearing process is not yet complete, then the proposed budget for public hearing may be submitted. The adequacy process generally takes at least 90 days. Therefore, in order for EPA to complete the adequacy process no later than the end of May, EPA must have by February 15, 2000, the final budget or a proposed that is substantially similar to what the final budget will be. The state must submit the final budget by April 15, 2000.

4. Tier 2/Sulfur Program Benefits

On May 13, 1999, EPA published a Notice of Proposed Rulemaking (NPRM) proposing a major, comprehensive program designed to significantly reduce emissions from passenger cars and light trucks (including sport-utility vehicles, minivans, and pickup trucks) and to reduce sulfur in gasoline. Under the proposed program, automakers would produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners would provide that cleaner gasoline nationwide. The EPA subsequently issued two supplemental notices. 64 FR 35112 (June 30, 1999); 64 FR 57827 (October 27, 1999).

These notices provide 1-hour ozone modeling and monitoring information that support EPA's belief that the Tier 2/Sulfur program is necessary to help areas attain the 1-hour NAAQS. Under the proposed rule, NO_x and VOC emission reductions (as well as other reductions not directly relevant for attainment of the 1-hour ozone standard) would occur beginning in the 2004 ozone season although incentives for early compliance by vehicle manufacturers and refiners will likely result in some reductions prior to 2004. Nationwide, the Tier 2/Sulfur program is projected to result in reductions of approximately 800,000 tons of NO_x per year by 2007 and 1,200,000 tons by 2010.

In the October 27, 1999 supplemental notice, EPA reported in Table 1 that EPA's regional ozone modeling indicated that 17 metropolitan areas for which the 1-hour standard applies need the Tier 2/Sulfur program reductions to help attain the 1-hour ozone standard. The New York-Northern New Jersey-Long Island nonattainment area whose Attainment Demonstration SIP EPA is proposing to approve and disapprove-in-the-alternative today is included on that list.

The EPA issued a memorandum that provides estimates of the emissions reductions associated with the Tier 2/Sulfur program proposal.⁹ The memorandum provides the tonnage benefits for the Tier 2/Sulfur program in 2007 on a county-by-county basis for all counties within the 10 serious and severe nonattainment areas for which EPA is proposing to take action today and the 2005 tonnage benefits for the

⁹ Memorandum, "1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking" from Lydia Wegman, Office of Air Quality Planning and Standards and Merrylin Zaw-Mon, Office of Mobile Sources to the Air Division Directors, Regions I-VI, issued November 8, 1999. A copy of this memorandum may be found on EPA's web site at <http://www.epa.gov/oms/transp/traqconf.htm>.

Tier 2/Sulfur program for each county for three areas.

The EPA also issued a memorandum which explains the connection between the Tier 2/Sulfur program, motor vehicle emissions budgets for conformity determinations, and timing for SIP revisions to account for the Tier 2/Sulfur program benefit.¹⁰ This memorandum explains that conformity analyses in serious and severe ozone nonattainment areas can begin including Tier 2/Sulfur program benefits once EPA's Tier 2/Sulfur program is promulgated, provided that the Attainment Demonstration SIPs and associated motor vehicle emissions budgets include the Tier 2/Sulfur program benefits. For areas that require all or some portion of the Tier 2/Sulfur program benefits to demonstrate attainment but have not yet included the benefits in the motor vehicle emissions budgets, EPA's adequacy finding will include a condition that conformity determinations may not take credit for Tier 2/Sulfur program until the SIP budgets are revised to reflect Tier 2/Sulfur program benefits. See EPA's memorandum for more information.

For the New York-Northern New Jersey-Long Island, Philadelphia-Wilmington-Trenton, Baltimore, Houston, and Atlanta nonattainment areas, the EPA is proposing to determine that additional emission reductions beyond those provided by the SIP submission are necessary for attainment. With the exception of the Atlanta nonattainment area, a portion of that reduction will be achieved by EPA's Tier 2/Sulfur program, which EPA expects to finalize shortly. States that need to rely in whole or in part on the Tier 2/Sulfur program benefits to help demonstrate attainment will need to adjust the demonstration for their SIP submission, emission inventories and motor vehicle emissions budgets to include the Tier 2/Sulfur program reductions in order for EPA to approve the SIP submittal. The submittal requirement including the analysis to make that submission is described in the two memoranda cited. States may use the tonnage benefits and guidance in these memoranda to make these adjustments to the SIP submission and motor vehicle emission budgets. The EPA encourages states to submit these SIP revisions by December 31, 1999 to

¹⁰ Memorandum, "Guidance on Motor Vehicle Emissions Budgets in One-hour Ozone Attainment Demonstrations", from Merrylin Zaw-Mon, Office of Mobile Sources, to Air Division Directors, Regions I-VI, issued November 3, 1999. A copy of this memorandum may be found on EPA's web site at <http://www.epa.gov/oms/transp/traqconf.htm>.

allow EPA to include them in the motor vehicle emissions budget adequacy determinations which need to be completed by May 31, 2000.

Alternatively, these revisions should be submitted by July 2000 for serious nonattainment areas, as EPA anticipates completing rulemaking on these SIPs in the fall of 2000. For severe nonattainment areas, these revisions should be submitted by December 31, 2000.

Revisions to the Motor Vehicle Emissions Budget and the Attainment Demonstration When EPA Issues the MOBILE6 Model. Within one year of when EPA issues the MOBILE6 model for estimating mobile source emissions which takes into account the emissions benefit of EPA's Tier 2/Sulfur program, states will need to revise their motor vehicle emissions budgets in their Attainment Demonstration SIPs if the Tier 2/Sulfur program is necessary for attainment. In addition, the budgets will need to be revised using MOBILE6 in those areas that do not need the Tier 2/Sulfur program for attainment but decide to include its benefits in the motor vehicle emissions budget anyway. The EPA will work with states on a case-by-case basis if the new emission estimates raise issues about the sufficiency of the attainment demonstration.

