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 does not affect State-enforceability. Moreover EPA's disapproval of the submittal would 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 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 Wisconsin, 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, Nitrogen dioxide, Ozone.

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

Dated: November 30, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–31722 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX101–2–7421; FRL–6503–4]

Approval and Promulgation of Implementation Plans; Texas; Proposed Conditional Approval or Proposed Disapproval of the Attainment Demonstration State Implementation Plan for the Houston/Galveston Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to conditionally approve the State Implementation Plan (SIP) revision for the Houston/Galveston nonattainment area submitted by the State of Texas on May 19, 1998. This submission was supplemented by a modeled control strategy and a transportation conformity budget on November 15, 1999. The EPA is also proposing, in the alternative, to disapprove the Attainment Demonstration SIP submittal for the HGA area.

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

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below.

Copies of the documents relevant to this action, including the technical support document, are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone: (214) 665–7214.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Guy R. Donaldson, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone: (214) 665–7242.

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 Houston/Galveston area.

Table of Contents

I. Background Information

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

1. Clean Air Act (CAA) Requirements

The 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 §§ 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 occur, or would have been 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 § 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 § 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. Under section 181(a)(1) and (2),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 (Severe-15) or November 15, 2007 (Severe-17). The Houston/Galveston area is classified as severe-17 and its attainment date is November 15, 2007.

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, EPA is proposing action on the attainment demonstration SIP submitted by Texas for the Houston/Galveston area, including the State's commitment to submit by December 2000 the adopted measures necessary for attainment by 2007. The EPA is also proposing action on the State's commitment to submit by December 2000 ROP target calculations and the adopted measures to achieve ROP until the attainment year. (Note, EPA will be taking action on the emission reduction plan for the three year period from 1996–1999 in a separate 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, Springfield (Western Massachusetts), New-York-North New Jersey-Long Island, Baltimore, Philadelphia-Wilmington-Trenton, Metropolitan Washington, D.C., Atlanta, Milwaukee-Racine, and Chicago-Gary-Lake County.

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 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[3]; (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

[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 Members, dated April 13, 1995.

[3] [Severe areas only] In general, a commitment for severe areas to adopt by December 2000 the control measures necessary for attainment and ROP plans through the attainment year applies to any additional measures that were not otherwise required to be submitted earlier. (For example, this memorandum was not intended to allow States to delay submission of measures required under the CAA, such as inspection and maintenance (I/M) programs or reasonable available control technology (RACT) regulations, required at an earlier time.) Thus, this commitment applies to any control measures or emission reductions on which the State relied for purposes of the modeled attainment demonstration or for ROP. To the extent Texas has relied on a commitment to submit these measures by December 2000 for the Houston nonattainment area, EPA is proposing a conditional approval of the area's attainment demonstration. Some severe areas submitted the actual adopted control measures and are not relying on a commitment.

public hearing on the State submittal.[4] [5] 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 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. Texas participated in the OTAG but was not included in the 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 six months for a completeness determination and an additional 12 months for approval or disapproval.) The EPA believes that it is 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 is fully approvable or whether the conditional approval of the attainment demonstration 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. [6] 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

[4] Memorandum, ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM 10 NAAQS,'' issued 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.

[5] In general, a commitment for severe areas to adopt by December 2000 the control measures necessary for attainment and ROP plans through the attainment year applies to any additional measures necessary for attainment that were not otherwise required to be submitted earlier. (For example, this memorandum was not intended to allow States to delay submission of measures required under the CAA, such as inspection and maintenance (I/M) programs or reasonable available control technology (RACT) regulations, required at an earlier time.) Thus, this commitment applies to any control measures or emission reductions on which the State relied for purposes of the modeled attainment demonstration. To the extent Houston has relied on a commitment to submit these measures by December 2000, EPA is proposing a conditional approval of the area's attainment demonstration. Some severe areas submitted the actual adopted control measures and are not relying on a commitment.

The EPA recognizes that motor vehicle emissions budgets can be established from the items listed in the Wilson memorandum.

[6] The EPA issued guidance on the air quality modeling that is used to demonstrate attainment with the 1-hour ozone NAAQS. See U.S. EPA, 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, 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'').

