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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC30

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Bloodwork Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations governing the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) to allow State agencies the option to defer the collection of blood test data for up to 90 days after the date of certification, so long as the applicant is determined to have at least one qualifying nutrition risk factor at the time of certification. In addition, this final rule will expand the current regulatory standard of the maximum age of blood test data used to assess nutritional risk for WIC certification.

Although blood tests may no longer be a mandatory part of each WIC applicant's certification intake process, such tests are still required for the purposes of assessing nutritional status, nutrition surveillance, providing nutrition education, further tailoring food packages to meet nutritional needs, and referring to appropriate health and social services in the community.

EFFECTIVE DATE: January 18, 2000.

FOR FURTHER INFORMATION CONTACT: Debbie Whitford at (703) 305–2730 during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Samuel Chambers, Jr., Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant impact on a substantial number of small entities. This rule provides State and local agencies with increased flexibility in meeting certification requirements for the Program. Participants and applicants are also affected by changes in the certification process which should result in expedited receipt of program services.

Paperwork Reduction Act

This rule imposes no new reporting or recordkeeping requirements. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), current reporting and recordkeeping requirements for Part 246 were approved by the Office of Management and Budget under Control Number 0584–0043.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557. For reasons set forth in the final rule in 7 CFR Part 3015, Subpart V, and related Notice (48 FR 29115), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is required under section 202 of the UMRA, section 205 generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

On November 19, 1998, the Department published a proposal at 63 FR 64211 regarding changes in bloodwork requirements for the WIC Program. Three specific concerns compelled the Department to reassess the blood testing requirements.

First, current WIC blood test requirements do not generally correspond with State, local, and generally accepted periodicity schedules and guidelines. Second, the move towards managed care programs as the primary source of health care has affected the ability of WIC local agencies to obtain hematological referral data in a timeframe that coincides with WIC certification periods. The source of health care for WIC participants and others has been shifting in many States from local health department clinics, many of which collected bloodwork to meet WIC's needs on site at the WIC clinic, to managed care settings in which blood tests are performed off site from the WIC clinic and thus provided to WIC on a referral basis. Third,

bloodwork data obtained from referral sources is becoming more frequently the norm in WIC because of Federal, State and local policies limiting blood handling only to persons or laboratories with specified medical credentials, thereby precluding some WIC local agencies from collecting or analyzing blood samples.

A total of one hundred comment letters were received during the comment period, which ended on January 19, 1999. The Department has given all comments careful consideration in the development of this final rule and would like to thank all commenters who responded to the proposal. Following is a discussion of each provision, as proposed, comments received, and an explanation of the provisions set forth in this final rule.

1. Hematological Tests for Anemia (§ 246.7(e), (e)(1), and (e)(1)(i)–(ii))

The vast majority of commenters supported the Department's proposal to no longer require a blood test at the time of each WIC applicant's certification intake process as long as at least one qualifying nutrition risk factor is present for the applicant. Such tests must, however, be collected within 90 days of the certification date. Several commenters wrote that this provision will remove a barrier to service that many applicants experience. As one commenter wrote, ''While these changes will certainly be appreciated by WIC Programs and practitioners, the main beneficiaries will be the families themselves.''

Given the importance of anemia testing in WIC's target population and WIC's long and successful track record in reducing national rates of anemia, § 246.7(e)(1)(i) continues to require a blood test but will permit its completion within 90 days of the date of certification, except as noted for infants (discussed later in this preamble). The test data will be used for the critical purposes of appropriately assessing an applicant's nutritional status, nutrition surveillance, providing nutrition education, tailoring food packages and referring to health care or social services. Although the Department considers the collection of blood test data at certification as optimal to assist with performing the most timely and complete nutrition assessment and providing appropriate nutrition education and referrals, this rule addresses the practical realities faced by State agencies and the difficulties some participants encounter obtaining blood tests at the time of, or previous to, the certification intake process. The Department believes that this provision, if implemented with the proper controls, will provide greater flexibility and reduce barriers to service without lessening program quality. State agencies will, however, be required to provide for blood tests at certification for income eligible applicants with no other documented risk condition (with the exception of presumptively eligible pregnant women as discussed below) in order to determine if the applicant is at nutritional risk due to anemia.

2. Timing of Nutritional Risk Data (§ 246.7(e), (e)(1), and (e)(1)(i)–(ii))

Timing of Bloodwork

The proposed rule was intended to allow sufficient flexibility to State agencies to accommodate generally accepted recommendations of maternal and child health and medical experts. In April 1998, the Centers for Disease Control and Prevention (CDC) issued a document titled, ''Recommendations to Prevent and Control Iron Deficiency in the United States.'' These recommendations are intended to guide primary health care providers in preventing and controlling iron deficiency in infants, preschool children, and women of childbearing age, particularly pregnant women—populations served by the WIC Program which are at high risk for iron-deficiency anemia. Another recognized organization, the American Academy of Pediatrics (AAP), also provides guidance for anemia screening in their publication ''Recommendations for Preventive Pediatric Health Care.'' However, these recommendations are for children not at risk or who ''* * * have no manifestations of any important health problems, and are growing and developing in satisfactory fashion.'' Taking into consideration that the CDC ''Universal Screening'' recommendations specifically address the WIC target population, they were adopted as the basis for the periodicity of anemia screening outlined in the proposed rule. Commenters generally supported the anemia screening provisions outlined in the proposal. As such, they have been adopted as final at § 246.7(e)(1)(ii)(B). The screening timeframes are discussed below.

Women

For pregnant, breastfeeding (those being certified at 0–6 months postpartum), and other postpartum women, results of a hematological test for anemia must be obtained at certification or within 90 days of the date of certification (when the applicant has at least one qualifying nutritional risk present at certification). Such test may be performed by the WIC agency or test results may be obtained from a referral source. The CDC recommends that anemia screening be done at the earliest opportunity during pregnancy and at 4 to 6 weeks after delivery for postpartum and breastfeeding women. Blood test results must be reflective of women applicants' categories, meaning that the test must have been taken for pregnant women during pregnancy and for postpartum or breastfeeding women following termination of pregnancy. For breastfeeding women who are 6–12 months postpartum, no additional blood test is necessary if a test was performed after the termination of their pregnancy.

Regarding pregnant women, current WIC regulations at Section 246.7(e)(1)(iii), provide State agencies additional flexibility by allowing them to presume that income-eligible pregnant women are nutritionally at risk and thus eligible to participate in the program. Presumptively eligible women can be certified immediately and can receive program benefits for 60 days from the date they were certified, by which time a nutrition assessment must be conducted to establish nutritional risk. If the subsequent assessment determines that the woman does not meet qualifying nutritional risk criteria, the certification terminates on the date of the determination, or 60 days after the participant was presumptively certified, whichever is sooner. This final rule defers the bloodwork requirement at certification or within the 60-day presumptive certification period for these women, for up to 90 days after the certification date. However, if the nutrition assessment performed during the 60-day period does not include anemia testing and does not identify any other qualifying risk factor, a blood test must be performed or obtained from referral sources before that 60-day period elapses to permit continuity of service for women found to be anemic. This requirement enables such pregnant women to have the temporary presumptive certification extended to a full certification period without disruption to continued receipt of WIC benefits, should they be found anemic.

Infants

Consistent with the 1998 CDC recommendations Section 246.7 (e)(1)(ii)(B) requires all infants 9 months of age or older to have a hematological test for anemia between 9 and 12 months of age. Such test may be performed by the WIC agency or test results may be obtained from a referral source. A blood test taken between 6 and 9 months of age may be used to meet the test requirement, however

State agencies are encouraged to obtain blood test data between 9 and 12 months of age as recommended by CDC. In addition, recognizing that the CDC guidelines state that blood tests for anemia for infants under 6 months of age may be appropriate for preterm infants and low birthweight infants who were not fed iron-fortified formula, this final rule permits, but does not require, blood tests for such infants.

The Department also wishes to clarify that in cases where the State agency has opted to certify infants under 6 months of age up to their first birthday, as permitted in Section 246.7(g)(1)(iv), such infants must receive a blood test between 9 and 12 months of age. The extension of the certification period up to the first birthday is only permitted provided the quality and accessibility of health care services are not diminished. A blood test for anemia is considered a critical component of health care services and thus, must be performed or obtained from referral services. The CDC recommendations identify the period between 9 and 12 months as the optimal timeframe for anemia testing for infants. Also considered as a critical component of health care services during the one-year period, is securing current length and weight measurements in order to assess the infant's growth.

State agencies that certify infants at 6 month intervals must ensure that infants 9 months of age or older receive a blood test. If a blood test is taken at the 6 month certification, such test can be used to meet the infant bloodwork requirement.

Children

For children, a hematological test for anemia must be obtained at certification or within 90 days of the date of certification (when the applicant has at least one qualifying nutritional risk). Such test may be performed by the WIC agency or test results may be obtained from a referral source. State agencies must perform a blood test for children between 12 and 24 months of age and at least annually for children over the age of 2 years.

For children over 1 year, CDC recommends that children have a blood test 6 months after the infant test, i.e., around 15 to 18 months of age, and annually thereafter from ages 2 to 5 years. The provision requiring a blood test between 12 and 24 months allows the State Agency flexibility in accommodating the CDC recommended 6-month follow-up to the infant bloodwork. While for most children, this would fall between 15 and 18 months of age, this final rule expands the allowable timeframe to accommodate practical logistical difficulties and circumstances. For example, if there is no bloodwork done during infancy, or it is taken during infancy at a time other than the recommended 9 to 12-month period, or there are other logistical complications, it could be impractical to obtain bloodwork during the optimal 15 to 18-month period. Nevertheless, because pediatric health authorities generally recommend that children have a blood test during the most vulnerable period of 15 to 18 months, when anemia is more likely to become manifest, State agencies are expected to make every effort to coordinate the scheduling of bloodwork for children between 12 and 24 months old within the recommended 15 to 18 month timeframe.

The Department also wishes to clarify that although bloodwork data obtained when an infant was between 9 and 12 months old may be used to certify a 12-month old as a child, such data cannot be used to fulfill the blood test that is required between 12 and 24 months. Children who had an inadequate iron intake during infancy are at greatest risk of developing anemia between 12 and 24 months of age. Thus, for example, a child who is first certified for WIC and first tested at or before 12 months of age, must have a follow-up test by 24 months of age and preferably at 18 months of age (as recommended by CDC and which coincides with WIC 6 month certification periods). As such, the provision at Section 246.7(e)(1) which allowed the blood test for children to be waived, has been modified to state that for children ages two and older who were determined to be within the normal range at their last certification, the blood test may be waived, provided that a blood test is performed at least once every 12 months. For those children ages two and older with a positive anemia screening result at their last certification a blood test is required at six-month intervals.

The following table summarizes the anemia screening requirements as set for in this rule:

BLOODWORK REQUIREMENTS FOR WIC CERTIFICATION

Category	Anemia screening schedule
Women.	
Pregnant	During their current pregnancy.
Postpartum	After the termination of their pregnancy.
Breastfeeding	After the termination of their pregnancy.*
Infants	Once between the ages of 9–12 months.* *
Children	Once between the ages of 12–24 months.* * * (One blood test at or before 12 months *cannot* fulfill the requirement for the infant and the 12–24 month child screening) Annually between the ages of 24–60 months.****

* For Breastfeeding women 6–12 months postpartum, no additional blood test is necessary if a blood test was obtained after the termination of pregnancy.
** A blood test taken between 6–9 months of age can be used to meet this screening requirement.
*** A blood test is recommended 6 months after the infant test, at around 15 to 18 months of age.
**** Children ages 24–60 months with a positive anemia screening result require a follow-up blood test at 6 month intervals.

Age of Bloodwork

As a result of comments received on the proposed rule and to be more consistent with CDC guidelines, the Department has revised its position with regard to the age of hematological referral data. Under the proposal, hematological referral data could not be more than 90 days old. Commenters questioned why the 90-day time frame was necessary given the specifics of the CDC guidelines we were proposing to adopt. Commenters viewed the 90-day limit as an unnecessary administrative barrier to coordination with other health providers. In response to commenter concerns, the Department has determined there is no longer a need to establish a maximum allowable age of referral hematological data. Instead, referral hematological data must meet the following conditions regardless of the age of such data:

(1) must be reflective of a woman applicant's category, meaning the test must have been taken for pregnant

women during pregnancy and for postpartum or breastfeeding women following termination of pregnancy;

(2) must conform to the anemia screening schedule for infants and children as outlined in the above table; and

(3) the date and results of the anemia screening must be obtained and recorded on the certification form as currently required in Section 246.7(i)(4).

This decision recognizes that if blood test results are within normal limits and meet the conditions as stated above, a WIC agency need not perform an additional anemia screening.

Failure to Provide Bloodwork Data Within 90 Days

Many commenters requested clarification for situations when a participant fails to provide referral bloodwork data within 90 days following certification. The Department would like to emphasize that if a State agency chooses to implement the option to obtain blood test data within 90 days of certification, the State agency must put into place procedures to ensure receipt of the data. Examples of appropriate procedures may include reminders and/or instituting monthly food instrument pick-up for participants who have not provided the test data. Because the participant has a risk condition that makes the individual eligible for participation, the Department does not believe it would be appropriate to impose sanctions on the participant for failure to provide the referral data. However, recognizing WIC's important role in anemia screening, it is important that blood test data be obtained. Therefore, the Department reserves the right to disallow this option for those State agencies that exhibit poor performance in obtaining the referral data. (Poor performance would include, for example, if a management evaluation indicates that bloodwork data for participants are frequently *not* collected within 90 days after certification.) A State agency exercising the option to allow data up to 90 days after the date of certification may in turn disallow this provision in a local agency that has exhibited poor performance in obtaining referral data. The Department believes that this approach fairly balances the need for accountability and State flexibility.