States described in the paragraph above will need to submit an enforceable commitment in the near term to revise their motor vehicle emissions budget within one year after EPA's release of MOBILE6. This commitment should be submitted to EPA along with the other commitments discussed elsewhere in this document, or alternatively, as part of the SIP revision that modifies the motor vehicle emission inventories and budgets to include the Tier 2/Sulfur program benefits needed in order for EPA to approve the SIP submittal.¹¹

5. Additional Measures To Further Reduce Emissions

The EPA is proposing to find that the Attainment Demonstration SIPs for New York-Northern New Jersey-Long Island; Baltimore; Philadelphia-Wilmington-Trenton; Houston; and Atlanta, even considering the Tier 2/Sulfur program reductions and the WOE, will not

achieve attainment without the application of additional emission control measures to achieve additional emission reductions. Thus, for each of these areas, EPA has identified specific tons per day emissions of NO_x and/or VOC that must be reduced through additional control measures in order to demonstrate attainment and to enable EPA to approve the demonstration. The need for additional emission reductions is generally based on a lack of sufficient compelling evidence that the demonstration shows attainment at the current level of adopted or planned emission controls. This is discussed in detail below for the New York-Northern New Jersey-Long Island nonattainment area. The method used by EPA to calculate the amount of additional reductions is described in a technical support document located in the record for this proposed rule. Briefly, the method makes use of the relationship between ozone and its precursors (VOC and NO_x) to identify additional reductions that, at a minimum, would bring the model predicted future ozone concentration to a level at or below the standard. The relationship is derived by comparing changes in either (1) the model predicted ozone to changes in modeled emissions or (2) in observed air quality to changes in actual emissions.

The EPA is not requesting that states perform new photochemical grid modeling to assess the full air quality impact of the additional measures that would be adopted. Rather, as described above, one of the factors that EPA can consider as part of the WOE analysis of the attainment demonstration is whether there will be additional emission reductions anticipated that were not modeled. Therefore, EPA will consider the reductions from these additional measures as part of the WOE analysis if the state adopts the measures or, as appropriate, submits an enforceable commitment to adopt the measures.

As an initial matter, for areas that need additional reductions, the state must submit a commitment to adopt additional control measures to meet the level of reductions that EPA has identified as necessary for attainment. For purposes of conformity, if the state submitted a commitment, which has been subject to public hearing, to adopt the control measures necessary for attainment and ROP through the area's attainment date in conformance with the December 1997 Wilson policy, the state will not need an additional commitment at this time. However, the state will need to amend its commitment by letter to provide two

things concerning the additional measures.

First, the state will need to identify a list of potential control measures (from which a set of measures could be selected) that when implemented, would be expected to provide sufficient additional emission reductions to meet the level of reductions that EPA has identified as necessary for attainment. States need not commit to adopt any specific measures on their list at this time, but if they do not do so, they must affirm that some combination of measures on their list has the potential to meet or exceed the additional reductions identified later in this notice by EPA. These measures may not involve additional limits on highway construction beyond those that could be imposed under the submitted motor vehicle emissions budget. (See memorandum, "Guidance on Motor Vehicle Emissions Budgets in One-hour Ozone Attainment Demonstrations," from Merrylin Zaw-Mon, Office of Mobile Sources, to Air Division Directors, Regions I-VI.¹²) States may, of course, select control measures that do impose limits on highway construction, but if they do so, they must revise the budget to reflect the effects of specific, identified measures that were either committed to in the SIP or were actually adopted. Otherwise, EPA could not conclude that the submitted motor vehicle emissions budget would be providing for attainment, and EPA could not find it adequate for conformity purposes.

Second, the letter should provide that the state will recalculate and submit a revised motor vehicle emissions budget that includes the effects, if any, of the measure or measures that are ultimately adopted when those measures are submitted as SIP revisions should any of the measures pertain to motor vehicles.

For purposes of approving the SIP, the state will need an enforceable commitment that identifies the date by which the additional measures will be submitted, identifies the percentage reductions needed of VOC and NO_x, and provides that the state will recalculate and submit a revised motor vehicle emissions budget that includes the effects, if any, of the measure or measures that are ultimately adopted when these measures are submitted as SIP revisions should any of the measures pertain to motor vehicles. To

¹¹ For purposes of conformity, the state needs a commitment that has been subject to public hearing. If the state has submitted a commitment that has been subject to public hearing and that provides for the adoption of all measures necessary for attainment, the state should submit a letter prior to December 31, 1999, amending the commitment to include the revision of the budget after the release of MOBILE6.

¹² Memorandum, "Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations", from Merrylin Zaw-Mon, Office of Mobile Sources, to Air Division Directors, Regions I-VI, issued November 3, 1999. A copy of this memorandum may be found on EPA's web site at <http://www.epa.gov/oms/transp/traqconf.htm>.

the extent the state's current commitment does not include one of the above items or to the extent that a state plans to revise one of the above items in an existing commitment, the state will need a new public hearing.

For areas within the OTR, such as the New York-Northern New Jersey-Long Island nonattainment area, EPA believes it is appropriate to provide a state that is relying on a regional solution to a Congressionally-recognized regional air pollution problem with more time to adopt and submit measures for additional reductions to EPA than for a state that will rely on intrastate measures to achieve the reductions. Therefore, the EPA believes that states in the OTR must be allowed sufficient time for the OTR to analyze the appropriate measures as well as time for the state to adopt the measures. For these states, EPA believes it is appropriate for them to commit to work through the OTR to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA for these areas. However, as a backstop, the state will need to commit to adopt intrastate measures sufficient to achieve the additional reductions if the regional measures are not identified by the OTR and adopted by the relevant states. For purposes of conformity, if the state submitted a commitment consistent with the December 1997 Wilson policy and which has been subject to public hearing, the state may amend its current commitment by letter to provide these assurances. However, before EPA can take final rulemaking action to approve the attainment demonstration, the state will need to meet the public hearing requirements for the commitment and submit it to EPA as a SIP revision. The EPA will have to propose and take final action on this SIP revision before EPA can fully approve the state's attainment demonstration. The state will have to submit the necessary measures themselves (and a revised motor vehicle emissions budget that includes the effects, if any, of the measure or measures that are ultimately adopted should any of the measures pertain to motor vehicles) as a SIP revision no later than October 31, 2001.

Guidance on Additional Control Measures. Much progress has been made over the past 25 years to reduce VOC emissions and over the past 9 years to reduce NO_x emissions. Many large sources have been controlled to some extent through RACT rules or other emission standards or limitations, such as maximum achievable control technology (MACT), new source performance standards (NSPS) and the

emission control requirements for NSR—lowest achievable emissions rate (LAER) and best achievable control technology (BACT). However, there may be controls available for sources that have not yet been regulated as well as additional means for achieving reductions from sources that have already been regulated. The EPA has prepared a report to assist states in identifying additional measures. This report is called "Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control Measures." The purpose of this report is to provide information to state and local agencies to assist them in identifying additional control measures that could, if later determined to be appropriate, be adopted into their SIPs to support the attainment demonstrations for the serious and severe nonattainment areas under consideration. This report has been added to the record for this proposal.