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 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 day[7] 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.

[7] The initial, ''ramp-up'' days for each episode are excluded from this determination.

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.
- 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 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, 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.

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. The 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_X**, 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_X**
—Enhanced Inspection and Maintenance (I/M) program
—15% volatile organic compound (VOC) plans
—Emissions inventory
—Emission statements
—Attainment demonstration
—9 percent ROP plan through 1999
—Clean fuels program or substitute
—Enhanced monitoring—Photochemical Assessment Monitoring Stations (PAMS)
—Stage II vapor recovery

**Areas that are currently attaining the standard or can demonstrate that NO_X controls are not needed can request a NO_X waiver under section 182(f). Houston/Galveston Area 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% ROP plan through attainment year
—Measures to offset VMT growth
—Requirement for fees for major sources for failure to attain

2. NO_X Reductions Consistent With the Modeling Demonstration

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 nine of the nonattainment areas for which EPA is proposing action today are located. The nine 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 domain [8] 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.

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.[9] 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.[10] 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.

4. Tier 2/Sulfur Program Benefits

On May 13, 1999, EPA published a Notice of Proposed Rulemaking 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 Houston area 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.[11] The memorandum provides the NO_X and VOC 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

[8] For 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 × 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.

[9] 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.

[10] A final budget is preferred; but, if the State public process is not yet complete, then a draft 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 draft that is substantially similar to what the final budget will be. The State must submit the final budget by April 15, 2000.

[11] 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.*

benefits for the 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.[12] 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 rule is promulgated, provided that the attainment demonstration SIPs and associated motor vehicle emissions budgets include the Tier 2 benefits. For areas that require all or some portion of the Tier 2 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 until the SIP budgets are revised to reflect Tier 2 benefits. See EPA's memorandum for more information.

For the New York-North New Jersey-Long Island area, Philadelphia-Wilmington-Trenton, Baltimore, Atlanta and Houston/Galveston 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. In the case of the Houston/Galveston area, Texas has already included a preliminary estimate of the reductions for Tier II in their air quality modeling in the November 15, 1999 supplemental SIP submission. Our preliminary analysis of Texas' November 15, 1999 submission indicates that further additional emission reductions beyond Tier II will be necessary for the area to attain.

States that need to rely in whole or in part on the Tier 2 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 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.

A number of areas for which the EPA is not proposing to determine that additional emission reductions beyond those provided by the SIP submission are necessary for attainment will be taking a partial credit for Tier 2 when they use credit from national low emissions vehicles (NLEV) in their attainment demonstration. These nonattainment areas are the Milwaukee-Racine, Chicago-Gary-Lake County and Metropolitan Washington, D.C. areas. By regulation, the NLEV standards do not extend beyond the 2003 model year unless EPA promulgates Tier 2 vehicle standards at least as stringent as the NLEV standards. See 40 CFR 86.1701–99(c). Thus, the emission reductions relied upon from 2004 and later model year NLEV vehicles will actually be due to the promulgation of the Tier 2 standards, either through the extension of the NLEV program or a portion of the reduction from vehicles meeting the Tier 2 standards.

Like all the other SIPs that rely on Tier 2 reductions in order to demonstrate attainment, the attainment demonstrations for the Milwaukee-Racine, Chicago-Gary-Lake County and Metropolitan Washington, D.C. areas must be revised to estimate the effects of Tier 2 according to our policy before EPA can take final action approving such attainment demonstrations. Until the SIPs are revised to include full Tier 2 credit, EPA can determine by May 31, 2000 that a motor vehicle emissions budget is adequate if the budget would be otherwise adequate. No conditions need be placed on such adequacy determinations since the budgets in such SIPs already include reductions equivalent to the amount of emission reductions the areas will be relying on from Tier 2 by virtue of the NLEV reductions included in the budgets.

a. 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 notice, 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.[13]

5. Additional Measures To Further Reduce Emissions

The EPA is proposing to find that the attainment demonstrations for New York-North New Jersey-Long Island; Baltimore; Philadelphia-Wilmington-Trenton; Houston-Galveston-Brazoria and Atlanta, even considering the Tier II/Sulfur program reductions and the WOE, will not achieve attainment without the application of additional emission control measures to achieve additional emission reductions. Our proposal for Houston is based on a preliminary analysis of the Houston November 15, 1999 submission which indicates even considering Tier II/Sulfur program reductions and WOE, sufficient measures have not been identified to achieve attainment. The EPA is also proposing to find that additional emission control measures are needed for the Atlanta area. Thus, for each of

[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.*

[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 revision of the budget after the release of MOBILE6.