Weight and Height or Length

The Department considers the effort at certification to measure and record height or length and weight and collect dietary and other medical data for all applicants to be minimal but necessary during the intake process, and not subject to the difficulties related to bloodwork assessment. These timely measurements and data are fundamental to the accuracy of nutritional risk assessment for all categories of applicants, but especially for infant and pregnant women applicants. Using weight and length data that were taken at 2 months of age as a basis to certify that same infant at 4 months of age represents questionable nutrition services standards. However, almost all who commented on this provision requested that the acceptable age of anthropometric data remain at 60 days. Many commented that the common use of referral data for WIC certification necessitates flexibility in terms of age of data and that reducing the allowable age of data could result in a barrier to service for the participant. In recognition of these comments, the Department has left this provision unchanged. State agencies have the option to use anthropometric data up to 60 days old. However, the Department is concerned about current State agency practice regarding the measurement of weight and height or length. Analysis of the participant characteristics data indicates that, as of April 1996, approximately 5 percent of all enrollees for whom data were submitted had anthropometric measurements that were more than 60 days old at certification. By State agency, the range was from 0 to 20 percent. However, 61 out of 88 State agencies had rates of less than 1 percent. Applicants not providing appropriate referral data are expected to be weighed and measured at certification. Current regulations do not allow for deferring the measurement of weight and height or length beyond the date of certification.

The Department wishes to stress that anthropometric data must reflect current health and categorical status. Therefore, although data may be up to 60 days old, such data may not be appropriate for pregnant women, or infants and children during critical periods of growth. As such, State agencies should use appropriate judgment in applying this option. The Department will continue to monitor, via management evaluations, the appropriate use of this provision to ensure the integrity of nutrition assessment in the WIC Program.

State Agency Options for Implementation

Many commenters requested clarification on a State's option to implement the various provisions outlined in the proposal. A State agency may choose to implement some, none or all of the options contained in this final rule. For example,

- a State agency may choose to allow the use of referral bloodwork data [as long as it meets the conditions described in Section 246.7 (e)(1)(i)], and not implement the option that permits bloodwork data to be collected up to 90 days after certification.
- a State agency may choose to establish a more restrictive timeframe for the collection of bloodwork data, e.g., 45 days prior to or after certification date, rather than 90 days as allowed in this rule.
- a State agency may allow local agency variations to accommodate differences in local health care delivery systems.
- a State agency may choose to collect weight and height or length data at certification, but allow the use of referral bloodwork data [as long as it meets the conditions described in Section 246.7(e)(1)(i)] or the collection of bloodwork data within 90 days of certification.

3. Allowable Costs for Anemia Tests (§ 246.14 (c)(2)(i)–(iv))

The proposal would have allowed State agencies to perform one additional hematological test as medically necessary in follow-up to a finding of anemia within a certification period. This follow-up test would be an allowable WIC cost for nutrition assessment purposes when deemed necessary for health monitoring as determined by the WIC competent professional authority (CPA). Commenters generally supported this provision, but expressed concern that WIC could experience increased pressure from Health Departments to perform such tests. The Department has retained in this final rule at § 246.14(c)(2)(i) the option to perform the follow-up test. The Department wishes to emphasize that while this rule would permit WIC to pay for one follow-up test, State agencies are encouraged to weigh the cost effectiveness of WIC expenditures for such purposes against other competing and critical WIC needs. The Department generally believes that follow up monitoring of blood values of persons with anemia is largely the responsibility of health care providers, and should be treated as a medical, rather than solely a nutritional, concern. As such, the Department encourages State agencies to explore other locally available sources for ongoing health care and assessments for WIC participants with anemia.

4. State Plan (§ 246.4 (a)(11)(i))

The proposal would have required State agencies to incorporate their blood test data requirements and timeframes in detail in the ''Certification Procedures'' section of their State Plan Procedure Manual. Commenters supported this provision and it has been adopted in this final rule at § 246.4(a)(11)(i). The Department wishes to point out that given the new flexibility regarding the timeframe for the collection of bloodwork data, it is important to document the date of the bloodwork results on certification forms, as required in Section 246.7(i)(4). The recording of the date is important especially in the context of nutrition surveillance and participant characteristic information that is collected at periodic intervals and provides invaluable information. Appropriate procedures that must be followed when blood test data are obtained include: (1) make notations in the participant's file with respect to nutrition risk factors listed and priority as appropriate; (2) document the date the nutrition risk data were taken if different from the date of certification; (3)inform the woman or parent/guardian of the outcome and meaning of the blood test if the results show anemia; (4) provide follow-up nutrition education, if appropriate; (5) make adjustments in the food package, as appropriate; and (6) make referrals to health care or social services, as appropriate.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Food and Nutrition Service, Food donations, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Reporting and recordkeeping requirements, Public assistance programs, WIC, Women.

For the reasons set forth in the preamble, 7 CFR Part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.4, paragraph (a)(11)(i) is revised to read as follows:

§ 246.4 State plan.

(a) * * *

(11) * * *

(i) Certification procedures, including a list of the specific nutritional risk criteria by priority level which cites conditions and indices to be used to determine a person's nutritional risk, hematological data requirements including timeframes for the collection of such data, the State agency's income guidelines for Program eligibility, and any adjustments to the participant priority system made pursuant to § 246.7(e)(4) to accommodate high-risk postpartum women or the addition of Priority VII;

* * * * *

3. In § 246.7:

a. The introductory text of paragraph (e) is revised;

b. The introductory text of paragraph (e)(1) is removed;

c. Paragraphs (e)(1)(i), (e)(1)(ii), (e)(1)(iii), and (e)(1)(iv) are redesignated as paragraphs (e)(1)(iii), (e)(1)(iv), (e)(1)(v), and (e)(1)(vi) respectively;

d. New paragraphs (e)(1)(i) and (e)(1)(ii) are added; and

e. A heading is added to newly redesignated paragraphs (e)(1)(iii), (e)(1)(iv), and (e)(1)(vi).

f. Newly redesignated paragraph (e)(1)(v) is revised.

The revisions and additions read as follows:

§ 246.7 Certification of participants.

* * * * *

(e) *Nutritional risk.* To be certified as eligible for the Program, applicants who meet the Program's eligibility standards specified in paragraph (c) of this section must be determined to be at nutritional risk. A competent professional authority on the staff of the local agency shall determine if a person is at nutritional risk through a medical and/or nutritional assessment. This determination may be based on referral data submitted by a competent professional authority not on the staff of the local agency. Nutritional risk data shall be documented in the participant's file and shall be used to assess an applicant's nutritional status and risk, tailor the food package to address nutritional needs, design appropriate nutrition education, and make referrals to health and social services for follow-up, as necessary and appropriate.

Except as stated in paragraph (e)(1)(v) of this section, at least one determination of nutritional risk must be documented at the time of certification in order for an income eligible applicant to receive WIC benefits.

(1) *Determination of nutritional risk.*

(i) *Required nutritional risk data.* (A) At a minimum, height or length and weight measurements shall be performed and/or documented in the applicant's file at the time of certification. In addition, a hematological test for anemia such as a hemoglobin, hematocrit, or free erythrocyte protoporphyrin test shall be performed and/or documented at certification for applicants with no other nutritional risk factor present. For applicants with a qualifying nutritional risk factor present at certification, such test shall be performed and/or documented within 90 days of the date of certification. However, for breastfeeding women 6–12 months postpartum, such hematological tests are not required if a test was performed after the termination of their pregnancy. In addition, such hematological tests are not required, but are permitted, for infants under nine months of age. All infants nine months of age and older (who have not already had a hematological test performed or obtained, between the ages of six and nine months), shall have a hematological test performed between nine and twelve months of age or obtained from referral sources. This hematological test does not have to occur within 90 days of the date of certification. Only one test is required for children between 12 and 24 months of age, and this test should be done 6 months after the infant test, if possible. At the State or local agency's discretion, the hematological test is not required for children ages two and older who were determined to be within the normal range at their last certification. However, the hematological test shall be performed on such children at least once every 12 months. Hematological test data submitted by a competent professional authority not on the staff of the local agency may be used to establish nutritional risk. However, such referral hematological data must:

(*1*) Be reflective of a woman applicant's category, meaning the test must have been taken for pregnant women during pregnancy and for postpartum or breastfeeding women following termination of pregnancy;

(*2*) Conform to the anemia screening schedule for infants and children as outlined in paragraph (e)(1)(ii)(B) of this section; and

(*3*) Conform to recordkeeping requirements as outlined in paragraph (i)(4) of this section.

(B) Height or length and weight measurements and, with the exceptions specified in paragraph (e)(1)(v) of this section, hematological tests, shall be obtained for all participants, including those who are determined at nutritional risk based solely on the established nutritional risk status of another person,

as provided in paragraphs (e)(1)(iv) and (e)(1)(v) of this section.

(ii) *Timing of nutritional risk data.* (A) *Weight and height or length.* Weight and height or length shall be measured not more than 60 days prior to certification for program participation.

(B) *Hematological test for anemia.* (*1*) For pregnant, breastfeeding, and postpartum women, and child applicants, the hematological test for anemia shall be performed or obtained from referral sources at the time of certification or within 90 days of the date of certification. The hematological test for anemia may be deferred for up to 90 days from the time of certification for applicants who have at least one qualifying nutritional risk factor present at the time of certification. If no qualifying risk factor is identified, a hematological test for anemia must be performed or obtained from referral sources (with the exception of presumptively eligible pregnant women).

(*2*) Infants nine months of age and older (who have not already had a hematological test performed, between six and nine months of age, by a competent professional authority or obtained from referral sources), shall between nine and twelve months of age have a hematological test performed or obtained from referral sources. Such a test may be performed more than 90 days after the date of certification.

(*3*) For pregnant women, the hematological test for anemia shall be performed during their pregnancy. For persons certified as postpartum or breastfeeding women, the hematological test for anemia shall be performed after the termination of their pregnancy. For breastfeeding women who are 6–12 months postpartum, no additional blood test is necessary if a test was performed after the termination of their pregnancy. The participant or parent/guardian shall be informed of the test results when there is a finding of anemia, and notations reflecting the outcome of the tests shall be made in the participant's file. Nutrition education, food package tailoring, and referral services shall be provided to the participant or parent/guardian, as necessary and appropriate.

(iii) *Breastfeeding dyads.* * * *

(iv) *Infants born to WIC mothers or women who were eligible to participate in WIC.* * * *

(v) *Presumptive eligibility for pregnant women.* A pregnant woman who meets the income eligibility standards may be considered presumptively eligible to participate in the program, and may be certified immediately without an evaluation of nutritional risk for a period up to 60 days. A nutritional risk evaluation of such woman shall be completed not later than 60 days after the woman is certified for participation. A hematological test for anemia is not required to be performed within the 60-day period, but rather within 90 days, unless the nutritional risk evaluation performed does not identify a qualifying risk factor. If no qualifying risk factor is identified, a hematological test for anemia must be performed or obtained from referral sources before the 60-day period elapses. Under the subsequent determination process, if the woman does not meet any qualifying nutritional risk criteria, including anemia criteria, the woman shall be determined ineligible and may not participate in the program for the reference pregnancy after the date of the determination. Said applicant may subsequently reapply for program benefits and if found to be both income eligible and at qualifying nutritional risk may participate in the program. Persons found ineligible to participate in the program under this paragraph shall be advised in writing of the ineligibility, of the reasons for the ineligibility, and of the right to a fair hearing. The reasons for the ineligibility shall be properly documented and shall be retained on file at the local agency. In addition, if the nutritional risk evaluation is not completed within the 60-day timeframe, the woman shall be determined ineligible.

(vi) *Regression.* * * *

* * * * * *

4. In § 246.14, paragraph (c)(2) is revised to read as follows:

§ 246.14 Program costs.

* * * * * *

(c) * * *

(2) The cost of Program certification, nutrition assessment and procedures and equipment used to determine nutritional risk, including the following:

(i) Laboratory fees incurred for up to two hematological tests for anemia per individual per certification period. The first test shall be to determine anemia status. The second test may be performed only in follow up to a finding of anemia when deemed necessary for health monitoring as determined by the WIC State agency;

(ii) Expendable medical supplies;

(iii) Medical equipment used for taking anthropometric measurements, such as scales, measuring boards, and skin fold calipers; and for blood analysis to detect anemia, such as spectrophotometers, hematofluorometers and centrifuges; and

(iv) Salary and other costs for time spent on nutrition assessment and certification.

* * * * * *

Dated: December 10, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AC31

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Board of Directors of the FDIC (Board) is amending its regulation governing assessments to change the reporting date used to determine the capital component of the assessment risk classifications assigned by the FDIC to insured depository institutions. This change moves that date closer by one calendar quarter to the semiannual assessment period for which the capital component is assigned, and it permits the FDIC to use more up-to-date information in determining institutions' assessment risk classifications. The new date coincides with the date currently used to determine the supervisory component of the assessment risk classification.

To permit the use of more current capital information, the Board is further amending the assessments regulation to shorten from 30 days to 15 days the prior notice the FDIC sends to institutions advising them of their assessment risk classifications for the following semiannual assessment period. The Board is adopting the same reduction for the invoice sent by the FDIC each quarter showing the amount of the assessment payment due for the next quarterly collection. At the other end of the process, the Board is increasing from 30 days to 90 days the time within which an institution may request review of its assessment risk classification.