In summary, the report provides information in four areas. First, the report contains detailed information on emissions for ozone precursor emissions of NO_x and VOCs. This inventory data gives an indication of where the major emissions are coming from in a particular geographic area and may indicate where it will be profitable to look for further reductions. Second, the report contains information on control measures for emission sources of NO_x and VOC (including stationary, area and mobile source measures) for which controls may not have been adopted by many jurisdictions. This would include many measures listed among the control measures EPA considered when developing the Regulatory Impact Analysis (RIA) for promulgation of the 8-hour ozone NAAQS. Third, the report includes information on standards EPA has issued for the NSPS and MACT programs as well as information on alternative control techniques (ACT) documents. This may be useful to states who may already specify emission limits on existing source categories to which NSPS and MACT for new sources apply, but the current RACT level of control for these existing sources may not match the level specified in the NSPS or MACT standards for new sources or sources which emit hazardous air pollutants. Finally, the report includes information on the control measures not already covered elsewhere that states have adopted, or have proposed to adopt at the date of the report, into their SIPs. Comparison of information on measures already

adopted into others' SIPs may help inform states about reductions that may be available from their sources whose emissions are currently not regulated.

Another source of information is the BACT and LAER determinations that states have made for individual new sources. Information on BACT/LAER determinations is available through EPA's RACT/BACT/LAER Clearinghouse (RBLC) which may be accessed on EPA's web site on the internet at the following address: www.epa.gov/ttn/catc/.

The ACT documents for VOC and NO_x are valuable because EPA has not issued control technique guidelines (CTGs) that specify the level of RACT for several categories of sources. For some of these source categories, EPA has prepared ACT documents which describe various control technologies and associated costs for reducing emissions. While states were required to adopt RACT for major sources within these source categories, the ACT documents may identify an additional level of control for regulated sources or may provide control options for non-major sources within these source categories. States are free to evaluate the various options given and use the results to assist in formulating their own regulations.

The EPA report lists the various sources EPA used to develop the lists of additional measures. These sources include an EPA draft control measure data base, state and Territorial Air Pollution Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO's) books "Controlling Nitrogen Oxides under the Clean Air Act: A Menu of Options", and "Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act: A Menu of Options", California's ozone SIP for the South Coast and various ACT documents.

There is one control approach which bears special mention because it is broader in application than any one specific control measure. This is the approach of "cap and trade." In this approach, a cap is placed on emissions, and existing sources are given emission allotments. Under a declining cap, emissions would be decreased each year. Sources may over-control and sell part of their allotments to other sources which under-control. Overall, the percentage decrease in emissions is maintained, but the reductions are made where they are most economical. A cap and trade program has been in operation in the South Coast Air Quality Management District in California since about 1992.

The State of Illinois has adopted a declining cap and trade program. The Illinois program will set a cap on future emissions of major sources in the Chicago area that in most cases is 12 percent lower than baseline emissions. Illinois will issue a number of emission allotments corresponding to the cap level and will require each source to have VOC emissions at or below the level for which it holds emission allotments. Trading of emission allotments will be allowed, so that sources that reduce VOC emissions more than 12 percent may sell emission allotments, and sources that reduce VOC emissions less than 12 percent must buy emission allotments. The proposed reductions are planned to begin in the next ozone season, May 2000.

In addition, EPA's draft economic incentives program guidance (EIP) was proposed in September 1999. This encourages cost-effective and innovative approaches to achieving air pollution goals through emissions trading. Such an approach has been demonstrated to be successful and cost-effective in reducing air pollution in EPA's acid rain emissions trading program. These and other similar programs should allow cost-effective implementation of additional control measures.

Finally, a reduction in VOC and NO_x emissions can be achieved through a wide range of control measures. These measures range from technology based actions such as retrofitting diesel trucks and buses, and controlling ground service equipment at airports to activity based controls such as increased use of transit by utilizing existing Federal tax incentives, market and pricing based programs, and ozone action days. States can also achieve emission reductions by implementing programs involving cleaner burning fuels. The State of Texas is also considering a rule to

change the times during the day in which construction can occur to reduce ozone precursor emissions during periods when ozone formation is occurring. There are a wide range of new and innovative programs beyond the few examples listed here. These measures, if taken together, can provide significant emission reductions for attainment purposes. In addition, a variety of mobile source measures could be considered as part of the commitment to meet the need for additional emission reduction measures.

6. Mid-Course Review

A mid-course review (MCR) is a reassessment of modeling analyses and more recent monitored data to determine if a prescribed control strategy is resulting in emission reductions and air quality improvements needed to attain the ambient air quality standard for ozone as expeditiously as practicable but no later than the statutory dates.

The EPA believes that a commitment to perform a MCR is a critical element of the WOE analysis for the attainment demonstration on which EPA is proposing to take action today. In order to approve the Attainment Demonstration SIP for the New York Metro Area, EPA believes that New York must submit an enforceable commitment to perform a MCR as described here.¹³

EPA invites the states to participate in a public consultative process to develop a methodology for performing the MCR and developing the criteria by which adequate progress would be judged.

For severe areas, the states must have an enforceable commitment to perform the MCR, preferably following the 2003 ozone season, and to submit the results to EPA by the end of the review year (e.g., by December 31, 2003). EPA believes that an analysis in 2003 would be most robust since some or all of the

regional NO_x emission reductions should be achieved by that date. EPA would then review the results and determine whether any states need to adopt and submit additional control measures for purposes of attainment. The EPA is not requesting that states commit now to adopt new control measures as a result of this process. It would be impracticable for the states to make a commitment that is specific enough to be considered enforceable. Moreover, the MCR could indicate that upwind states may need to adopt some or all of the additional controls needed to ensure an area attains the standard. Therefore, if EPA determines additional control measures are needed for attainment, EPA would determine whether additional emission reductions as necessary from states in which the nonattainment area is located or upwind states, or both. The EPA would require the affected state or states to adopt and submit the new measures within a period specified at the time. The EPA anticipates that these findings would be made as calls for SIP revisions under section 110(k)(5) and, therefore, the period for submission of the measures would be no longer than 18 months after the EPA finding. A draft guidance document regarding the MCR process is located in the docket for this proposal and may also be found on EPA's web site at <http://www.epa.gov/ttn/scram/>.

D. In Summary, What Does EPA Expect to Happen with Respect to Attainment Demonstrations for the New York-Northern New Jersey-Long Island 1-Hour Ozone Nonattainment Areas?