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.

The method used by EPA to calculate the amount of additional reductions is described in a technical support document 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 measures, 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 identify sufficient additional emission reductions to attain the standard with the submitted motor vehicle emissions budget. 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 [14].) 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 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.

Texas already provided in its May 18, 1998 submission an enforceable commitment to adopt, by December 31, 2000, all measures necessary for attainment in Houston without identifying any specific measure. This commitment was reaffirmed in the November 15, 1999 submission with specific measures identified and modeled. Unfortunately, the measures identified in the November 15, 1999 submission were not sufficient to demonstrate attainment. Therefore, Texas needs to send a list of additional measures beyond those identified in the November 15, 1999 submission that can be used to achieve the additional reductions needed to achieve attainment. If Texas determines that it needs additional time beyond December 31, 2000 to adopt some or all of the additional measures not identified in the November 15, 1999 submission, it must submit an enforceable commitment to adopt these measures by a date certain that is as expeditiously as practicable. Moreover, the commitment must specify the necessary additional percentage reduction. The EPA will work with Texas on what constitutes an expeditious schedule for adoption.

a. 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 can 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

[14] 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.

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 Official's (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 Houston/Galveston area, EPA believes that Texas must submit an enforceable commitment to perform a MCR as described here.[15]

As part of the commitment, the State should commit to work with EPA in a public consultative process to develop a methodology for performing the MCR and developing the criteria by which adequate progress would be judged.

[15] 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.

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). The 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. The 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 are 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 Houston-Galveston Area 1-Hour Ozone Nonattainment Area?

The following table shows a summary of information on what EPA expects from Texas to allow EPA to approve the 1-hour ozone attainment demonstration SIP.

SUMMARY SCHEDULE OF FUTURE ACTIONS RELATED TO ATTAINMENT DEMONSTRATION FOR THE HOUSTON-GALVESTON SEVERE NONATTAINMENT AREA IN TEXAS

Required no later than:	Action
12/31/99	State submits the following to EPA: —Motor vehicle emissions budget. [1] —Commitments [2] to do the following: —Submit by 12/31/00 measures for additional emission reductions as required in the attainment demonstration test. —Submit revised SIP & motor vehicle emissions budget by 12/31/00 if additional measures (due by 12/31/00) affect the motor vehicle emissions inventory. —Submit revised SIP & motor vehicle emissions budget 1 year after MOBILE6 issued.[3] —Perform a mid-course review. —A list of potential control measures that could provide additional emission reductions needed to attain the standard. [4]
4/15/00	State submits in final any submissions made in draft 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	—State submits adopted rules that reflect measures that are needed for ROP and attainment. —State revises & submits SIP & motor vehicle emissions budget if changes in the adopted control measures affect the motor vehicle category. —State revises & submits SIP & motor vehicle emissions budget to account for Tier 2 reductions as needed.[5]
Within 1 yr. after release of MOBILE6 model.	State submits revised 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 ''draft'' 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 draft 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.'' Note, Texas provided a budget for Houston in its November 15, 1999 submission.

[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 draft commitments may be submitted at this time. The final commitment should be submitted no later than 4/15/00. Note, Texas provides in its May 19, 1998 SIP revision a commitment to adopt all necessary measures. Texas will need to provide public notice and comment if it wishes to revise this commitment.

[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). Note that Texas included the effects of Tier 2 in the SIP and associated attainment budget submitted in November 1999.

[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).

A. What Are Some Significant 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. Some other 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/oarpg/t1pgm.html.

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/oarpg/t1pgm.html.

6. Memorandum, ''Guidance on 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 Action Is EPA Taking for the Houston/Galveston Ozone Attainment Demonstration SIP revision?