Additionally, to reflect a shift of certain assessment functions within the FDIC, the Board is revising two of the references to FDIC offices in the regulation. Also, as proposed, the amendment corrects a typographical error in the form of a misstated cross-reference to another FDIC regulation.

Finally, in response to concerns raised by comments that the FDIC

received on the proposal, the final rule is additionally amended to increase from 15 to 30 days the time between announcement of limited changes in deposit insurance rates and the date of the assessment notice sent to insured institutions by the FDIC.

EFFECTIVE DATE: The final rule is effective April 1, 2000.

FOR FURTHER INFORMATION CONTACT: James W. Thornton, Senior Banking Analyst, Division of Insurance, (202) 898–6707; or Claude A. Rollin, Senior Counsel, Legal Division, (202) 898–8741, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On September 8, 1999, the Board issued for public comment a proposal to make several revisions to its assessments regulation. 64 FR 48719 (September 8, 1999). The primary change proposed by the Board involved the reporting date for data used in determining the capital component of the assessment risk classifications that the FDIC assigns semiannually to FDIC-insured institutions. At present, the FDIC's risk-based assessments regulation specifies that the capital component of the assessment risk classification assigned to an institution for a semiannual assessment period will be determined on the basis of data reported by the institution in its Consolidated Reports of Condition and Income, Thrift Financial Report, or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (collectively, call report) for the quarter ending six months earlier (12 CFR 327.4(a)(1)). The Board proposed to amend the regulation by basing capital-group determinations on data reported by institutions in their call reports for the period ending three months before the beginning of the semiannual period to which that data would apply.

To allow use of the more current capital data in assigning assessment risk classifications, the Board also proposed to shorten—from 30 days to 15 days—the time between the date institutions are notified of their assessment risk classifications for the upcoming assessment period and the date the assessment is collected for the first quarter of that upcoming period. The same reduction was proposed, for both the first and second quarters of each semiannual assessment period, in the time between the date of the quarterly assessment invoice and date the invoiced amount is collected.

As the Board explained in its proposal, moving the capital reporting date forward by 90 days would leave the FDIC as little as 15 to 30 days to receive the reported data, scan the reports, input the information into the FDIC's system, perform capital-group calculations for more than 10,000 institutions, and prepare and mail the assessment notices. 64 FR 48720. Because that is not sufficient time for completing this process, the alternatives are to leave the capital reporting date as it is or mail the assessment notices somewhat later. As the Board noted, the proposal anticipated that reduction of the notice period from 30 to 15 days would not have a significantly adverse impact on insured institutions, as institutions typically know (or can anticipate with reasonable certainty) the assessment risk classification they will be assigned for the next assessment period. *Id.*

With regard to the assessment the FDIC collects on behalf of the Financing Corporation (FICO), institutions are also able, under normal circumstances, to estimate with reasonable accuracy the assessment amount due for each upcoming payment date. However, the proposal noted the FDIC's intent, in the event of significant developments that could cause material changes in the FICO assessment rate, to provide notice of the changes as early as possible through such means as mailings to insured institutions. *Id.*

Another timing change proposed by the Board was an increase in the period during which an institution may seek review and revision of its assessment risk classification. Under the existing regulation, an institution may file a review request within 30 days after the date of the FDIC notice informing the institution of its assessment risk classification. The proposal would expand that period to 90 days.

The two remaining changes proposed by the Board were office redesignations to reflect the shift of certain assessment functions within the FDIC, and correction of a typographical error in the form of a misstated cross-reference.

Comments Received

The FDIC received nine comment letters in response to the proposal. Three of the letters were from depository institutions, two from state associations of bankers, three from national associations of bankers, and one from a state banking regulator. In general, these commenters supported the proposal. However, one commenter—a state association of bankers—neither supported nor opposed the proposal itself, but expressed its views on the proposal's implications for agricultural banks. This comment letter is not included in the discussion immediately below but rather is addressed separately, following the discussion below.

The remaining eight commenters expressed unanimous support for the use of more current capital data. The seven commenters addressing the proposed extension of the deadline for filing requests for review of assessment risk classifications all supported that proposal. Of the two commenters specifically addressing either or both of the proposals to correct the typographical error and to revise two of the references in the regulation to FDIC offices, both supported those changes as well. Thus, the Board has decided to adopt each of these four amendments as proposed.

The remaining element of the proposal is reduction of the assessment notice period from 30 to 15 days. In the proposal, the Board specifically requested comment on any adverse impact the shorter notice period might have. Comment was further requested on any alternative means of permitting the use of more current capital data without shortening the notice period.

The eight commenters either generally supported or did not separately address the proposed reduction. None of the commenters offered an alternative to the reduction. Two of the commenters expressly recognized a necessary connection between the use of more current capital data and a reduction in the assessment notice period.

Six commenters concluded that the proposed reduction in the notice period would not have a significant adverse impact. However, two of the eight expressed certain concerns. These two commenters—both of which are national associations of bankers—agreed that the proposed reduction generally would not present a problem. However, one noted that a shorter notice period could potentially present problems if assessment rates increase or become more complex, or in the event of volatile economic conditions. The other commenter suggested that the proposal be revised to require the FDIC to notify institutions of any changes in the assessment rate schedule at least 30 days before the assessment notice date, and that the FDIC be required to notify an institution of any changes in its supervisory category no later than 30 days prior to each assessment collection date. This same commenter further recommended that the FDIC provide notice of any material changes in the FICO assessment rate at least 30 days before the relevant assessment payment date, including any advance notice of

material changes in the rate expected for subsequent quarters.

The Board appreciates the concerns expressed regarding the shortened notice period. At the same time, the Board believes that—as was suggested in the proposal and as more than one commenter expressly recognized—a reduction in the notice period is necessary if more current capital data is to be used. The eight commenters addressing the proposal unanimously supported the use of more up-to-date capital data, and only limited concerns were expressed by commenters regarding the reduced notice period. Accordingly, the Board has decided to adopt the proposed notice reduction.

With regard to the concern that a 15-day notice period might not be sufficient for institutions for which there is a change in the supervisory category from one semiannual assessment period to the next, the FDIC is willing to consider what refinements might be warranted and feasible to address any significant problems. To this end, the FDIC will monitor implementation of the new notice schedule in June 2000 to determine any adverse impact. The results will be reviewed and alternative means of addressing any significant problems will be considered.

In response to the concern raised by one commenter regarding material changes in the FICO assessment, the Board reiterates its intention, as noted in the proposal, that in instances in which significant developments are likely to result in material changes in FICO assessment rates, the FDIC will provide notice as early as possible, through mailings to insured institutions or similar means. 64 FR 48720.

The remaining issue raised by commenters regarding the reduced assessment notice period concerned notice of changes in the assessment rate schedule. At present, the assessments regulation requires that any change in the assessment rate schedule be announced by the FDIC at least 15 days before the date the assessment notice is to be provided to institutions for the first quarter of each semiannual assessment period.[1] Thus, for example, under the existing regulation, an adjustment for the assessment period beginning July 1 would be announced by no later than May 16, which is 15 days before the existing assessment notice date of May 31.

Because, in this example, the final rule moves the applicable assessment notice date to June 15, the amendment as proposed would have had the effect of moving the deadline for the rate-change announcement to May 31. However, if the announcement period were increased from 15 to 30 days prior to the assessment notice date, that change, in conjunction with the reduction of the assessment notice period to 15 days, would restore the announcement deadline to May 16, which is the existing date.

Under these circumstances, the Board believes a revision of the existing announcement date is warranted. This change would serve merely to continue the existing situation, by adapting the announcement date to accommodate the new change in the assessment notice date. Accordingly, the Board is further amending the assessments regulation to require that any adjustment in the assessment rate schedule under this provision of the regulation be announced at least 30 days before the date the assessment notice is to be provided to institutions for the first quarter of each semiannual assessment period.

As indicated above, one of the nine comment letters received by the FDIC in response to the proposal neither supported nor opposed any aspect of the proposal itself but expressed its views of the proposal's implications for agricultural banks. As noted in the letter, the focus of the comments ''is the need to address the adverse impacts of substantial increases in assessments if well-managed ag banks experience significant capital reductions because of ag loan losses''. The commenter ''does not challenge the concept that deposit assessments should be founded on the most current available data'' but does note that one of the effects of using more current information is that the assessments of a bank with declining capital is a more rapid increase in risk-based deposit insurance assessments. The commenter suggested that the assessment process be reviewed to determine whether additional revisions are necessary to reflect the likelihood that increased deposit assessments may increase, rather than reduce, the risk that some banks will fail.

The commenter further suggested that the FDIC consider providing a means by which banks can benefit from funds paid as increased assessments in connection with loan losses from economic contraction rather than from poor management practices.

In response, the Board notes that refinements to the risk-based assessment system are continually under consideration and that these comments will be reviewed and carefully considered in connection with that on-going process.

The Final Rule

For the reasons stated above, the Board is adopting the amendments as proposed, with one addition. That addition is the revision of § 327.9 to increase from 15 to 30 days the time by which an announcement of a limited adjustment to the assessment rate schedule must precede the date of the assessment notice sent to FDIC-insured institutions prior to the beginning of a semiannual assessment period.

The date changes made by the final rule will be implemented with the assessment period beginning July 1, 2000. The following chart illustrates the new dates, as compared to the existing dates, using that initial assessment period as an example.

SEMIANNUAL ASSESSMENT PERIOD BEGINNING JULY 1, 2000

	Controlling call report date	Deadline for announcing limited rate change	Assessment notification date	Payment date	Start of assessment period	Deadline to request a review
Old Dates	12–31–1999	5–16–2000	5–31–2000	6–30–2000	7–1–2000	6–30–2000
New Dates	3–31–2000	5–16–2000	6–15–2000	6–30–2000	7–1–2000	9–13–2000

[1] 12 CFR 327.9(c)(4). This provision applies only to adjustment (either increase or decrease) of the rate schedule up to a maximum of five basis points. Any change that exceeds this level would first be announced in the form of a proposal on which public comment would be invited.

Regulatory Flexibility Act

The Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No new or increased reporting, recordkeeping, or other compliance requirements are imposed by the rule. Of the amendments adopted by the Board, only one—lengthening the time for filing requests for review of assessment risk classifications—addresses actions to be initiated by insured institutions. The remaining amendments address actions to be undertaken by the FDIC. The amendments addressing actions to be initiated by institutions relax an existing time restriction, and it is expected that any impact on insured institutions, of whatever size, will be favorable rather than adverse.

Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this amendment will not affect family well-being within the meaning of section 654 of the Treasury Department Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

For the reasons stated in the preamble, 12 CFR part 327 is amended as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1813, 1815, 1817–1819; Pub. L. 104–208, 110 Stat. 3009–479 (12 U.S.C. 1812).

§ 327.3 [Amended]

2. Section 327.3 is amended by removing the phrase ''30 days'' and adding in its place the phrase ''15 days'' in paragraphs (c)(1) and (d)(1), respectively.

3. Section 327.4 is amended by removing the citation ''309.5(c)(8)'' in paragraph (e) and adding in its place the citation ''309.5(g)(8)'', and revising paragraphs (a)(1) introductory text and (d) to read as follows:

§ 327.4 Annual assessment rate.

(a) * * *

(1) *Capital factors.* Institutions will be assigned to one of the following three capital groups on the basis of data reported in the institution's Consolidated Reports of Condition and Income, Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, or Thrift Financial Report dated as of March 31 for the assessment period beginning the following July and as of September 30 for the assessment period beginning the following January 1.

* * * * *

(d) *Requests for review.* An institution may submit a written request for review of its assessment risk classification. Any such request must be submitted within 90 days of the date of the assessment risk classification notice provided by the Corporation pursuant to paragraph (a) of this section. The request shall be submitted to the Corporation's Director of the Division of Insurance in Washington, D.C., and shall include documentation sufficient to support the reclassification sought by the institution. If additional information is requested by the Corporation, such information shall be provided by the institution within 21 days of the date of the request for additional information. Any institution submitting a timely request for review will receive written notice from the Corporation regarding the outcome of its request. Upon completion of a review, the Director of the Division of Insurance (or designee) or the Director of the Division of Supervision (or designee), as appropriate, shall promptly notify the institution in writing of his or her determination of whether reclassification is warranted. Notice of the procedures applicable to reviews will be included with the assessment risk classification notice to be provided pursuant to paragraph (a) of this section.

§ 327.9 [Amended]

4. Section 327.9 is amended by removing the phrase ''15 days'' and adding in its place the phrase ''30 days'' in paragraph (c)(4).

By order of the Board of Directors.

Dated at Washington, DC, this 6th day of December, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–32587 Filed 12–15–99; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–328–AD; Amendment 39–11473; AD 99–23–22 R1]

RIN 2120–AA64

Airworthiness Directives; Various Transport Category Airplanes Equipped With Mode ''C'' Transponder(s) With Single Gillham Code Altitude Input

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to various transport category airplanes equipped with certain Mode ''C'' transponder(s) with single Gillham code altitude input. That AD currently requires repetitive tests to detect discrepancies of the Mode ''C'' transponder(s), air data computer, and certain wiring connections; and corrective actions, if necessary. The existing AD is prompted by reports that, during level flight, the Traffic Alert Collision Avoidance System (TCAS II) issued false advisories that directed the flightcrew to change course and either climb or descend. The actions specified by that AD are intended to prevent such false advisories due to inaccurate airplane altitude reporting, which could result in the flightcrew deviating the airplane from its assigned flight path and a possible mid-air collision. This new action revises certain compliance times and limits the applicability of the existing AD.