The following table shows a summary of information on what EPA expects from the states which make up the New York-Northern New Jersey-Long Island nonattainment area, to allow EPA to approve the 1-hour Ozone Attainment Demonstration SIPs.

SUMMARY SCHEDULE OF FUTURE ACTIONS RELATED TO ATTAINMENT DEMONSTRATION FOR THE NEW YORK-NORTHERN NEW JERSEY-LONG ISLAND SEVERE NONATTAINMENT AREA IN NEW YORK WHICH IS LOCATED IN THE OTR

Req'd no later than	Action
12/31/99	<p>State submits the following to EPA:</p> <ul style="list-style-type: none"> —motor vehicle emissions budget¹. —Commitments² to do the following: —Submit by 10/31/01 measures for additional emission reductions as required in the attainment demonstration test; for additional emission reduction measures developed through the regional process, the State must also submit a commitment for the additional measures and a backstop commitment to adopt and submit by 10/31/01 intrastate measures for the emission reductions in the event the OTR process does not recommend measures that produce emission reductions. —Submit revised SIP & motor vehicle emissions budget by 10/31/01 if additional measures (due by 10/31/01) affect the motor vehicle emissions inventory.

¹³ For purposes of conformity, the state needs a commitment that has been subject to public hearing. If the state has submitted a commitment

that has been subject to public hearing and that provides for the adoption of all measures necessary for attainment, the state should submit a letter prior

to December 31, 1999, amending the commitment to include the MCR.

SUMMARY SCHEDULE OF FUTURE ACTIONS RELATED TO ATTAINMENT DEMONSTRATION FOR THE NEW YORK-NORTHERN NEW JERSEY-LONG ISLAND SEVERE NONATTAINMENT AREA IN NEW YORK WHICH IS LOCATED IN THE OTR—Continued

Req'd no later than	Action
	<ul style="list-style-type: none"> —Revise SIP & motor vehicle emissions budget 1 year after MOBILE6 issued³. —Perform a mid-course review. —A list of potential control measures that could provide additional emission reductions needed to attain the standard⁴.
4/15/00	State submits in final form any previous submissions made in proposed form by 12/31/99.
Before EPA final rulemaking	State submits enforceable commitments for any above-mentioned commitments that may not yet have been subjected to public hearing.
12/31/00	<ul style="list-style-type: none"> —State submits adopted modeled measures relied on in attainment demonstration and relied on for ROP through the attainment year. —State revises & submits SIP & motor vehicle emissions budget to account for Tier 2 reductions as needed⁵.
10/31/01	<ul style="list-style-type: none"> —OTR States submit additional measures developed through the regional process. —State revises SIP & motor vehicle emissions budget if the additional measures are for motor vehicle category.
Within 1 yr after release of MOBILE6 model	State submits revised SIP & motor vehicle emissions budget based on MOBILE6.
12/31/03	State submits to EPA results of mid-course review.

¹ Final budget preferable; however, if public process is not yet complete, then a proposed budget (the one undergoing public process) may be submitted at this time with a final budget by 4/15/00. However, if a final budget is significantly different from the proposed submitted earlier, the final budget must be submitted by 2/15/00 to accommodate the 90 day processing period prior to the 5/31/00 date by which EPA must find the motor vehicle emissions budget adequate. Note that the budget can reflect estimated Tier 2 emission reductions—see memorandum from Lydia Wegman and Merrylin Zaw-Mon, “1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking.”

² As provided in the preamble text, the state may clarify by letter an existing commitment, which has been subject to public hearing, to submit the control measures needed for attainment. If the state has not yet submitted such a commitment, the state should adopt a commitment after public hearing. If the public hearing process is not yet complete, then proposed commitments may be submitted at this time. The final commitment should be submitted no later than 4/15/00.

³ The revision for MOBILE6 is only required for SIPs that include the effects of Tier 2. The commitment to revise the SIP after MOBILE6 may be submitted at the same time that the state submits the budget that includes the effects of Tier 2 (no later than 12/31/00).

⁴ The state is not required to commit to adopt any specific measures. However, if the state does not do so, the list cannot include any measures that place limits on highway construction.

⁵ If the state submits such a revision, it must be accompanied by a commitment to revise the SIP and motor vehicle emissions budget 1 year after MOBILE6 is issued (if the commitment has not already been submitted).

E. What Are the Relevant Policy and Guidance Documents?

This proposal has cited several policy and guidance memoranda. The EPA has also developed several technical documents related to the rulemaking action in this proposal. Some of the documents have been referenced above. The documents and their location on EPA's web site are listed below; these documents will also be placed in the docket for this proposal action.

Recent Documents

1. “Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.” U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: <http://www.epa.gov/ttn/scram/>.

2. “Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control Measures.” Draft Report. November 3, 1999. Ozone Policy and Strategies Group. U.S. EPA, RTP, NC.

3. Memorandum, “Guidance on Motor Vehicle Emissions Budgets in One-Hour

Attainment Demonstrations,” from Merrylin Zaw-Mon, Office of Mobile Sources, to Air Division Directors, Regions I–VI. November 3, 1999. Web site: <http://www.epa.gov/oms/transp/traqconf.htm>.

4. Memorandum from Lydia Wegman and Merrylin Zaw-Mon to the Air Division Directors, Regions I–VI, “1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur/Sulfur Rulemaking.” November 8, 1999. Web site: <http://www.epa.gov/oms/transp/traqconf.htm>.

5. Draft Memorandum, “1-Hour Ozone NAAQS—Mid-Course Review Guidance.” From John Seitz, Director, Office of Air Quality Planning and Standards. Web site: <http://www.epa.gov/ttn/scram/>.

6. Memorandum, “Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.” John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

Previous Documents

1. U.S. EPA, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA-450/4-91-013, (July 1991). Web site: <http://www.epa.gov/ttn/scram/> (file name: “UAMREG”).

2. U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA-454/B-95-007, (June 1996). Web site: <http://www.epa.gov/ttn/scram/> (file name: “O3TEST”).

3. Memorandum, “Ozone Attainment Demonstrations,” from Mary D. Nichols, issued March 2, 1995. Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

4. Memorandum, “Extension of Attainment Dates for Downwind Transport Areas,” issued July 16, 1998. Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

5. December 29, 1997 Memorandum from Richard Wilson, Acting Assistant Administrator for Air and Radiation “Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM₁₀ NAAQS.” Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>

II. EPA's Review and Technical Information

A. What Was Included in New York's Submittal?

On June 26, 1998 the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA a SIP revision for the New York portion of the New York-Northern New

Jersey-Long Island Area (described previously) to meet requirements related to attainment of the 1-hour NAAQS for ozone, referred to here as Ozone Attainment Demonstration SIP. This was further supplemented with additional documentation on July 10, 1998, November 27, 1998 and April 15, 1999. These submittals included the following: Demonstration of Attainment of the 1-hour NAAQS for Ozone; commitments for future actions; transportation conformity budgets; 3 percent per-annum Rate Of Progress (ROP) requirements for the years 2002, 2005 and 2007 for the New York Metro Area; 2002, 2005 and 2007 ozone projection emission inventories; and contingency measures. New York held a public hearing on April 30, 1998 and reopened the comment period to allow for public comment on subsequent revisions.