EPA's options for acting on a SIP revision are described in Section I.A.4. We are proposing to conditionally approve the 1-hour ozone Attainment Demonstration SIP revision for the Houston/Galveston nonattainment area, which was submitted by the Governor in a letter dated May 19, 1998, and as supplemented by a modeled control strategy and a budget submitted by the Governor on November 15, 1999. Based on our preliminary review of the November 15, 1999 submission, to meet the framework described in Section I.C., Texas should provide the elements discussed later in this notice. Please note, this action is based on only a preliminary analysis of the November 15, 1999 submission.

Alternatively, we are proposing to disapprove the May 19, 1998 SIP submission as supplemented by the November 15, 1999 modeled control strategy and an attainment motor vehicle emissions budget if EPA determines there is not an adequate motor vehicle emissions budget.

With the May 19, 1998, letter from the Governor, Texas also submitted revisions to address the requirement for Post '96 Rate of Progress (ROP) Reductions. In this action, we are not addressing the portions of the May 19, 1998, SIP revision pertaining to the Post-96 ROP Plan. However, EPA will propose and take final action on the Post-96 ROP Plan before issuing a final full approval of the area's attainment demonstration as meeting the requirement of section 182(c)(2) and (d).

What About the November 15, 1999 SIP Revision?

The Governor of Texas has submitted on November 15, 1999 a revision to the SIP intended to correct deficiencies in the May 19, 1998 SIP revision. As previously discussed, we are proposing action on the May 19, 1998 SIP submittal at this time, as supplemented by the modeled control strategy and the budget in the November 15, 1999 SIP revision. Our review of the November 15, 1999 submission, to date, has been a cursory review of the modeled control strategy and the adequacy of the related motor vehicle emissions budget, because we believe an adequate motor vehicle emissions budget is necessary before we can finalize conditional approval of the May, 1998 SIP revision. We will perform a detailed review of the November 15, 1999 submission to determine its approvability (e.g., the modeling, the weight of evidence analysis, etc.) in an expeditious manner but we have not had sufficient time to include an evaluation of the approvability of the more recent submission in this action.

The November 15, 1999 submission does include a modeled control strategy and an associated motor vehicle emissions budget. Unfortunately, the modeled control strategy in the November 15, 1999 submission, while calling for significant emission reductions in NO_x, does not project attainment of the ozone standard. In fact, the control strategy modeling indicates additional emissions reductions are necessary to demonstrate attainment by 2007.

Why Is EPA Proposing To Conditionally Approve the May 19, 1998 SIP Revision as Supplemented by the 1999 SIP Revision?

We cannot fully approve the May 19, 1998, SIP revision because it did not include control strategy modeling showing how the area will attain the one-hour ozone standard and an explicit motor vehicle emissions budget. In the May 19, 1998 SIP revision, Texas committed to provide by the end of 2000 the adopted measures to achieve the needed emission reductions for Post-99 Rate of Progress and 2007 attainment. On January 5, 1999, Texas committed to submit by November 15, 1999, a control strategy modeled to show attainment. On July 19, 1999, Texas committed to submit by November 15, 1999, an adequate motor vehicle emissions budget.

Texas provided a modeled control strategy and a motor vehicle emissions budget by November 15, 1999. We will post the availability of this SIP revision on the EPA's conformity web page (http://www.epa.gov/oms/transp/conform/currsips.htm) to start EPA's adequacy determination process and to receive comment on the adequacy of the budget.

What Must Texas Do Before EPA Can Finalize This Conditional Approval?

We will have to determine that the motor vehicle emissions budget is adequate. Our preliminary analysis indicates, that the November 15, 1999 submitted budget is derived from attainment demonstration modeling that does not have sufficient emission reductions identified to result in attainment of the 1-hour ozone standard

by 2007. This modeling and associated motor vehicle emissions budget included estimates of Tier II emission reductions. Therefore, in order for the budget to be determined by the EPA to be adequate, Texas must submit the following: (1) A list of measures that could be used to achieve the needed additional emissions reductions; (2) A commitment to recalculate and resubmit a motor vehicle emissions budget that includes the effects (if any) of the measures that are ultimately adopted should any of these measures pertain to motor vehicles; (3) A commitment to submit a revised motor vehicle budget 1 year after MOBILE 6 is issued; and (4) A commitment to perform a mid-course review.