DATES: Effective November 29, 1999.

Comments for inclusion in the Rules Docket must be received on or before February 14, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–328–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Ave, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Peter Skaves, Aerospace Engineer, Airplane and Flight Crew Interface Branch, ANM–111, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington

98055–4056; telephone (425) 227–2795; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION: On November 4, 1999, the FAA issued AD 99–23–22, amendment 39–11418 (64 FR 61493, November 12, 1999), applicable to various transport category airplanes equipped with certain Mode ''C'' transponder(s) with single Gillham code altitude input. That AD requires repetitive tests to detect discrepancies of the Mode ''C'' transponder(s), air data computer, and certain wiring connections; and corrective actions, if necessary. That action was prompted by reports that, during level flight, the Traffic Alert Collision Avoidance System (TCAS II) issued false advisories that directed the flightcrew to change course and either climb or descend. The actions required by that AD are intended to prevent such false advisories due to inaccurate airplane altitude reporting, which could result in the flightcrew deviating the airplane from its assigned flight path and a possible mid-air collision.

Actions Since Issuance of Previous Rule

Since the issuance of AD 99–23–22, the FAA has determined that the existing AD should be revised as follows:

1. The applicability section of the existing AD has been revised to identify only airplane models used in the same type of operations as those involved in the reported incidents of reduced airplane separation. Specifically, the applicable airplane models have been limited to only those transport category airplanes that can be operated for extended periods in level flight cruise at altitudes greater than 24,000 feet and that are equipped with Mode ''C'' transponder(s) with single Gillham code altitude input. As the FAA has not yet determined the precise cause of the erroneous Mode ''C'' altitude reporting, investigations into the cause of the unsafe condition are continuing. The FAA has determined that the applicability of the existing AD should be limited to airplanes with more exposure to the potential risks of incorrect altitude reporting. Based on the review of the data received from these airplane inspections, the FAA may consider future rulemaking to expand the applicability of this AD.

2. A note has been added to the existing AD to clarify that the requirements of that AD DO NOT supersede the current airplane Master Minimum Equipment List (MMEL) requirements for deferral of repair of malfunctioning systems. The existing AD states that any malfunctioning Mode ''C'' altitude reporting system is to be repaired prior to further flight. Note 3 of this revised AD explains that Mode ''C'' transponder altitude reporting systems that have been determined to be malfunctioning must be turned off and placarded as inoperative, as specified in the MMEL. The airplane may then be operated in accordance with the MMEL.

3. The compliance time for accomplishment of the initial and repetitive tests required by paragraph (a) of the existing AD has been extended from 45 days to 90 days after the effective date of the existing AD. Test results received to date indicate that a substantial number of airplanes have already been tested without failures. Based on these test results and on the increased awareness of operators using Mode ''C'' altitude reporting, the FAA has determined that the risk of exposure to incorrect altitude reporting has been sufficiently reduced to allow extension of the compliance time for accomplishment of the initial and repetitive testing. Extended test intervals also will provide additional time for operators required to schedule and execute the tests. In addition, the reporting requirement specified in paragraph (c) of the existing AD has been extended from 10 days to 20 days after accomplishment of the initial and repetitive tests required by paragraph (a) of the existing AD.

4. The alternative method of compliance paragraph of the existing AD has been revised to identify the Manager, Airplane and Flight Crew Interface Branch, Transport Airplane Directorate, as the point of contact in lieu of the Manager, Seattle Aircraft Certification Office.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD revises AD 99–23–22 to continue to require repetitive tests to detect discrepancies of the Mode ''C'' transponder(s), air data computer, and certain wiring connections; and corrective actions, if necessary. This action revises certain compliance times and limits the applicability of the existing AD. This AD also includes a note which describes provisions for continued operation of the airplane in accordance with the provisions and limitations specified in the operator's FAA-approved Master Minimum Equipment List (MMEL).

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–328–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation

that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11418 (64 FR 61493, November 12, 1999), and by adding a new airworthiness directive (AD), amendment 39–11473, to read as follows:

099–23–22 R1 Transport Category Airplanes: Amendment 39–11473. Docket 99–NM–328–AD. Revises AD 99–23–22, Amendment 39–11418.

Applicability: Transport category airplanes, as listed below, certificated in any category, equipped with any Mode ''C'' transponder with single Gillham code altitude input, including, but not limited to, the transponder part numbers listed below. Whether a Mode ''C'' transponder has a single Gillham code altitude input may be determined by reviewing the transponder installation instructions.

Airplane Models

Airbus Industrie
- A300
- A310

British Aerospace
- BAe Avro 146–RJ
- BAe ATP

Fokker
- F28 Mark 0070
- F28 Mark 0100
- F28 Mark 1000–4000

Lockheed
- L–1011 TriStar
- L–188 Electra

CASA
- CN–235

Dassault Aviation
- Mystere Falcon 50
- Mystere Falcon 900
- Mystere Falcon 200
- Fan Jet Falcon Series G

Boeing (MDC)
- DC–10–30
- DC–10–40
- DC–9
- DC–9–81
- DC–9–82
- DC–9–83
- DC–9–87
- Boeing 707
- Boeing 727
- Boeing 737
- Boeing 747

Bombardier
- CL–215–1A10
- CL–215–6B11
- CL–600–1A11
- CL–600–2A12
- CL–600–2B16

Gulfstream
- G1159 (G–II)
- G–1159A (G–III)
- G–IV

Mode ''C'' Transponder Part Numbers:

Rockwell Collins
- 622–2224–001
- 622–2224–003
- 522–2703–001
- 522–2703–011
- 787–6211–001
- 787–6211–002

Bendix
- 066–1056–00
- 066–1056–01
- 066–1123–00
- 2041599–6508

Wilcox
- 97637–201
- 97637–301

IFF
- APX–100
- APX–101

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent false Traffic Alert Collision Avoidance System (TCAS II) advisories due to inaccurate airplane altitude reporting, which could result in the flightcrew deviating the airplane from its assigned flight path and a possible mid-air collision, accomplish the following:

Repetitive Tests

(a) Within 90 days after November 29, 1999 (the effective date of AD 99–23–22, amendment 39–11418): Perform the test procedures specified in paragraphs (a)(1) through (a)(9) of this AD to detect any discrepancies of the Mode ''C'' transponder(s), air data computer (ADC), or Gillham wiring connections, in accordance with the applicable ADC and Mode ''C'' transponder component maintenance manuals and airplane maintenance manual. Repeat the test procedures thereafter at intervals not to exceed 90 days.

(1) Connect an air data test set to the Captain's (No. 1) Pitot/Static system.

(2) In the airplane flight deck, select Mode ''C'' transponder (1), or left Mode ''C'' transponder, depending on airplane flight deck configuration, and select ADC source (1).

(3) Select the air data test set to the following altitude reporting values:

1,000 feet;
4,100 feet;
15,700 feet; and
31,000 feet.

(4) For each selected altitude, verify that the Mode ''C'' altitude reporting is within tolerance (+/−125 feet), and record the altitude output as follows:
1,000 feet (+/−125 feet);
4,100 feet (+/−125 feet);
15,700 (+/−125 feet); and
31,000 feet (+/−125 feet).

(5) In the airplane flight deck, select ADC source (2) and repeat paragraphs (a)(3) and (a)(4) of this AD.

(6) In the airplane flight deck, select Mode ''C'' transponder (2), or the right Mode ''C'' transponder, depending on airplane flight deck configuration, select ADC source (1), and repeat paragraphs (a)(3) and (a)(4) of this AD.

(7) In the airplane flight deck, select ADC source (2) and repeat paragraphs (a)(3) and (a)(4) of this AD.

(8) Connect an air data test set to the Captain's (No. 2) Pitot/Static system.

(9) Repeat paragraphs (a)(2) through (a)(7) of this AD.

Note 2: The tests required by paragraph (a) of this AD examine the three primary sources of inaccurate airplane altitude reporting. These three sources are: ADC's, Mode ''C'' transponders, and the Gillham wiring connections between the ADC and Mode ''C'' transponder.

Corrective Actions

(b) Except as permitted by the Master Minimum Equipment List (MMEL): If any discrepancy is detected during any test required by paragraph (a) of this AD: Prior to further flight, repair in accordance with the applicable ADC and Mode ''C'' transponder component maintenance manual and airplane maintenance manual. If the repair information is not available in the applicable manual, except as permitted by the MMEL, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 3: The airplane may be operated in accordance with the provisions and

limitations specified in the FAA-approved MMEL, provided that only one Mode ''C'' transponder on the airplane is inoperative.

Reporting Requirement

(c) Within 20 days after accomplishing the initial and repetitive tests required by paragraph (a) of this AD, submit a report of the inspection and test results (both positive and negative findings) to: Peter Skaves, Aerospace Engineer, Airplane and Flight Crew Interface Branch, ANM–111, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1320. The test results must include the Mode ''C'' transponder(s) and ADC part number(s), and must specify if any discrepancies of the Gillham wiring connections were detected, and if corrective action was required. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Airplane and Flight Crew Interface Branch, ANM–111, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance or Avionics Inspector, who may add comments and then send it to the Manager, ANM–111.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, ANM–111.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The effective date of this amendment remains November 29, 1999.

Issued in Renton, Washington, on December 10, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–32584 Filed 12–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 95–054]

RIN 2115–AF17

Regattas and Marine Parades

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; delay of effective date.

SUMMARY: The Coast Guard is delaying indefinitely the effective date of the interim rule on regatta and marine parades published in the **Federal Register** on June 26, 1996. The interim rule more precisely identifies those marine events that require a permit, those that require only written notice to the Coast Guard, and those that require neither. Delay of the effective date is necessary to allow additional time to complete the consultation with the Fish & Wildlife Service and National Marine Fisheries and the environmental documentation.

DATES: The interim rule published on June 26, 1996, (61 FR 33027) and delayed by documents published on November 26, 1996, (61 FR 60027); December 29, 1997, (62 FR 67570); and December 30, 1998, (63 FR 71753) is delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: For questions on this action, contact Carlton Perry, Project Manager, Office of Boating Safety, Program Management Division, by telephone at 202–267–0979 or by e-mail at *cperry@comdt.uscg.mil*.

You may obtain a copy of the interim rule and subsequent notices by calling the U.S. Coast Guard Infoline, 1–800–368–5647; by e-mail at *uscginfoline@tiscom.uscg.mil*; or by Internet at the Web Site for the Office of Boating Safety, *http://www.uscgboating.org*.

SUPPLEMENTARY INFORMATION: On June 26, 1996, the Coast Guard published an interim rule and notice of availability of environmental assessment (CGD 95–054) entitled ''Regattas and Marine Parades'' in the **Federal Register** (61 FR 33027). The interim rule revised the Coast Guard's marine event regulations to eliminate unnecessary requirements while continuing to protect the safety of life. The rule more precisely identified those events that require a permit, those that require only written notice to the Coast Guard, and those that require neither. The environmental assessment and proposed finding of no significant impact that support this rulemaking were made available to the public.

Approximately 85 comments were received in response to the interim rule and notice of availability of the environmental assessment and to the Coast Guard's previous requests for comments. Many of these comments raised concerns regarding the reporting requirements placed on the marine event sponsors and the potential environmental effects associated with changing the current regulations on regatta and marine parade permitting procedures. In addition, several comments received in response to a draft environmental impact statement (EIS) entitled ''U.S. Coast Guard Atlantic Protected Living Marine Resources Initiative'' reiterated concerns raised by the comments on the interim rule. Based on these comments and on the concerns raised during the ongoing consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), the Coast Guard delayed the effective date of the interim rule. Because the Coast Guard has not yet completed its consultation with the FWS and NMFS or the required environmental documentation, the Coast Guard is delaying the effective date.

Accordingly, in FR Document 96–16319 published in the **Federal Register** on June 26, 1996, at 61 FR 33027, and as amended by notices of delay of effective date published on November 26, 1996, at 61 FR 60027; December 29, 1997, at 62 FR 67570; and December 30, 1998, at 63 FR 71753, the effective date for the referenced interim rule is delayed indefinitely.

Dated: December 7, 1999.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 99–32387 Filed 12–15–99; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300950; FRL–6391–8]

RIN 2070–AB78

Metsulfuron methyl; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for the combined residues of metsulfuron methyl and its 4-hydroxy metabolite (methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-4-hydroxybenzoate) in or on sorghum grain, sorghum forage, and sorghum fodder. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing the use of the pesticide on sorghum. This

regulation establishes maximum permissible levels for residues of metsulfuron-methyl on these food commodities. The tolerances will expire and be revoked on December 31, 2001.

DATES: This regulation is effective December 16, 1999. Objections and requests for hearings, identified by docket control number OPP–300950, must be received by EPA on or before February 14, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300950 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9367; and e-mail address: ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300950. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for the combined residues of the herbicide metsulfuron methyl and its 4-hydroxy metabolite (methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-4-hydroxybenzoate) in or on sorghum grain at 0.4 part per million (ppm); sorghum forage at 0.3 ppm; and sorghum fodder at 0.5 ppm. These tolerances will expire and are revoked on December 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Metsulfuron-methyl on Sorghum and FFDCA Tolerances

The current emergency situation was brought about by the loss of the chemical propazine as a section 18 chemical. The use of propazine as a preemergent application in grain sorghum was very efficacious. However, with its loss, grain sorghum producers are relying more on postemergent applications. Sorghum grows slowly in the early seedling stage and is susceptible to weed interference the first 2 to 3 weeks after crop emergence. This is especially the case in light soils where surface moisture is the major limiting growth factor. The use of methsulfuron methyl with 2,4-D

provides the producer with a wider window of application (sorghum that is 3–15'' tall) than registered alternatives.