These revisions are intended to fulfill EPA's Ozone Attainment Demonstration SIP requirements ("Ozone Attainment Demonstrations," March 2, 1995 memo from Mary Nichols and "Guidance for Implementing the 1-hour Ozone and Pre-existing PM-10 NAAQS," December 29, 1997 memo from Richard D. Wilson).

ROP for Milestone Years 2002, 2005 and 2007

The December 29, 1997 Wilson policy memo required states to submit a "SIP commitment to submit a plan on or before the end of 2000 which, (1) contains target calculations for post-1999 ROP milestones up to the attainment date and, (2) adopted regulations needed to achieve post 1999 ROP and to attain the 1-hour NAAQS." New York's submittal included more than just a commitment, it identified the target calculations for the post-1999 ROP milestones for the years 2002, 2005 and 2007 and identifies air pollution control programs which have occurred since New York's Phase I Ozone SIP submittal, including control measures which have been adopted or are to be adopted in order to achieve 3 percent per-annum post-1999 ROP requirements up to the attainment date of 2007.

NO_x SIP Call

New York identified emission reduction credits resulting from the NO_x SIP Call and is relying on these credits to achieve attainment of the 1-hour ozone standard. New York proposed emission budgets consistent with the NO_x SIP Call and held public hearings on the proposed budgets on August 2 and 3, 1999 and additional public hearings on the emission budget demonstration on August 31, 1999 and

September 2, 1999. On November 15, 1999, New York's Environmental Board adopted 6 NYCRR Part 204, "NO_x Budget Trading Program." This regulation will allow New York to comply with the NO_x SIP Call. The regulation will be submitted to EPA after it becomes effective. New York's administrative process takes at least 40 days from adoption to effectiveness.

Emission Inventories

In addition, New York provided projection emission inventories for milestone years 2002, 2005 and 2007.

Commitments

New York also made the following commitments in their Ozone Attainment Demonstration SIP revision: (1) To undertake an assessment of the ambient air quality and modeling as part of the mid-course review and submit a report to EPA, in the 2001/2002 time period; (2) to review any future technology breakthroughs for feasibility, to achieve any necessary, additional emission reductions; (3) to evaluate all control measures which are not currently implemented (referring to STAPPA/ALAPCO list of measures) for potential future implementation; (4) to evaluate all control measures listed in the California Federal Implementation Plan list of control measures, and compare the stringency of these measures to those already in place in New York. EPA will further discuss these commitments below.

EPA is in the process of evaluating New York's ROP control strategies, projection year inventories and contingency measures and will act on these in a separate **Federal Register** notice.

B. What Modeling Did the States Do To Show Attainment of the 1-Hour Ozone Standard?

As discussed previously, EPA's guidance allows the states to use modeling with optional WOE analyses to show that they will attain the 1-hour ozone standard. The goal is to calculate how much ozone-forming emissions need to be reduced to meet the ozone standard by 2007. The two main kinds of emissions that form ozone are VOCs and NO_x.

New Jersey, New York and Connecticut worked together to predict future concentrations of ozone as a result of emission control programs. The states primarily used a photochemical grid model called Urban Airshed Model-IV (UAM-IV) to predict ozone concentrations in the year 2007.

The states also used other methods as well to make a WOE argument that the

New York-Northern New Jersey-Long Island nonattainment area will attain the 1-hour ozone standard by 2007. One of these methods is called "design value rollback." Design value rollback relies on actual measurements of ozone levels and information from the modeling results to predict future ozone design values. The states also used air quality trends analysis, extrapolating changes in measured air quality over the last decade to predict future ozone concentrations.

C. How Did the States Do Photochemical Grid Modeling?

New Jersey, New York and Connecticut agreed to work together on the modeling for the New York-Northern New Jersey-Long Island nonattainment area since parts of all three states are in the nonattainment area. They developed a modeling protocol, which they used to guide their work. New York agreed to perform the photochemical grid modeling and coordinate the effort. Connecticut contributed analysis of air quality trends and New Jersey performed additional analyses to support the WOE for attainment. All three states contributed air quality and emissions data and worked together on special analyses like selection of days for modeling.

The modeling domain included the entire New York City ozone plume including locations downwind in Connecticut, southeast New York and northern New Jersey. New York ran the UAM-IV model for the two episodes selected by the states. The states reviewed air quality and weather data from 1987 through 1991 to find periods representative of high ozone which could be used for modeling. The July 1988 and July 1991 episodes were selected as being representative of the days most conducive to ozone formation. Other episodes were reviewed, but only the 1988 and 1991 episodes were selected. EPA guidance recommends three episodes from at least two kinds of weather conditions that occur with high ozone concentrations. However, EPA allowed the states to use the two episodes they selected for the following reasons. The episodes were representative of weather conditions on over 50 percent of the high ozone days and had some of the most severe ozone days during the time from 1987 through 1991. In addition, modeling over a broader region was available to support analyses of the 1988 and 1991 episodes in the metropolitan area modeling domain. This modeling is referred to as regional modeling. The states used this regional modeling to provide input into the local modeling

on changes in ozone and ozone-forming chemicals coming into the modeling domain from sources outside the nonattainment area.

The states used emission inventories developed for the regional modeling for the base year modeling. For the year 2007 prediction of ozone, the states used an emission inventory that was used to model the effects of emission controls in the Ozone Transport Region. These controls included low emission vehicles and reductions in NO_x from major sources and is representative of the emission reduction plans submitted by these states and the emission reductions from EPA's NO_x SIP Call.

To model how the winds distributed the pollution, two methods were tested and compared with observed data. The method selected did better at predicting where the highest ozone concentrations were observed.

The results of the modeling for the 1988 and 1991 episodes were compared with the observed ozone from those episodes. The model performed well, based on the statistics recommended by EPA guidance. The model also did well at reproducing the observed distribution of ozone, however, the predicted ozone concentrations exceeded the maximum monitored concentrations. Since there are more modeling grid cells than monitoring sites, it is possible that higher concentrations could occur between monitors.