Texas provided a commitment to adopt the measures necessary for attainment and ROP in its May 19, 1998, SIP revision. For purposes of finding the budget adequate, Texas can amend this commitment in a letter to add the above items. However, before EPA can finalize this conditional approval, Texas will have to provide for notice and comment on these additional elements. We expect that Texas will submit the list of measures and enforceable commitments in draft by 12/31/99 and in final by 4/15/00. The list of additional control measures should be submitted in the same time frame as the enforceable commitments. We will include any additional submission of additional commitments or list of measures in the administrative record for this rule. Please note, if the final list of additional measures and commitments is significantly different than the draft submitted earlier, the final list and commitments should be submitted by February 15, 2000 to accommodate the 90 day processing period so the budget can be determined adequate by May 31, 2000.

What Are the Proposed Conditions?

We are proposing the following conditions:

(1) Texas must submit target calculations and adopted rules that meet the Post-99 Rate of Progress requirements of the Act by December 31, 2000.

(2) Texas must submit by, December 31, 2000, adopted rules that are needed for attainment by 2007.

How Can Texas Receive Full Approval of the Attainment Plan?

EPA will have to complete its analysis of the modeling in the November 15, 1999 SIP modeling demonstration to determine if it meets the requirements of the Act, rules, and policies. Then, Texas must submit the adopted control measures to achieve rate of progress and attainment. If EPA determines they are complete, or they are deemed complete, the EPA will determine through additional rulemaking action whether the State's submittals meet requirements of the Act, rules and policies.

Is the May 19, 1998, SIP Revision Consistent With the December 27, 1997 Policy?

The provisions of the December 27, 1997 policy are discussed in section I.A.2. The May 19, 1998 SIP revision included modeling that shows that a 65–85 percent, across the board, reduction in NO_X emissions would be needed for the area to attain the ozone standard. Texas submitted documentation and information to support the analysis. The modeling shows the sensitivity of ozone levels to overall emission reductions. Texas did not, however, model a specific control strategy that would achieve the needed reductions. It is necessary to model the specific control strategy being considered to make sure the planned controls on specific sources will be effective in reducing ozone. This cannot be ascertained by modeling across the board reductions of all sources.

Texas also has provided SIP revisions to address all of the measures and regulations required for a severe-17 ozone nonattainment area by subpart 2 of the Act. We are reviewing SIP revisions for the 97–99 (9%) ROP plan, the Vehicle Miles Traveled Offset SIP, Industrial Wastewater RACT, and Batch Processing RACT. We will take action to address these submissions in separate **Federal Register** notices.

Texas also provided a list of potential control measures in the May 19, 1998, SIP revision. These measures have not, however, been modeled to determine, if implemented, whether attainment of the one-hour standard would be demonstrated.

The May 19, 1998, SIP submission also contained a commitment to submit a SIP revision with the remaining components by December 30, 2000. These items must include a Post-1999 ROP Plan, and adopted regulations to achieve the required ROP reductions through 2007 and to attain the 1-hour NAAQS.

Finally, Texas also included evidence that public hearings were held on the May 19, 1998, SIP revision.

We acknowledge that Texas attempted to address the elements due under the December 1997, policy. Texas, however, still needed to provide a specific control strategy that has been modeled and shown to achieve the NAAQS for ozone to fully address all of the requirements due April 1998, under the policy. Further, Texas needed to provide an adequate motor vehicle emissions budget based on that modeled control strategy. Texas submitted a specific modeled control strategy and an associated motor vehicle emissions budget in the November 15, 1999 submission.

Why Is EPA Alternatively Proposing Disapproval?

We are taking comment on this alternative because the Attainment Demonstration SIP for HGA should be disapproved if there is not an adequate motor vehicle emissions budget.

Under What Circumstances Would EPA Expect To Finalize the Disapproval?