In addition, there is less flexibility in rotation of crops after sorghum because of the carry-over problems that exist with registered alternatives, primarily atrazine. The applicants asserted that the inability to rotate other crops after sorghum will result in significant loss of income to producers. EPA has authorized under FIFRA section 18 the use of metsulfuron methyl on sorghum for control of weeds in Kansas, Oklahoma, and Texas.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of metsulfuron methyl in or on sorghum. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on sorghum grain, forage, or fodder after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether metsulfuron methyl meets EPA's registration requirements for use on sorghum or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of metsulfuron methyl by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Kansas, Oklahoma, and Texas to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for metsulfuron methyl, contact the Agency's Registration Division at the address provided under ''*FOR FURTHER INFORMATION CONTACT*.''

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of metsulfuron methyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for the combined residues of the herbicide metsulfuron methyl and its 4-hydroxy metabolite (methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-4-hydroxybenzoate) in or on sorghum grain at 0.4 ppm; sorghum forage at 0.3 ppm; and sorghum fodder at 0.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by metsulfuron methyl are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity*. For acute dietary and aggregate risk assessments, the Agency established an acute reference dose (RfD) of 0.25 milligram/kilogram/day (mg/kg/day). This RfD was based on decreased body weight gain seen on gestation days 6–9 in the prenatal developmental toxicity study in rabbits. The no observed adverse effect level (NOAEL) was 25 mg/kg/day and an uncertainty factor of 100 was applied.

Because the potential for additional sensitivity of infants and children to residues of metsulfuron methyl was not assessed by the Agency, for the purposes of this section 18 only, the FQPA 10x safety factor will be retained. Therefore the acute Population Adjusted Dose (aPAD) is 0.025 mg/kg/day.

2. *Short- and intermediate-term toxicity.* For short- and intermediate-term dermal toxicity, the Agency established an endpoint of 500.0 mg/kg/day. The lowest observed adverse effect level (LOAEL) was 2,000 mg/kg/day, based on diarrhea in the 21–day dermal toxicity study in rats. Margin of exposures (MOEs) must be equal to or greater than 100 to be considered to be acceptable (i.e., to not exceed EPA's level of concern). A long-term dermal endpoint was not established for this use because long-term exposure is not expected.

3. *Chronic toxicity*. EPA has established the RfD for metsulfuron methyl at 0.25 mg/kg/day. This RfD is based on decreased body weight in the 2–year rat study. The NOAEL was 25 mg/kg/day and an uncertainty factor of 100 was applied.

Because the potential for additional sensitivity of infants and children to residues of metsulfuron methyl was not assessed by the Agency, for the purposes of this section 18 only, the FQPA 10x safety factor will be retained. Therefore the chronic Population Adjusted Dose (cPAD) is 0.025 mg/kg/day.

4. *Carcinogenicity*. Metsulfuron methyl is classified as a class E compound (not likely to be a human carcinogen). This classification was based on a 2–year rat study (HDT = 5,000 ppm, 250 mg/kg/day) and an 18–month mouse study (HDT = 5,000 ppm, 714 mg/kg/day).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.428) for the combined residues of metsulfuron methyl and its metabolite (methyl 2-[[[[(4-methoxy-6-methyl-1,3,5 triazin-2-yl)amino]carbonyl]amino]sulfonyl]-4-hydroxybenzoate) in or on barley, grass, sugarcane, and wheat. These tolerances range from 0.1 ppm to 20 ppm. Tolerances are also established for metsulfuron methyl residues in milk and on the fat, meat, meat byproducts, and kidney of cattle, goats, hogs, horses, and sheep. These animal commodity tolerances range from 0.05 ppm in milk to 0.5 ppm in kidney. Results of a poultry feeding study indicate that residues will not be present in poultry commodities. Risk assessments were conducted by EPA to assess dietary

exposures and risks from metsulfuron methyl as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. In conducting this acute dietary risk assessment, EPA made very conservative assumptions: 100% crop treated is assumed for all crops and residues will be at the level of the tolerance.

The aPAD (0.025 mg/kg/day) is the level above which exposure of a subgroup exceeds EPA's level of concern. The exposures of all population subgroups (as well as the exposure of the U.S. population as a whole) are expressed as percentages of the aPAD. Therefore, exposures above 100% aPAD exceed EPA's level of concern. The existing metsulfuron methyl tolerances (published, pending, and including the necessary section 18 tolerance(s)) result in exposures that are equivalent to the following percentages of the aPAD: The U.S. population (8%), non-nursing infants < 1 year old (20%), and females 13+, nursing (6%).

The most highly exposed subgroup is non-nursing infants (< 1 year) which uses 20% of the aPAD. The exposure to metsulfuron methyl of the U.S. population and all population subgroups is below EPA's level of concern.

ii. *Chronic exposure and risk.* As with the acute analysis, in conducting this chronic dietary risk assessment, the Agency made very conservative assumptions: 100% crop treated is assumed for all crops and residues will be at the level of the tolerance. The Novigen Dietary Exposure evaluation Model (DEEM) system was used for this chronic dietary exposure analysis. The cPAD (also 0.025 mg/kg/day) is analogous to the aPAD (see discussion of aPAD, above). The existing metsulfuron methyl tolerances (published, pending, and including the necessary section 18 tolerance(s)) result in exposures that are equivalent to the following percentages of the cPAD: The U.S. population (3%), children 1–6 years old (8%), and females 13+ pregnant, not nursing (2%).

The most highly exposed subgroup, children 1–6 years, uses 8% of the cPAD. The exposure of the U.S. population and all population subgroups is below EPA's level of concern.

2. *From drinking water.* Metsulfuron methyl is persistent and mobile. There is no established maximum contaminant level (MCLs) for residues of metsulfuron methyl in drinking water. No health advisory levels for metsulfuron methyl in drinking water have been established. Estimates for the concentration of metsulfuron methyl in surface water were based on generic estimated environmental concentration (GENEEC) modeling and in ground water based on screening concentration in ground water (SCI-GROW) modeling. The maximum application rate of metsulfuron methyl (0.015 lb ai/acre) is on pasture and rangeland.

i. *Acute exposure and risk.* The peak surface water estimated concentration for metsulfuron methyl is 0.63 parts per billion (ppb). The ground water estimated concentration is 0.093 ppb. For purposes of risk assessment, the maximum EEC for metsulfuron methyl in surface water (0.63 ppb) should be used for comparison to the back-calculated human health drinking water levels of comparison (DWLOC) for the acute endpoint.

The estimated maximum concentrations of metsulfuron methyl in surface water and ground water are less than EPA's levels of comparison for metsulfuron methyl in drinking water as a contribution to acute aggregate exposure. The population subgroup with the highest dietary exposure is non-nursing infants. The DWLOC for this group is 200 micrograms/Liter (µg/L). The DWLOCs for all population subgroups exceed the maximum acute estimated environmental concentrations (EEC) of 0.63. Therefore, taking into account the present uses and uses proposed in this section 18, EPA concludes with reasonable certainty that residues of metsulfuron methyl in drinking water (when considered along with other sources of chronic exposure for which EPA has reliable data) would not result in an unacceptable estimate of acute aggregate human health risk at this time.

EPA bases this determination on a comparison of estimated maximum concentrations of metsulfuron methyl in surface and ground water to back-calculated DWLOCs for metsulfuron methyl in drinking water. These levels of comparison in drinking water were determined after EPA considered all other non-occupational human exposures for which it has reliable data (there are no residential uses), including all current uses, and the use considered in this action. The estimate of metsulfuron methyl in surface water is derived from a water quality model that uses conservative assumptions (health-protective) regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of metsulfuron methyl in drinking water as a part of the acute aggregate risk assessment process.

ii. *Chronic exposure and risk.* The 56–day average surface water estimated concentration for metsulfuron methyl is 0.61 ppb. The ground water estimated concentration is 0.093 ppb. For purposes of risk assessment, the average EEC for metsulfuron methyl in surface water (0.61 ppb) should be used for comparison to the back-calculated human health drinking water levels of comparison (DWLOC) for the chronic (non-cancer) endpoint.

The estimated average concentrations of metsulfuron methyl in surface water and ground water are less than EPA's levels of comparison for metsulfuron methyl in drinking water as a contribution to chronic aggregate exposure. The population subgroup with the highest dietary exposure is children 1–6 years old. The DWLOC for this subgroup is 230 µg/L. The DWLOCs for all population subgroups exceed the chronic average EEC of 0.61 ppb. Therefore, taking into account the present uses and uses proposed in this section 18 and the fact that GENEEC can substantially overestimate (by up to 3x) true pesticide concentrations in drinking water, EPA concludes with reasonable certainty that residues of metsulfuron methyl in drinking water (when considered along with other sources of chronic exposure for which the Agency has reliable data) would not result in an unacceptable estimate of chronic (non-cancer) aggregate human health risk at this time.

EPA bases this determination on a comparison of estimated average concentrations of metsulfuron methyl in surface and ground water to back-calculated DWLOCs for metsulfuron methyl in drinking water. These levels of comparison in drinking water were determined after EPA considered all other non-occupational human exposures for which it has reliable data (there are no residential uses), including all current uses, and the use considered in this action. The estimate of metsulfuron methyl in surface water is derived from a water quality model that uses conservative assumptions (health-protective) regarding the pesticide transport from the point of application to surface and ground water. Because the Agency considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's

uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, the Agency will reassess the potential impacts of metsulfuron methyl in drinking water as a part of the chronic (non-cancer) aggregate risk assessment process.

3. *From non-dietary exposure.* Metsulfuron methyl is not currently registered for use on residential non-food sites. Because there are no residential uses registered, a risk assessment on acute exposure, chronic exposure, and short- and intermediate-term exposures relating to non-dietary exposures were not conducted.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether metsulfuron methyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, metsulfuron methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that metsulfuron methyl has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Acute aggregate exposure risk assessment is limited to food + water only because there are no residential uses registered. The risk from acute exposure to metsulfuron methyl in food and drinking water is below the Agency's level of concern for the U.S. population and all population subgroups. See Units IV.C.1.i. and IV.C.2.i. for details on this topic.

2. *Chronic risk.* There are no registered residential uses or registered uses which will result in application or post-application residential exposure; therefore, aggregate exposure risk assessment will be limited to food + water only. The risk from chronic exposure to metsulfuron methyl in food and drinking water is below the Agency's level of concern for the U.S. population and all population subgroups. See Units IV.C.1.i. and IV.C.2.i. for details on this topic.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

There are no registered residential uses or registered uses which will result in application or post-application residential exposure; therefore, these aggregate exposure risk assessments are not required. See section (C)(3) for details on this topic.

4. *Aggregate cancer risk for U.S. population.* Metsulfuron methyl has been classified by the Agency as a class E compound (not likely to be a human carcinogen); therefore, a cancer risk assessment is not required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to metsulfuron methyl residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

A conservative risk assessment for expedited actions (i.e., section 18s) may be performed, assuming that an FQPA safety factor of 10x is retained. If risk estimates do not exceed the Agency's level of concern under these circumstances, the action can go forward, noting that the safety factor determination applies only to this action and is subject to change when the chemical undergoes full review by the FQPA Safety Factor Committee. Because the potential for additional sensitivity of infants and children to residues of metsulfuron methyl was not assessed by the Agency, for the purposes of this section 18 only, the FQPA 10x safety factor will be retained. Therefore, the MOE/safety factor is 1,000.

As noted above, because the Agency did an expedited conservative risk assessment, for the purposes of this section 18 only, the FQPA 10x safety factor will be retained. Therefore, both the aPAD and cPAD are 0.025 mg/kg/day, adding the additional 10x to the RfDs of 0.25 mg/kg/day.

1. *Acute risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to metsulfuron methyl from food will utilize between 4% and 20% of the aPAD for infants and children. EPA generally has no concern for exposures below 100% of the aPAD because the aPAD represents the level at or below which acute dietary exposure will not pose appreciable risks to human health.

The estimated maximum concentrations of metsulfuron methyl in surface water and ground water are less than EPA's levels of comparison for metsulfuron methyl in drinking water as a contribution to acute aggregate exposure. The population subgroup with the highest dietary exposure is non-nursing infants. The DWLOC for this group is 200 µg/L. The DWLOCs for all population subgroups exceed the maximum acute EEC of 0.63. Therefore, taking into account the present uses and uses proposed in this section 18, EPA concludes with reasonable certainty that residues of metsulfuron methyl in drinking water (when considered along with other sources of chronic exposure for which EPA has reliable data) would not result in an unacceptable estimate of acute aggregate human health risk at this time.

2. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to metsulfuron methyl from food will utilize between 1% and 8% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

The estimated average concentrations of metsulfuron methyl in surface water

and ground water are less than EPA's levels of comparison for metsulfuron methyl in drinking water as a contribution to chronic aggregate exposure. The population subgroup with the highest dietary exposure is children 1–6 years old. The DWLOC for this subgroup is 230 µg/L. The DWLOCs for all population subgroups exceed the chronic average EEC of 0.61 ppb. Therefore, taking into account the present uses and uses proposed in this section 18 and the fact that GENEEC can substantially overestimate (by up to 3x) true pesticide concentrations in drinking water, EPA concludes with reasonable certainty that residues of metsulfuron methyl in drinking water (when considered along with other sources of chronic exposure for which EPA has reliable data) would not result in an unacceptable estimate of chronic (non-cancer) aggregate human health risk at this time.