D. What Were the Results of Photochemical Grid Modeling?

The modeling for the nonattainment area predicted that ozone levels in 2007 would exceed the 1-hour ozone standard. The highest ozone in the predictions for 2007 using the 1988 and 1991 weather conditions were 0.171 ppm and 0.169 ppm, respectively. If the predicted peaks were adjusted to approximate the estimated design values, the design value in 2007 would be 0.163 ppm, well over the 0.124 ppm standard. However, the design value for the peak site from the area in and downwind of the New York-Northern New Jersey-Long Island area was less than 0.163 ppm for the past four years. Since some major controls included in the 0.163 ppm prediction for 2007 are yet to be implemented, EPA believes that the design value in 2007 is likely to be lower than the photochemical grid model's prediction for 2007. To corroborate these results, the states turned to other methods, namely design value rollback and extrapolation of air quality trends.

E. What Were the Results of the States' Design Value Rollback Analysis?

The results depended on the method selected. The states did several design value rollback calculations using slightly different data sets. Some calculations used the amount of ozone change from the regional or local photochemical grid modeling results. The calculations included different starting points from which the modeling "rolled back" to predict the ozone design value in 2007. In general, the calculations predicted that the ozone design value in 2007 could be close to or below the 0.124 ppm standard, with results ranging from as low as 0.122 ppm to as high as 0.131 ppm. The states acknowledged that there was significant uncertainty in these estimates. New York proposed to address this uncertainty by committing to a mid course review.

As discussed later in this notice, EPA independently performed a design rollback analysis using the change in ozone from 1990 to 2007 from the local modeling and using an average design value from around 1990. However, EPA performed its own design value rollback analysis with more robust data to account for fluctuations in the results due to meteorology. EPA's results predict nonattainment.

F. What Were the Results of Air Quality Trends Analyses?

States used data from the late 1980s through 1997 to attempt to make a qualitative argument that by extrapolating the 1-hour peak ozone and the highest design value in the airshed over the past decade, ozone would decrease to less than the standard by 2007.

Year to year trends in ozone are affected by the number of days with hot weather. Since hot weather favors ozone formation, hot summers will tend to have more high ozone days. Some of the trends analyses used by the states and EPA attempt to factor out the effects of year to year changes in weather so we can see effects of emission changes on ozone. These state and EPA analyses show that ozone changes due to emission changes have leveled off in recent years.

EPA agrees that ozone will decrease as these new programs are implemented. However, EPA believes that these trends data are not quantitative enough to help EPA determine if the standard will be attained in 2007. The design value rollback analyses provide more accurate answers to the question about how much ozone air quality will improve by

the 2007 attainment date due to future emission reductions.

G. What Are the Uncertainties in These Analyses?

There is a large difference between the results using the photochemical grid modeling and methods that use air quality data, like design value rollback and extrapolation of air quality trends. The UAM-IV predicts concentrations in 2007 that would lead to a design value of 0.163 ppm in 2007, well above the 0.124 ppm standard. The predictions for 2007 from design value rollback range from 0.122 to 0.141 ppm. Air quality trends projected to 2007 show ozone concentrations nearing attainment, but trends analyses are not sufficient for showing attainment.

The wide range of values from these analyses lead EPA to conclude that additional assurances are needed to conclusively determine that the New York's Ozone Attainment Demonstration SIP will result in attainment and EPA will be able to approve these plans.

H. What Are the Results of EPA's Evaluation?

EPA finds that New York's Attainment Demonstration SIP does not conclusively predict attainment. The New York-Northern New Jersey-Long Island nonattainment area will need more reductions in ozone-causing emissions than that presented in New York's Ozone Attainment Demonstration SIP. Specifically, the additional reductions needed is a 3.8 percent reduction in VOCs and a 0.3 percent reduction in NO_x, based on the 1990 emission inventory. This is equivalent to reducing emissions in the New York-Northern New Jersey-Long Island ozone nonattainment area by 85 tons of VOC per summer day and 7 tons of NO_x per summer day.

EPA determined the amount of additional reductions needed by performing an additional analysis (described later in this notice) to better calculate a design value for 2007 using a nationally consistent method for serious and severe ozone nonattainment areas. EPA's analysis included the modeled decrease in ozone due to the emission reductions resulting from all the adopted and implemented measures, including those reductions expected from the NO_x SIP Call (both at the boundaries and in the local area). To make the method more robust, EPA used a three-year average of design values from 1990 through 1992 with the design value rollback technique. The method calculates that the ozone design value in 2007 will be 0.129 ppm. Since

this more robust method predicts a 2007 concentration above the 0.124 ppm standard, the states will need to achieve additional emission reductions to demonstrate attainment.

Then EPA developed methods for calculating the amount of additional reductions the states need to attain the ozone standard. Details are in the Technical Support Document. These methods extrapolate the additional VOC and NO_x reductions needed to reduce ozone from 0.129 to 0.124 ppm. The additional reductions described earlier are after EPA applied credits for the Tier 2/Sulfur program.

New York can use either VOC or NO_x reductions in the ROP Plan and the Attainment Demonstration to the extent allowed by the CAA. This is because photochemical grid modeling studies for New York predict that ozone will be reduced if emissions of VOC or of NO_x are reduced. When the states modeled the impact of proportionally reducing emissions of VOC and NO_x together the results showed that reductions in VOC or NO_x together or alone reduces peak ozone concentrations. The actual substitution ratio will vary and depends on the total VOC and NO_x emission inventories.

I. What Is Needed To Demonstrate Attainment?

In order to be more certain that the area will attain the standard by 2007, EPA has determined that the states will need additional measures to reduce ozone by 0.005 more ppm after all the already planned measures are implemented. These additional measures include Tier 2/Sulfur program, the NO_x SIP call and some additional local controls.

If the states commit to implementing these additional reductions, they will provide sufficient assurance of attainment by 2007. In addition, New York has committed to a mid-course review as part of their WOE argument. If New York adopts these commitments, this would account for any uncertainty in the ability of the states to show that they will attain the ozone standard by 2007.

J. How Is the Tier 2/Sulfur Program Needed?

As result of EPA's review of the State's SIP submittal, EPA believes that the ozone modeling submitted by the State for the New York Metro Area on which EPA is proposing to approve and disapprove-in-the-alternative today will need the emission reductions from EPA's Tier 2/Sulfur program to attain the 1-hour ozone NAAQS. Further, EPA believes that the New York-Northern

New Jersey-Long Island area will require additional emission reductions identified by EPA, beyond those from EPA's Tier 2/Sulfur program, to attain the 1-hour ozone NAAQS.