In addition to proposing conditional approval, we are also proposing as an alternative disapproval of the May 19, 1998, attainment SIP submission, as supplemented by the SIP on November 15, 1999. We propose to finalize the disapproval if the motor vehicle emissions budget in the November 15, 1999 submission is inadequate. As discussed previously, we cannot find the budget adequate unless Texas provides the following: a list of additional measures that can be used to achieve the needed additional reductions, a commitment to revise the motor vehicle emissions budget if later measures affect the motor vehicle emissions inventory, a commitment to submit a revised motor vehicle emissions budget 1 year after MOBILE 6 is released, and a commitment to perform a mid-course review.

What Are the Consequences if the Plan Is Disapproved?

If the plan is disapproved, either by converting the final conditional approval to a disapproval or by finalizing the proposed disapproval in this notice, there are certain consequences.

A disapproval can lead to the imposition of sanctions under section 179 of the Act. Also, a disapproval can lead to the promulgation under section 110(c) of a Federal Implementation Plan (FIP) to address the Houston air quality problem. Furthermore, upon disapproval, only projects in the first three years of the currently conforming plan and TIP can be approved. No new transportation plan or transportation improvement program (TIP) may be found to conform until another attainment demonstration with an explicit motor vehicle emissions budget is submitted and the motor vehicle emissions budget is determined adequate.

If Texas does not submit an approvable plan that meets the conditions within 18 months of the disapproval action, then the emission offset requirement for new and modifying sources in the Houston/Galveston nonattainment area would be increased. Six months later, if an approvable plan still has not been received, highway funding limitations would go into place and conformity would lapse. We are also required to promulgate a FIP no later than 2 years following disapproval of a SIP, if the State has not submitted and EPA has not approved a new submission in the interim.

What Does the Modeling in the May 19, 1998 SIP Submission Show?

The modeling shows that NO_X emissions must be reduced in the Houston area by 65–85 percent. Texas has also shown that emissions of VOC should be reduced by an additional 15 percent. These percentage reductions are based on an estimate of projected total emissions for the eight county nonattainment area in the year 2007. The Texas Natural Resource Conservation Commission also performed a large number of model runs to evaluate the sensitivity of the model to emission reductions in different locations and its sensitivity to controls on point, mobile or area sources. The State concluded from its analysis that controlling just point sources would not be sufficient to achieve attainment. Further, controlling just mobile sources would not achieve attainment. Emission reductions will have to be achieved in all source categories to achieve the goal of attainment.

What Does Preliminary Examination of the Modeling in the November 15, 1999 Modeling and Control Strategy Show?

Texas has modeled control strategies of increasing stringency. The scenario that gets closest to attaining the one hour standard still has peak values of in the range of 0.140–0.152 ppm, still well above the standard of 0.124 ppm, the modeling attainment test cut-off. This strategy includes:

Federal Measures:
- Heavy Duty Diesel Standards
- Phase II Reformulated Gasoline
- National Low emitting vehicle
- Tier II motor vehicle standards
- Heavy Duty diesel equipment standard
- Locomotive standards
- Spark ignition standards for off-road equipment
- Commercial marine vessel standards
- Recreational marine standards

State Measures:
- Tier III point source controls (approx. 90% reduction)
- Reductions in East Texas: Utilities 50%, grandfathered 30%
- Cleaner burning gasoline in East Texas
- California Reformulated Gasoline
- California Reformulated Diesel
- Acceleration Simulation Mode equivalent I/M program 8 counties

How Does Texas Compare to the Framework for Proposing Action Discussed in Section I.C.?

As previously discussed, Texas submitted a SIP on May 19, 1998, and then submitted a SIP to correct the deficiencies on November 15, 1999. EPA must determine if the November 15, 1999 SIP submittal is complete. If EPA determines the November 15, 1999 SIP submittal is complete, we will publish a notice of proposed action on the approvability of that SIP. As discussed in section I.C., the EPA has identified the key elements, in addition to the modeling and WOE support, which must be present for EPA to approve or conditionally approve the attainment demonstration SIP. A preliminary comparison of the November 15, 1999 SIP submission to these key elements follows. *Regional NO_X reductions consistent with the modeling demonstration:* This element does not strictly apply to the Houston area because Texas was outside of the area covered by the NO_X SIP call. It is worth noting that Regional NO_X reductions at power plants in the eastern portion of Texas have been included in the modeling submitted November 15, 1999. Texas will have to adopt and submit rules by December 2000 that achieve these reductions to continue to rely on these reductions.