3. *Short- or intermediate-term risk.* There are no registered residential uses or registered uses which will result in application or post-application residential exposure; therefore, these aggregate exposure risk assessments are not required.

4. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to metsulfuron methyl residues.

V. Other Considerations

A. Metabolism in Plants and Animals

1. *Plants*. The nature of the residue is understood for cereal grains. The residue to be regulated consists of metsulfuron methyl and its metabolites methyl 2-[[[[(4-methyoxy-6-methyltriazin-2-yl)amino]carbonyl]amino]sulfonyl]-4-beta-D-glycopyranosylbenzoate (metabolite A) and methyl 2-[[[[(4-methoxy-6-methyltriazin-2-yl)amino]carbonyl]amino]sulfonyl]-4-hydroxybenzoate (metabolite A1). The latter metabolite can be formed from metabolite A through enzymatic hydrolysis.

2. *Animals*. Metabolism studies were conducted for metsulfuron methyl in rat and goat and metabolite A in goat. The residue to be regulated was determined to be parent only. Metsulfuron methyl was the major component in milk. Saccharin was the major component in liver and was judged not to be of concern. Levels in other tissues were ≤ 20 ppb. However, the dose level of 3.4 ppm in the diet was only about equal to the calculated dietary intake, and there are no studies in which the triazine moiety was labeled. Liver and milk were the only tissues characterized, and a sample chromatogram was submitted from the milk analysis only. A subsequent petition (for grass forage, hay and fodder) resulted in a potentially higher contribution to the diet of ruminants 15 ppm. Any subsequent use which results in a significant contribution to the dietary intake of the herbicide will require submission of a new ruminant metabolism study in which the triazine portion of the molecule is labeled, the dose level is appropriate (≧ 1x rate and at least 10 ppm) and residues in muscle, fat, kidney, liver and milk are fully characterized.

Sorghum grain can constitute up to 80% of the diet of poultry. A poultry metabolism study has been submitted, but has not been fully reviewed by the Agency. The results were similar to the results of the goat and rat metabolism studies in that parent metsulfuron methyl was excreted largely unchanged. A minor portion was metabolized to *O*-desmethyl metsulfuron methyl. As a result, EPA concludes that for the purposes of this section 18 the nature of the residue in poultry is understood.

B. Analytical Enforcement Methodology

1. *Plants.* An adequate analytical method is available for enforcement of the proposed tolerances in sorghum. This method (AMR 1797–90, Revision No. 1: Analytical Method for the Quantitation of DPX–T6376 (Ally) in Wheat Grain and Straw,'' 1991) is an HPLC method. The limit of quantitation (LOQ) is based on spike recoveries and is reportedly 0.050 ppm for sorghum grain and 0.10 ppm for forage hay and stover. For processed commodities, the LOQ for process and steep water fractions was 0.02 ppm and the LOQ for all other fractions was 0.050 ppm. Metabolites A and A1 were determined by a procedure derived from Dupont's AMR 238–84 and AMR 1934–91, Revision 1. This method is also an HPLC method and has the same quantitation limits as the method for parent does. In this procedure, metabolite A is converted to metabolite A1. As a result, the residue of concern is parent and metabolite A1.

In addition to the methods described above, two regulatory analytical methods are also given in PAM II for metsulfuron methyl and its metabolites. The method for metsulfuron methyl is titled ''High-Performance Liquid Chromatographic Determination of Metsulfuron Methyl Residues in Crops,'' L.W. Hershberger, DuPont Document No. AMR–104–82, Revision B, February 20, 1986. [PAM II, Method I]. The method for the metabolites is: ''High-Performance Liquid Chromatographic Determination of Residues of Metsulfuron Methyl Metabolites A and A1 in Cereal Grain Crops,'' L.W. Hershberger, Du Pont Document No. AMR–238–84, Revision B, March 27, 1986. [PAM II, Method III]

Adequate analytical methodology is available for enforcement of the proposed tolerances.

2. *Animals.* A method is available for enforcement of tolerances in bovine tissues and milk (Method II in PAM II).

C. Magnitude of Residues

Residues of metsulfuron methyl and its 4-hydroxy metabolite (methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]-amino]sulfonyl]-4-hydroxybenzoate) are not expected to exceed the following levels: sorghum grain at 0.4 part per million (ppm); sorghum forage at 0.3 ppm; and sorghum fodder at 0.5 ppm.

D. International Residue Limits

There are no Codex, Canadian, or Mexican Maximum Residue Limits (MRLs) for metsulfuron methyl on sorghum.

E. Rotational Crop Restrictions

Minimum rotation intervals of 1 to 22 months are specified explicitly for wheat, field corn, soybeans, and cotton. For all other crops, the minimum rotation interval is 34 months.

VI. Conclusion

Therefore, the tolerance is established for the combined residues of the herbicide metsulfuron methyl and its 4-hydroxy metabolite (methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]-amino]sulfonyl]-4-hydroxybenzoate) in or on sorghum grain at 0.4 part per million (ppm); sorghum forage at 0.3 ppm; and sorghum fodder at 0.5 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons

to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300950 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 14, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–300950, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). 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.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

IX. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 1, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. By revising §180.428, to read as follows:

§ 180.428 Metsulfuron methyl; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the herbicide metsulfuron methyl (methyl 2-[[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino] carbonyl]amino]sulfonyl]benzoate) and its metabolite methyl 2-[[[[[(4-methoxy-6-methyl-1-,3,5-triazin-2-yl)amino]carbonyl]amino] sulfonyl]-4-hydroxybenzoate in or on the following raw material agricultural commodities:

Commodity	Parts per million
Barley, grain	0.1
Barley, hay	20.0
Barley, straw	0.3
Grass, fodder	15.0
Grass, forage	15.0
Grass, hay	15.0
Sugarcane	0.05
Wheat, grain	0.1
Wheat, green forage	5.0
Wheat, hay	20.0
Wheat, straw	0.3

(2) Tolerances are established for residues of metsulfuron methyl (methyl-2[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl) amino]carbonyl] amino]sulfonyl]benzoate) in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.1
Cattle, kidney	0.5
Cattle, meat	0.1
Cattle, meat byproduct	0.1
Goats, fat	0.1
Goats, kidney	0.5
Goats, meat	0.1
Goats, meat byproduct	0.1
Hogs, fat	0.1
Hogs, kidney	0.5
Hogs, meat	0.1
Hogs, meat byproduct	0.1
Horses, fat	0.1
Horses, kidney	0.5
Horses, meat	0.1
Horses, meat byproduct	0.1
Milk	0.05
Sheep, fat	0.1
Sheep, kidney	0.5
Sheep, meat	0.1
Sheep, meat byproduct	0.1

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of the herbicide metsulfuron methyl and its 4-hydroxy metabolite (methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl) amino]carbonyl]-amino] sulfonyl]-4-hydroxybenzoate)] in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/ Revocation Date
Sorghum, fodder	0.5	12/31/01
Sorghum, forage	0.3	12/31/01
Sorghum, grain	0.4	12/31/01

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 99–32652 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AD05

National Flood Insurance Program (NFIP); Standard Flood Insurance Policy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (FEMA) are increasing the limit of liability under Coverage D—Increased Cost of Compliance of the Standard Flood Insurance Policy from $15,000 to $20,000. New information indicates an expected decrease in annual claims, and based on this decrease, we believe the limit of liability can be increased with no change in premium.

EFFECTIVE DATE: May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, (202) 646–3422, (facsimile) (202)646–4327, or (email) charles.plaxico@fema.gov.

SUPPLEMENTARY INFORMATION: On February 25, 1997, we published in the **Federal Register**, 62 FR 8391, a final rule that adds Coverage D—Increased Cost of Compliance (ICC) to the Standard Flood Insurance Policy. We set the limit of liability for this coverage at $15,000. We considered several issues in arriving at that figure.

First, the pricing for this coverage has to be actuarially sound with premiums varying, to the extent possible, by risk. Second, § 555 of the National Flood Insurance Reform Act of 1994, which

mandates ICC coverage, sets a cap of $75 that we may charge for this coverage. Third, our initial estimates were that the number of policyholders receiving benefits under ICC coverage would be between 3400–3700 each year. Fourth, we considered the uncertainties associated with the introduction of the product, especially since we had had no direct experience with ICC coverage.

In making initial estimates of ICC claims, we had access to our loss experience from 1978 through 1994. The latest experience period for estimating ICC claims runs through 1998. Based on our additional experience with flood losses—losses large enough to trigger community declarations of substantial damage—we have decreased the number of expected annual ICC claims to a range of 2700—2900. On this basis, we are confident that the limit of liability for ICC coverage can be increased from $15,000 to $20,000 (a 33% increase) with no change in premium. The number of ICC claims actually filed since the introduction of this coverage is small compared to the number that we expected based on our flood claims filed under building coverage. We intend to continue analyzing this discrepancy, make further adjustments in premium charges, coverage amounts, or both as warranted, and to continue our education efforts with policyholders and local officials to make sure that they adequately understand the coverage.

Administrative Procedure Act Determination

We are publishing this final rule without opportunity for prior public comment under the Administrative Procedure Act, 5 U.S.C. 553. This final rule is a rule of agency procedure or practice that is excepted from the prior public comment requirements of § 553(b). The rule makes nonsubstantive, nonsignificant changes to 44 CFR part 61 by conferring a benefit to flood insurance policyholders, increasing coverage for the increased cost of compliance without an increase in premium.

National Environmental Policy Act

The requirements of 44 CFR Part 10, Environmental Consideration, categorically exclude this final rule. We have not prepared an environmental impact assessment.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has not reviewed this final rule under E.O. 12866.

Paperwork Reduction Act

The final rule is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 13132, Federalism

This rule involves no policies that have federalism implications under Executive Order 13132, Federalism, dated August 4, 1999. The rule simply increases coverage for the increased cost of compliance from $15,000 to $20,000 without an increase in premium. It involves no preemption of State law nor does it limit State policymaking discretion. In light of the purpose of the rule and the absence of federalism implications, we have not consulted with State and local officials during preparation of this rule.

I certify that the requirements of Executive Order 13132 have been met in a meaningful and timely manner.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is not a ''major rule'' within the meaning of that Act. It is an administrative action in support of normal day-to-day activities that increases a benefit to policyholders without increasing premiums. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, we amend 44 CFR part 61 as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. The first sentence of the second paragraph of Coverage D—Increased Cost of Compliance in Article 4 of Appendix A(1) to Part 61 that begins ''The limit of liability * * *'' is revised to read as follows:

Appendix A(1) to Part 61

* * * * *

Article 4

* * * * *

Coverage D—Increased Cost of Compliance

* * * * *

The limit of liability under this Coverage D (Increased Cost of Compliance) is $20,000. * * *

* * * * *

2. The first sentence of the second paragraph of Coverage D—Increased Cost of Compliance in Article 4 of Appendix A(2) to Part 61 that begins ''The limit of liability * * *'' is revised to read as follows:

Appendix A(2) to Part 61

* * * * *

Article 4

* * * * *

Coverage D—Increased Cost of Compliance

* * * * *

The limit of liability under this Coverage D (Increased Cost of Compliance) is $20,000. * * *

* * * * *

3. The first sentence of the second paragraph of *Coverage D—Increased Cost of Compliance* in Article 4 of Appendix A(3) to Part 61 that begins ''The limit of liability * * *'' is revised to read as follows:

Appendix A(3)—to Part 61

* * * * *

Article 4

* * * * *

Coverage D—Increased Cost of Compliance

* * * * *

The limit of liability under this Coverage D (Increased Cost of Compliance) is $20,000. * * *

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance''; No. 83.516, ''Disaster Assistance'')

Dated: December 13, 1999.

Jo Ann Howard,

Administrator,

Federal Insurance Administration.

[FR Doc. 99–32657 Filed 12–15–99; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 211, 235, 238 and 240

[Docket No. FRA–99–6625, Notice No. 1]

RIN 2130–AB37

Revised Docket Filing Procedures for Federal Railroad Administration Rulemaking and Adjudicatory Dockets

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Railroad Administration has consolidated its docket operations with those of other Department of Transportation operating elements. DOT's nine separate docket facilities have been consolidated into the Centralized Docket Management System and have been converted from a paper-based system to an optical imaging system for more efficient storage, management and retrieval of docketed information. This conversion is intended to provide better service and more widespread access to both the public and government users. This final rule provides details of new docket filing procedures for FRA regulatory and adjudicatory proceedings.

This final rule also amends certain FRA rules to provide accurate information to the public regarding filing requirements for FRA proceedings.

DATES: This final rule is effective February 14, 2000.

ADDRESSES: Dockets opened after September 15, 1998, are available for inspection and copying in DOT's Central Docket Management System located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. Docket materials filed in the Central Docket Management System are also available for viewing and downloading on the Internet at http://dms.dot.gov.

All rulemaking comments, comments pertaining to regulatory waiver dockets, railroad block signal applications, special approval proceedings, and submissions related to adjudicatory dockets (*e.g.* hearings on engineer certification denials or revocations) should be submitted to DOT's Central Docket Management System, 401 Plaza level, Nassif Building at the U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590–0001 between the hours of 10 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Tessler, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, N.W., Mail Stop 10, Washington, D.C. 20590 (telephone 202–493–6061) (e-mail address: mark.tessler@fra.dot.gov).