For the New York Metro Area, EPA is proposing to determine that the submitted control strategy does not provide for attainment by the attainment deadline. However, the emission reductions from EPA's Tier 2/Sulfur program, which are not reflected in the submitted SIP, will assist in attainment. Because the New York Metro Area must rely on reductions from the Tier 2/Sulfur program in order to demonstrate attainment, the effects of these standards must be included in the motor vehicle emissions budget that is established for transportation conformity purposes.

To assist the State in the preparation of a new submission, EPA has prepared an estimate of the air quality benefits of EPA's Tier 2/Sulfur program in the New York-Northern New Jersey-Long Island nonattainment area. In our calculation, EPA assumed that all of the Tier 2/Sulfur emissions reductions will contribute to the ability of the New York Metro Area to demonstrate attainment. The EPA suggests that the State include these calculations as part of the WOE analysis accompanying the adjusted attainment demonstration and revised motor vehicle emissions budget for this area.

K. What Is the Status of New York's Transportation Conformity Budgets?

1. Conformity Budgets for Milestone Years 2002 and 2005

On November 16, 1999, EPA published a **Federal Register** document (64 FR 62194) finding that the conformity budgets for VOCs and NO_x for 2002 and 2005 meet the adequacy criteria contained in section 93.118(e)(4) of the transportation conformity regulation. EPA will take action on the approvability of these budgets when we act on the full 2002 and 2005 ROP plans.

2. Conformity Budgets for Attainment Year 2007

The EPA has found that the motor vehicle emissions budgets in the Attainment Demonstration submitted by New York is inadequate for conformity purposes for Attainment Year 2007 (November 16, 1999, 64 FR 62194). The EPA is proposing to approve the Attainment Demonstration SIP if New York corrects the deficiencies that cause the motor vehicle emissions budget to be inadequate and, alternatively, to disapprove it if New York does not

correct the deficiencies. Because many states may shortly be submitting revised demonstrations with revised motor vehicle emission budgets, EPA is providing a 60 day comment period on this proposed rule. If New York submits a revised attainment demonstration, EPA will place the revisions in the docket for this rulemaking and will post a notice on EPA's website at www.epa.gov/oms/traq. By posting notice on the website, EPA will also initiate the adequacy process.

L. What Future Actions Are Needed From New York for an Approvable Ozone Attainment Demonstration SIP?

1. NO_x SIP Call Submittal

Since New York has taken credit for emission reductions associated with the NO_x SIP Call occurring in the New York Metro Area for purposes of the 1-hour Attainment Demonstration SIP, the NO_x SIP Call, which New York has adopted, must be submitted to EPA as part of an approved 1-hour attainment demonstration.

2. CAA Measures and Measures Relied on in the Modeled Attainment Demonstration SIP

New York has adopted the control measures already required under the CAA for the New York Metro Area classification of severe. Generally these measures have been approved by EPA or are in the process of being acted on by EPA. With the exception of the NO_x SIP Call, all measures relied on in the current SIP have been adopted by New York and will be approved before EPA takes final action on the ozone Attainment Demonstration SIP.

3. Additional Measures To Further Reduce Emissions

New York must submit an enforceable commitment to adopt additional control measures to meet that level of reductions identified by EPA for attainment of the 1-hour ozone standard. New York should submit the commitment by December 31, 1999. However, if the public process on the commitment is not yet complete by that date, it should submit the proposed commitment and submit the final commitment as quickly as possible, but no later than April 15, 2000.

New York must commit to work through the OTR to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA. However, as a backstop, New York will need to commit to adopt intrastate measures sufficient to achieve the additional reductions if the regional measures are

not identified by the OTR and adopted by the relevant states.

4. Attainment Demonstration—Conformity Budget—Tier 2/Sulfur Program Benefit

a. In order for EPA to complete the adequacy determination by May 31, 2000, New York should submit a revised budget no later than December 31, 1999. This revised budget would be submitted with the commitment to adopt sufficient measures to address the required level of emission reductions identified by EPA. The State may choose to include preliminary Tier 2/Sulfur program benefits in this submittal. If the State chooses not to include these benefits, then Metropolitan Planning Organizations may not use these emission reductions in conformity determinations until the State revises the budgets to account for the Tier 2/Sulfur program benefits.

In addition, in order for EPA to find the motor vehicle emissions budget adequate for conformity purposes, the State will need to identify a list of potential control measures that could provide sufficient additional emission reductions as identified by EPA. These measures may not involve additional limits on highway construction beyond those that could be imposed under the submitted motor vehicle emissions budget. New York need not commit to adopt any specific measure(s) on their list at this time. In satisfying the additional emission reductions, the State is not restricted to the list and could choose other measures that may prove feasible. It is not necessary for the State to evaluate each and every measure on the list.

b. If New York chooses not to include the Tier 2/Sulfur program benefits in its December 31, 1999 SIP submittal, New York must make a subsequent SIP submittal by December 31, 2000. This latter SIP submittal would incorporate the Tier 2/Sulfur program benefits and appropriately modify the transportation conformity budgets.

c. New York must submit an enforceable commitment to revise its transportation conformity budgets within one year after EPA's release of MOBILE6. This commitment should be submitted to EPA along with the other commitments discussed in this section, or alternatively, as part of the SIP revision that modifies the motor vehicle emission inventories and transportation conformity budgets to include the Tier 2/Sulfur program benefits which is due December 31, 2000.

d. New York must commit to recalculate and submit a revised motor vehicle emissions budget if any of the

additional emission reductions pertain to motor vehicle measures. This must be done when the measures are submitted as a SIP revision.

5. Mid Course Review

While New York has submitted a commitment to perform a MCR, the commitment does not include a firm end date for this submittal. New York must submit an enforceable commitment to perform a MCR as described previously by December 31, 1999 which contains a firm end date. However, if the public process on the commitment is not yet complete by that time, a proposed commitment may be submitted at that time, with a final enforceable commitment to be submitted no later than April 15, 2000.

M. What Are the Consequences of State Failure?

This section explains the CAA consequences of state failure to meet the time frames and terms described generally in this notice. The CAA provides for the imposition of sanctions and the promulgation of a federal implementation plan (FIP) if states fail to submit a required plan, submit a plan that is determined to be incomplete or if EPA disapproves a plan submitted by the state. (EPA is using the phrase "failure to submit" to cover both the situation where a state makes no submission and the situation where the state makes a submission that we find is incomplete in accordance with section 110(k)(1)(B) and 40 CFR part 51, appendix V.) For purposes of sanctions, there are no sanctions clocks in place based on a failure to submit. Thus, the description of the timing of sanctions, below, is linked to a potential disapproval of the state's submission.