Clean Air Act Measures: This refers to adopted and submitted rules for all previously required CAA mandated measures for a Severe area. Texas has provided SIP revisions to address all of the measures and regulations required for a severe-17 ozone nonattainment area by subpart 2 of the Act. We are reviewing SIP revisions for the 9% ROP plan, the Vehicle Miles Traveled Offset SIP, Industrial Wastewater RACT, and Batch Processing RACT. We will take action to address these submissions in separate **Federal Register** notices.

Adequate Motor Vehicle Emissions Budget: The May 19, 1998 submission did not contain an attainment motor vehicle emissions budget. Texas has submitted a motor vehicle emissions budget in its November 15, 1999 submission. As discussed above, we will be reviewing this budget for adequacy and posting notice of availability of the SIP for comment on the adequacy of the motor vehicle emissions budget on our website.

Tier 2/Sulfur Program Benefits: Texas has estimated the benefits of the Tier 2/Sulfur program in their modeling submitted November 15, 1999. We will have to review their estimates of emission reductions and propose in our action on the 1999 Attainment Demonstration SIP submittal whether those estimates are acceptable or not.[16]

Additional Measures to further reduce emissions to support the attainment test: The modeling in the November 1999 submission does not appear to have sufficient emission reductions to demonstrate attainment. As discussed previously, Texas already has an enforceable commitment to adopt measures necessary for attainment by December 31, 2000. They will need to provide a list of measures that can be used to achieve the needed additional reduction. This list of measures will need to receive public notice and comment. Further, if Texas determines that they need additional time to adopt some or all of these additional measures, they will need to revise their previous commitment contained in the May 19, 1998 SIP revision. In any case, the rules must be adopted as expeditiously as practicable and Texas should show a compelling reason why additional time is necessary.

Mid-course Review: Texas will need to provide an enforceable commitment to perform a mid-course review.

What Is EPA's Preliminary Analysis of the Amount of Additional Reductions Needed To Demonstrate Attainment Beyond Those in the November Submission?

We have performed a preliminary analysis of the November 15, 1999 submission. We believe that an additional 11% NO_X emission reduction beyond the reductions that have already been identified is necessary for the area to attain. To develop our estimate of the shortfall, we extrapolated the relationship between NO_X emissions and peak ozone using three of Texas's modeling scenarios. Because this relationship is not linear, we used a polynomial curve fitting technique to extrapolate what level of NO_X reductions would correspond to 0.124 ppm. A more detailed discussion of our analysis is contained in the TSD for this proposal. We will be working with the

[16] If EPA ultimately concludes that Texas has not properly estimated the Tier II emission reductions, Texas will have to resubmit their Tier II estimates, attainment demonstration and their motor vehicle emissions budget before we can take a final approval action.

Texas Natural Resource Conservation Commission to further refine this analysis. We also recognize that further modeling refinements could increase or decrease this estimate.

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 provided in the Background, above, EPA provided for States to submit the attainment demonstration SIPs in two phases. In June 1996, EPA made findings that ten States 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. None of these findings included the Houston/Galveston area.

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.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted these proposed regulatory actions from review under E.O. 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.

These proposed actions are not subject to E.O. 13045 because they do not involve decisions intended to mitigate environmental health and safety risks.

C. Executive Order 13084

Under E.O. 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 proposed actions do not significantly or uniquely affect the communities of Indian tribal governments. These proposed actions do not involve or impose any new requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to these proposed actions.

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.

These proposed rules 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 the proposed conditional approval 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 Clean Air Act. The proposed disapproval would not impose requirements directly upon the State, and does not alter the relationship or the distribution of power and responsibilities established in the Act. Thus, the requirements of section 6 of the Executive Order do not apply to these proposed rules.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, 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 conditional SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this proposed 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 conditional 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 proposed 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 does not affect State-enforceability. Moreover EPA's disapproval of the submittal would 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 conditional 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 proposed 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 proposed 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 Texas, 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 these proposed actions. Today's proposed actions 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 regulations, Nitrogen oxides, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

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

Dated: November 30, 1999.

David W. Gray,

Acting Regional Administrator, Region 6.

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