SUPPLEMENTARY INFORMATION: On March 15, 1995, DOT issued a public meeting notice (60 FR 14050) concerning the centralization and computerization of DOT dockets. On June 10, 1996, at 61 FR 29282, the Office of the Secretary (OST) published a final rule revising the filing procedures for OST dockets. FRA's transition to the DOT-wide Central Docket Management System (Central Dockets) began in September 1998. All new regulatory and adjudicatory dockets established after that date are located in the central docket facility. Therefore, all comments and related documents filed in those proceedings should be sent to the docket facility address listed above. Each **Federal Register** notice requesting comments from the public in a proceeding will contain instructions on how to file comments and where they should be sent. While we prefer that all comments and related documents be sent directly to the new facility, FRA will, for the foreseeable future, ensure that documents sent directly to FRA will be forwarded to the Central Docket. The date of receipt will, however, be the date and time logged in at the Central Docket.

Internet Access to Docket Materials

The change in docket filing procedures announced in this notice will provide the public with unprecedented access to FRA's public dockets. All documents in FRA's public dockets established in the central docket system are accessible through the Internet at http://dms.dot.gov. Detailed information is available at that Web site to assist the public in viewing documents filed in FRA's and other DOT administrations' regulatory and adjudicatory proceedings. In order to view documents, a software program called a document image viewer must be installed on your computer. The Web site listed above provides information as to how such viewer programs (also known as ''plug-ins''), which are generally available free of charge, may be downloaded onto your computer. When downloaded, the viewer program installs itself into your current Internet browser to enable the documents to be viewed. In many cases, Internet browsers already contain such plug-ins without the need for additional action by the user.

Filing of Submissions to the Central Docket

Paper Filing

At the present time, to ensure that the highest quality image is captured during the scanning process, we request that documents be typed double spaced on 8½ by 11 inch white paper with dark type (not green) to provide adequate contrast for reproduction. Original documents should be unbound, without tabs, to reduce possible damage to the document during removal of fasteners and to facilitate the use of a high-speed mechanism for automated scanning. Multi-page documents may be clipped with a removable clip or other similar device. Filers are requested to provide one-sided original documents to speed the physical scanning process, but the capability to sort and copy double-sided copies is available. Specific filing instructions will be found on the Central Docket web site. We anticipate that those instructions and technical requirements will periodically change due to advances in document storage and retrieval technology.

In the unlikely event that written materials cannot be scanned they will be stored at FRA's own docket facility and a cross-reference to the location of the material will be noted in the docket file. Similarly, non-scannable items such as videotapes, and non-paper items, will be stored at FRA's docket facility.

Electronic Filing

In addition to traditional paper filings, comments and related files may be submitted electronically to established dockets. Because technology in this area is changing very rapidly, directions and technical requirements for such submissions are not being specified in this notice, but may be found at the Central Docket web site. This will enable the public to take

immediate advantage of changes in technology as they are adopted by the Central Docket. Each **Federal Register** notice requesting comments from the public in a proceeding will contain specific information regarding electronic filing of comments.

Section by Section Analysis of Regulatory Amendments To Reflect the Change in Docket Facilities

Part 209

Part 209, ''Railroad Safety Enforcement Procedures'' describes certain procedures employed by FRA in its enforcement of statutes and regulations related to railroad safety. Subpart B of part 209, prescribes rules of procedure for the assessment of civil penalties pursuant to the Federal hazardous materials transportation law. Subpart C prescribes rules of procedure leading to the issuance of compliance orders, while subpart D prescribes the rules of practice for administrative proceedings relating to the determination of an individual's fitness for performing safety-sensitive functions. No changes are being made to these provisions. Section 209.9, ''Filing'' provides that all materials filed with FRA in connection with a proceeding under subpart B, C, or D shall be submitted to the Assistant Chief Counsel for Safety. If the informal proceedings prescribed in these subparts evolve into adjudicatory proceedings, the hearing officer or presiding officer will take appropriate steps to create a public docket and will provide the necessary direction to the parties as to proper filing procedures.

Part 211

Part 211 of title 49 of the Code of Federal Regulations, ''Rules of Practice'', provides for the rules of practice that apply to rulemaking and waiver proceedings, review of emergency orders, and miscellaneous safety-related proceedings and informal safety inquiries. Part 211 contains various references to filing of documents with the Docket Clerk. This part is being revised to reflect the new filing procedures and locations.

The definition and address of the docket clerk in section 211.1(b)(4) is being amended to include the DOT Docket Management System. Each regulation containing a filing requirement will specify the office in which a document should be filed, however, generally, if a party is filing a document to a docket which has already been established (after November 1, 1998), that document should be filed with the DOT Docket Management System and should contain the unique docket number assigned to that proceeding. However, if a docket has not yet been established by FRA, correspondence and documents should be sent to FRA. For example, requests that FRA issue a regulatory waiver, or petitions for rulemaking should be sent directly to FRA's Docket Clerk who will take steps to open a docket, if appropriate.

New paragraph 211.5(a) provides that regulatory and other dockets created after November 1, 1998, are maintained by the DOT Docket Management System and may be accessed at the Central Dockets office or on the Internet. The records available include rulemaking and waiver petitions, applications for special approval, grandfathering petitions under part 238, emergency orders, notices, comments received in response to notices, hearing transcripts, final rules, denials of rulemaking petitions, grants and denials of waiver and other petitions.

New paragraph 211.5(b) provides that the type of records cited in paragraph (a), but created prior to November 1, 1998, remain available at FRA's docket room at its headquarters at 1120 Vermont Avenue, NW, Washington, DC 20590.

Part 235

Part 235 ''Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief From the Requirements of Part 236'' is being amended to eliminate the procedural requirement that notice of the filing of an application for approval of a discontinuance or material modification or a request for reconsideration be posted in the FRA Office of Public Affairs. For a number of years, notices have also been published in the **Federal Register**. Given the availability of the notices in the **Federal Register** and over the Internet, posting in the Office of Public Affairs is not necessary for adequate public notice. Therefore, this section is being revised to provide for publication of such notices in the **Federal Register**.

Part 238

Part 238, ''Passenger Equipment Safety Standards'', is being amended to specify that comments in certain proceedings should be filed with DOT's Central Docket Management System. Section 238.21(f) is being amended to provide that comments relating to the special approval procedure specified in that section be filed with the Central Dockets. The amendment also provides that either written or electronic submissions may be made. Because of the availability of all comments on the Internet, FRA is deleting § 238.21(f)(3) which had required certification of filing of a copy of the comment on each petitioner. Section 238.203(g), relating to petitions for grandfathering, is being similarly amended. It is important to note that the only provisions being amended are those relating to comments filed by interested parties; provisions relating to filing of the petitions by parties requesting relief, remain unchanged.

Part 240

Part 240, ''Qualification and Certification of Locomotive Engineers'' is also being amended to specify the situations in which documents should be filed with DOT's Central Docket Management System and those situations in which documents should still be sent to FRA's Office of Chief Counsel.

Section 240.403, which governs petitions requesting Locomotive Engineer Review Board review of a railroad's decision to deny certification, deny recertification, or revoke certification, requires that such petitions be submitted to FRA's Docket Clerk. These petitions will still be filed with the Office of Chief Counsel.

Petitions and other documents associated with the administrative hearings prescribed in 49 CFR 240.409 (hearing for those adversely affected by a decision of the Locomotive Engineer Review Board) will be filed in DOT's Central Docket Management System. Section 240.407(b) will thus clarify the revised filing requirement.

Executive Order 12866 and DOT Regulatory Policies and Procedures

This Final Rule has been evaluated in accordance with existing policies and procedures of DOT. FRA has concluded that this rule does not constitute a significant rule under either Executive Order 12866 or DOT's regulatory policies and procedures.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this rule will not have a significant impact on a substantial number of small entities. There are no substantial economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

This rule contains no new information collection requirements.

Environmental Impact

FRA has evaluated this Final Rule in accordance with its procedure for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and related directives. This rule has no impact on the environment.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, ''Federalism,'' and it has been determined that this Final Rule does not have federalism implications.

Public Participation

FRA is proceeding to a final rule without providing a notice of proposed rulemaking or an opportunity for public comment. Inasmuch as the final rules issued today are rules of agency organization, procedure and practice, FRA finds that notice and opportunity for comment are impracticable and unnecessary.

List of Subjects in 49 CFR Parts 211, 235, 238 and 240

Administrative practice and procedure, Railroad safety.

Therefore in consideration of the foregoing, parts 211, 235, 238 and 240 of title 49, Code of Federal Regulations are amended as follows:

PART 211—[AMENDED]

1. The authority citation for part 211 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

2. Section 211.1(b)(4) is revised to read as follows:

§ 211.1 General.

* * * * *

(b) * * *

(4) *Docket Clerk* means the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, N.W., Mail Stop 10, Washington, D.C. 20590 or the Docket Clerk, Department of Transportation Central Docket Management System, Nassif Building, Room Pl-401, 400 Seventh Street, S.W., Washington, D.C. 20590–0001.

* * * * *

3. Section 211.5 is amended by revising paragraphs (a) and (b) to read as follows:

§ 211.5 Regulatory docket.

(a)(1) Records of the Federal Railroad Administration created after November 1, 1998, concerning each proceeding subject to this part are maintained in current docket form by the DOT Docket Management System. These records include rulemaking and waiver petitions, emergency orders, notices, comments received in response to notices, hearing transcripts, final rules, denials of rulemaking petitions, grants and denial of waiver and other petitions. Also included are records pertaining to applications for special approval under § 211.55 and § 238.21 of this chapter, petitions for grandfathering approval under § 238.203 of this chapter, signal applications under parts 235 and 236 of this chapter, and informal safety inquiries under § 211.61.

(2) Any person may examine docketed material created after November 1, 1998:

(i) At the DOT Docket Management System, room Pl-401 (plaza level), 400 Seventh Street, S.W. Washington, D.C. 20590. Copies of docketed materials may be obtained upon payment of the fees prescribed by the Docket Management System, or

(ii) Through the Internet at *http://dms.dot.gov.* All docketed materials are available for viewing and may be downloaded for electronic storage or printing. There is no charge for this service.

(b) Records of the Federal Railroad Administration created before November 1, 1998, concerning each proceeding subject to this part are available in FRA's Docket Office, seventh floor, 1120 Vermont Avenue, Washington, DC 20590. Any person may examine docketed material at that location during normal business hours. Copies of docketed material may be obtained upon payment of the fees prescribed in part 7 of this title.

* * * * *

4. Section 211.7 is revised to read as follows:

§ 211.7 Filing requirements.

(a) Any person may petition the Administrator for issuance, amendment, repeal or permanent or temporary waiver of any rule or regulation. A petition for waiver must be submitted at least 3 months before the proposed effective date, unless good cause is shown for not doing so.

(b)(1) All petitions and applications subject to this part, including applications for special approval under § 211.55 and § 238.21 of this chapter, petitions for grandfathering approval under § 238.203 of this chapter, and signal applications under parts 235 and 236 of this chapter, shall be submitted in triplicate to the FRA Docket Clerk. Each petition received shall be acknowledged in writing. The acknowledgment shall contain the docket number assigned to the petition or application and state the date the petition or application was received. Within 60 days following receipt, FRA will advise the petitioner or applicant of any deficiencies in its petition or application.

(2) All comments submitted in response to a notice and other material pertaining to proceedings subject to this part, including comments submitted in response to requests for special approval under § 211.55 and § 238.21 of this chapter, petitions for grandfathering approval under § 238.203 of this chapter, and signal applications under parts 235 and 236 of this chapter, shall be submitted to the DOT Central Docket Management System and shall contain the assigned docket number for that proceeding. The form of such submissions may be in written or electronic form consistent with the standards and requirements established by the Central Docket Management System and posted on its web site at http://dms.dot.gov.

5. The second sentence of § 211.19(a) is revised to read as follows:

§ 211.19 Petitions for extensions of time to comment.

(a) * * * The petition must be received by the FRA Docket Clerk not later than 10 days before expiration of the time stated in the notice and must contain reference to the FRA docket number for the proceeding involved.

* * *

* * * * *

PART 235—[AMENDED]

6. The authority citation for part 235 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, and 49 CFR 1.49.

7. Section 235.14 is revised to read as follows:

§ 235.14 Notice.

The FRA will publish notice of the filing of an application or a request for reconsideration of an application in the **Federal Register** and a copy of such notice will be available at the Department of Transportation Central Docket Management System, Nassif Building, Room Pl–401, 400 Seventh Street, S.W., Washington, D.C. 20590, and on the Docket Management System's Web site at *http://dms.dot.gov.*

PART 238—[AMENDED]

8. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–03, 20306, and 20701–02; 49 CFR 1.49.

9. Section 238.21(f) is revised to read as follows:

§ 238.21 Special approval procedure.

* * * * *

(f) *Comment.* Not later than 30 days from the date of publication of the notice in the **Federal Register** concerning a petition under paragraphs (b) and (c) of this section, any person may comment on the petition.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Each comment shall be submitted to the DOT Central Docket Management System, Nassif Building, Room Pl–401, 400 Seventh Street, S.W., Washington, D.C. 20590, and shall contain the assigned docket number for that proceeding. The form of such submission may be in written or electronic form consistent with the standards and requirements established by the Central Docket Management System and posted on its web site at *http://dms.dot.gov.*

* * * * *

10. Section 238.203(g) is revised to read as follows:

§ 238.203 Static end strength.