1. What Are the CAA's Provisions for Sanctions?

If EPA disapproves a required SIP, such as the Attainment Demonstration SIPs, section 179(a) provides for the imposition of two sanctions. The first sanction would apply 18 months after EPA disapproves the SIP if the state fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the state has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has

authority under section 110(m) to sanction a broader area, but is not proposing to take such action today.

2. What Are the CAA's FIP Provisions if a State Fails To Submit a Plan?

In addition to sanctions, if EPA finds that a state failed to submit the required SIP revision or disapproves the required SIP revision EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected. The attainment demonstration SIPs on which EPA is taking action today were originally due in November 1994. However, through a series of policy memoranda, EPA recognized that states had not submitted attainment demonstrations and were constrained to do so until ozone transport had been further analyzed. As discussed previously, EPA provided for states to submit the attainment demonstration SIPs in two phases. In June 1996, EPA made findings that ten states (including New York) and the District of Columbia had failed to submit the phase I SIPs for nine nonattainment areas. 61 FR 36292 (July 10, 1996). In addition on May 19, 1997, EPA made a similar finding for Pennsylvania for the Philadelphia area. 62 FR 27201.

In July 1998, several environmental groups filed a notice of citizen suit, alleging that EPA had outstanding sanctions and FIP obligations for the serious and severe nonattainment areas on which EPA is proposing action today. These groups filed a lawsuit in the Federal District Court for the District of Columbia on November 8, 1999.

N. What Are EPA's Conclusions?

EPA has evaluated New York's 1-hour Ozone Attainment Demonstration SIP submittal for consistency with the CAA, applicable EPA regulations, and EPA policy. EPA has determined that the ozone standard in the New York-Northern New Jersey-Long Island area will not be achieved until the states and EPA implement some additional measures, including Tier 2/Sulfur program and some additional local controls. EPA is proposing two alternative actions on New York's Ozone Attainment Demonstration SIP, depending on whether New York submits the adopted NO_x SIP Call, the revised transportation conformity budgets and necessary enforceable commitments.

First, EPA is proposing to approve New York's Ozone Attainment Demonstration SIP provided New York submits:
—The adopted NO_x SIP Call program as a SIP revision;

- An enforceable commitment to adopt sufficient measures to address the required level of emission reductions identified by EPA;
- Revised transportation conformity budgets which reflect the additional emission reductions identified by EPA for attainment;
- Revised transportation conformity budgets to include the Tier 2/Sulfur program benefits, if these benefits have not already been incorporated;
- An enforceable commitment to revise the Attainment Demonstration SIP, including recalculation of the transportation conformity budgets (if any of the additional emission reductions pertain to motor vehicle measures) to reflect the adopted additional measures needed for attainment;
- An enforceable commitment to revise the Attainment Demonstration, including transportation conformity budgets, when MOBILE6 is released; and
- An enforceable commitment to perform a mid course review and submit the results to EPA by December 31, 2003.

With respect to the NO_x SIP Call, the proposed approval is predicated upon the expectation that New York will submit the NO_x SIP Call program prior to EPA taking final action on today's proposal.

EPA also is proposing to disapprove-in-the-alternative New York's Ozone Attainment Demonstration SIP if New York does not provide one or more of the identified elements by the required dates.

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially

effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health and safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive

Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

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 implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

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

The EPA's alternative proposed disapproval of the state request under section 110 and subchapter I, part D of the CAA would not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements would remain in place after this disapproval. Federal disapproval of the state submittal does not affect State-enforceability. Moreover EPA's disapproval of the submittal would not impose any new Federal requirements. Therefore, EPA certifies that the proposed disapproval would not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

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

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

Sections 202 and 205 do not apply to the proposed disapproval because the proposed disapproval of the SIP submittal would not, in and of itself, constitute a Federal mandate because it would not impose an enforceable duty on any entity. In addition, the Act does not permit EPA to consider the types of analyses described in section 202 in determining whether a SIP submittal meets the CAA. Finally, section 203 does not apply to the proposed disapproval because it would affect only the State of New York, which is not a small government.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, the EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

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

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

Dated: November 29, 1999.

Jeanne M. Fox,

Regional Administrator, Region 2.

[FR Doc. 99-31712 Filed 12-15-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ40-205, FRL-6502-3]

Approval and Promulgation of Implementation Plans; New Jersey; One-Hour Ozone Attainment Demonstrations State Implementation Plan and 2007 Transportation Conformity Budgets

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve New Jersey's Ozone Attainment Demonstration State Implementation Plan (SIP) for the New York-Northern New Jersey-Long Island nonattainment area (NAA) and the Philadelphia, Wilmington, Trenton NAA or in the alternative to disapprove it, depending on whether New Jersey submits the adopted NO_x SIP Call, the revised transportation conformity budgets and necessary enforceable commitments.

First, EPA is proposing to approve New Jersey's Ozone Attainment

Demonstration SIP provided New Jersey submits: the adopted NO_x SIP Call program as a SIP revision; an enforceable commitment to adopt sufficient measures to address the required level of emission reductions identified by EPA; revised transportation conformity budgets which reflect the additional emission reductions identified by EPA for attainment; revised transportation conformity budgets to include the Tier 2/Sulfur program benefits, if these benefits have not already been incorporated; an enforceable commitment to revise the Attainment Demonstration SIP, including recalculation of the transportation conformity budgets (if any of the additional emission reductions pertain to motor vehicle measures) to reflect the adopted additional measures needed for attainment; and, an enforceable commitment to revise the Attainment Demonstration, including transportation conformity budgets, when MOBILE6 (the most recent model for estimating obile source emissions) is released.

With respect to the NO_x SIP Call, the proposed approval is predicated upon the expectation that New Jersey will submit the NO_x SIP Call program prior to EPA taking final action on today's proposal.

EPA also is proposing to disapprove-in-the-alternative New Jersey's Ozone Attainment Demonstration SIP for the New York-Northern New Jersey-Long Island NAA and the Philadelphia, Wilmington, Trenton NAA if New Jersey does not provide one of more of the identified elements by the required dates.

DATES: Comments must be received on or before February 14, 2000.

ADDRESSES: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866

Copies of the New Jersey submittals and EPA's Technical Support Document are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866 and New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Paul R. Truchan, Air Programs Branch, Environmental Protection Agency, 290