* * * * *

(g) *Comment.* Not later than 30 days from the date of publication of the notice in the **Federal Register** concerning a petition under paragraph (d) of this section, any person may comment on the petition.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Each comment shall be submitted to the DOT Central Docket Management System, Nassif Building, Room Pl–401, 400 Seventh Street, SW, Washington, DC 20590, and shall contain the assigned docket number for that proceeding. The form of such submission may be in written or electronic form consistent with the standards and requirements established by the Central Docket Management System and posted on its web site at *http://dms.dot.gov.*

* * * * *

PART 240—[AMENDED]

11. The authority citation for part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135; 49 CFR 1.49.

12. Section 240.403(b)(2) is revised as follows:

§ 240.403 Petition requirements.

* * * * *

(b) * * *

(2) Be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW, Washington, DC 20590;

* * * * *

13. Section 240.407(b) is revised to read as follows:

§ 240.407 Request for a hearing.

* * * * *

(b) To exercise that right, the adversely affected party shall, within 20 days of service of the Board's decision on that party, file a written request with the Docket Clerk, Department of Transportation Central Docket Management System, Nassif Building, Room Pl–401, 400 Seventh Street, S.W., Washington, D.C. 20590. The form of such request may be in written or electronic form consistent with the standards and requirements established by the Central Docket Management System and posted on its web site at *http://dms.dot.gov.*

* * * * *

Issued in Washington, D.C. on September 30, 1999.

Jolene M. Molitoris,

Administrator.

[FR Doc. 99–32447 Filed 12–15–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No.991207322–9328–02;I.D.120899D]

RIN 0648–AN45

Sea Turtle Conservation; Restrictions to Fishing Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS is closing the waters of Pamlico Sound, North Carolina to fishing with gillnets with a mesh size larger than 5 inches (12.7 cm) stretched mesh for a 30-day period. The closed area includes all inshore waters of Pamlico Sound south of 35°23' N. lat. and east of 76°05' W. long. NMFS is taking this action because of its determination that the large mesh gillnet fishery is the most likely cause of significant increases in the stranding of sea turtles listed as threatened or endangered under the Endangered Species Act (ESA) in Pamilco Sound. This action is necessary to protect threatened and endangered turtles from being taken by the large mesh, gillnet fishery in Pamlico Sound.

DATES: This action is effective from December 10, 1999 through January 10, 2000. Comments on this action are requested, and must be received at the appropriate address or fax number (See **ADDRESSES**) by no later than 5:00pm, eastern standard time, on January 10, 2000.

ADDRESSES: Written comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz (ph. 727–570–5312, fax 727–570–5517, e-mail Chuck.Oravetz@noaa.gov), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail Barbara.Schroeder@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles—even incidentally—is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of endangered species may only legally be authorized by an incidental take statement or an incidental take permit issued pursuant to section 7 or 10 of the ESA. Existing sea turtle conservation regulations specify procedures that NMFS may use to determine that unauthorized takings of sea turtles are occurring during fishing activities, and

to impose additional restrictions to conserve listed sea turtles and to prevent unauthorized takings (50 CFR 223.206(d)(4). Restrictions may be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each.

Recent Events

The Sea Turtle Salvage and Stranding Network has documented a high level of sea turtle strandings in North Carolina this fall. Beginning November 1, 1999, large numbers of sea turtles have been stranding in Pamlico Sound, North Carolina, particularly in the vicinity of Hatteras and Ocracoke Inlets. The strandings through the week ending December 4 have totaled 74, including 39 endangered Kemp's ridley sea turtles. The total number of strandings in North Carolina for 1999 is 2.3 times the average annual strandings from 1980 to 1999. The total number of Kemp's ridley strandings in 1999 is 7 times the average annual for the same time period.

Several fisheries, including trawling for shrimp and crabs and gillnetting for speckled trout and southern flounder, have been operating in Pamlico Sound over the period of the turtle strandings. After conducting aerial surveys of the fishing activity and reviewing other available information on the fisheries, NMFS determined that sink gillnetting for southern flounder was the most likely cause of the elevated turtle mortality. Gillnet vessels and many untended gillnets were observed in the Sound near the areas of highly concentrated turtle strandings. Small turtles, such as the Kemp's ridley, are likely to be entangled in the large mesh sizes used in these gillnets. Necropsies of stranded animals have generally indicated that they were healthy and had been foraging prior to their deaths. As the weather cools in the fall and winter, the sea turtles' migrations through and out of the North Carolina sounds make them extremely vulnerable to fishing effort that is concentrated at the inlets.

NMFS discussed the situation with the North Carolina Division of Marine Fisheries (NCDMF) on November 19, 1999. At that time, NCDMF did not believe that any action was necessary to regulate the large mesh flounder gillnet fishery on the basis that the fishery would be winding down seasonally and that the available evidence was not strong enough to confirm conclusively that this fishery was responsible for the turtle mortality. To develop additional information, NCDMF deployed observers aboard gillnet vessels from November 22–24. In 5 trips aboard flounder gillnet vessels, two Kemp's ridley turtles were taken. No turtles were taken in 6 trips aboard speckled trout gillnet vessels.

NMFS deployed a Protected Resources Enforcement Team (PRET) to North Carolina for further investigations in late November. PRET has worked cooperatively with the North Carolina Marine Patrol to investigate the role of the different fisheries in the turtle deaths. PRET investigations so far indicate that flounder gillnetting is the probable cause of the great majority of the turtle mortality.

There are approximately 30 to 40 boats participating in the southern flounder gillnet fishery, each setting from 2,000 to 10,000 yards (1 to 5 nautical miles (1.8 to 9 km)) of large mesh gillnet, mostly concentrated in an area about 25 miles long by a few miles wide. The fishery has grown rapidly in the last few years. There are no state regulations on the amount of net fished, manner or place of setting the net, tending requirements, soak time, or the length of the season. Nets are generally set and left untended for 1 or 2 days, although even longer sets occur. This year, bad weather after Thanksgiving caused many fishermen to leave their nets in the water for 5 to 6 days. Although the fishery is said to be winding down, there is no assurance that fishermen will pull their nets out of the water soon, since there is no regulatory end to the season. As fish catch rates decline, the nets may be left untended for even longer periods of time and pose an even greater threat to turtles. PRET observed that Pamilco Sound had high concentrations of gillnets in early December.

Analysis of Other Factors

Examination of the strandings in Pamlico Sound indicates that the most significant source of sea turtle mortality is large mesh gillnetting. The carcasses have primarily been coming ashore in the vicinity of areas where gillnetting effort has been concentrated, and fishery observers and enforcement officers have observed sea captures in the large-mesh gillnets. The construction of the gear, the extremely large amounts of netting deployed, and the long soak times create an extreme threat for entangling and drowning sea turtles during their fall migration. NMFS' PRET and NCDMF will continue to investigate factors other than southern flounder gillnetting that may contribute to sea turtle mortality in Pamlico Sound, including other fisheries and environmental factors.

Closure of Gillnet Fishing in Pamlico Sound

The incidental taking of an endangered species of wildlife is prohibited by section 9(a)(1)(B) of the ESA. There are no exemptions to this prohibition applicable to the southern flounder gillnet fishery in Pamlico Sound. This fishery is known to be catching and killing large numbers of endangered Kemp's ridley sea turtles. Green turtles and threatened loggerhead turtles have also been taken. Section 11(f) (16 U.S.C. 1540(f)) of the ESA authorizes the Secretary of Commerce to promulgate regulations to enforce the requirements of the Act. Regulations at 50 CFR 223.206(d)(4) specify procedures that the Assistant Administrator for Fisheries, NOAA, (AA) may use to impose additional restrictions to conserve listed sea turtles and prevent unauthorized takings.

Therefore, the AA issues this determination that takings of endangered sea turtles by southern flounder gillnetters in Pamlico Sound are unauthorized by statute and issues this additional restriction to gillnet fishing activities to conserve endangered Kemp's ridley sea turtles. Specifically, the AA closed the waters of Pamlico Sound, North Carolina to fishing with gillnets with a mesh size larger than 5 inches (12.7 cm) stretched mesh. The closed area includes all inshore waters of Pamlico Sound south of 35°23' N. lat. (approximately the end of Avon Channel) and east of 76°05' W. long. (approximately Bluff Shoal). This closure is effective from December 10, 1999 through 11:59 p.m. (local time) January 10, 2000. For the duration of this closure, no gillnet with a mesh size larger than 5 inches stretched mesh may be set in the closed area. All such nets that are currently set must be retrieved no later than 11:59 p.m. local time on December 13, 1999. Any such nets remaining in the water after such time will be a violation of this closure.

This restriction has been announced on the NOAA weather channel, in newspapers, and other media.

Additional Conservation Measures

The AA may withdraw or modify any additional restriction on fishing activities if the AA determines that such action is warranted. Notification of any additional sea turtle conservation measures, including any extension of this 30-day action, will be published in the **Federal Register** pursuant to 50 CFR 223.206(d)(4).

NMFS will continue to monitor sea turtle strandings to gauge the

effectiveness of these conservation measures.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The AA has determined that this action is necessary to respond to an emergency situation to provide adequate protection for endangered and threatened sea turtles, primarily the Kemp's ridley turtle, pursuant to the ESA and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing this action in a timely manner to protect the listed sea turtles. Notification of and opportunity to comment on, this action was provided through the proposed rule which established these actions (57 FR 18446, April 30, 1992). For the same reasons, the AA finds good cause also under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. NMFS is making the rule effective December 10, 1999 through January 10, 2000. As stated earlier, this restriction has been announced on the NOAA weather radio, in newspapers, and other media.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.*, are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule (57 FR 57348, December 4, 1992) requiring turtle excluder device use in shrimp trawls and creating the regulatory framework for the issuance of notices such as this. Copies of the EA are available (see **ADDRESSES**).

Dated: December 10, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 99–32531 Filed 12-10-99; 4:37 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 120199C]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Retention limit adjustment.

SUMMARY: NMFS adjusts the daily retention limit for the Angling category fishery for Atlantic bluefin tuna (BFT) in all areas to one large school or small medium BFT (measuring 47 to less than 73 inches (119 to less than 185 cm) curved fork length) per vessel. The Angling category trophy retention limit for large medium and giant BFT remains at one fish per vessel, per fishing year. This action is being taken to lengthen the fishing season and to ensure reasonable fishing opportunities in all geographic areas without risking overharvest of the quota established for the Angling category fishery.

DATES: The daily retention limit adjustment is effective 1 a.m., local time, January 1, 2000, until May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Sarah McLaughlin, 978–281–9260.

SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

Implementing regulations for the Atlantic tuna fisheries at § 635.23 allow for adjustments to the daily retention limits in order to provide for maximum utilization of the quota over the longest possible period of time. NMFS may increase or reduce the per angler retention limit for any size class BFT or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit.

Since October 7, 1999, NMFS has maintained the daily retention limit at one large school or small medium BFT per vessel. In order to maintain the current daily retention limit through the end of the 1999 fishing year (May 31, 2000), NMFS must announce a daily retention limit adjustment since the current retention limit is valid only through December 31, 1999 (64 FR 10576, March 5, 1999).

Preliminary Large Pelagic Survey estimates of landings from the beginning of the 1999 fishing year (June 1, 1999) through November 7, 1999, indicate that approximately 34 metric tons (mt) of school BFT and approximately 44 mt of large school/small medium BFT have been landed; reported landings of large medium and giant BFT total approximately 1 mt.

NMFS adjusts the BFT Angling category daily retention limit for all areas one large school or small medium BFT (measuring 47 to less than 73 inches (119 to less than 185 cm) curved fork length) per vessel. In addition, each Angling category vessel may retain no more than one large medium or giant BFT (measuring 73 inches (185 cm or greater) per year. Landing rates during the first few months of 1998 and 1999 were low, but landing rates during the winter fishery were high in 1996 and 1997. This action is being taken to provide the greatest geographic and temporal range of data collection and fishing opportunities without risking overharvest.

This daily retention limit adjustment is effective January 1 through May 31, 2000. The daily retention limit and the duration of daily retention limit adjustment have been selected based on an examination of past catch and effort rates. NMFS will continue to monitor the Angling category fishery closely through the Automated Landings Reporting System, the North Carolina harvest tagging program, and the Large Pelagic Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that an interim closure or additional retention limit adjustment is necessary to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

If NMFS determines, based on landings statistics and other available information, that a BFT quota in any category or, as appropriate, subcategory has been exceeded or has not been reached, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year, provided that the total of the adjusted category quotas and the reserve is consistent with a recommendation of ICCAT regarding country quotas, the take of school BFT, and the allowance for dead discards.

Closures or subsequent adjustments to the daily retention limit, if any, shall be

announced through publication in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9305 for updates on quota monitoring and retention limit adjustments. Anglers aboard Charter/Headboat category vessels, when engaged in recreational fishing for school, large school, and small medium BFT, are subject to the same rules as anglers aboard Angling category vessels. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Landings Reporting System by calling (888) 872–8862 or, if landed in the state of North Carolina, to a reporting station prior to offloading. Information about the North Carolina harvest tagging programs, including reporting station locations, can be obtained by calling (800) 338–7804. In addition, anglers aboard permitted vessels may continue to tag and release BFT of all sizes under a tag-and-release program, provided the angler tags all BFT so caught, regardless of whether previously tagged, with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the tagging, and, if the BFT was previously tagged, the information on the previous tag (50 CFR 635.26).

Classification

This action is taken under 50 CFR 635.23(b)(3). This action is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 9, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–32546 Filed 12-15-99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 120899B]

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements; Public Workshops

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of workshops.

SUMMARY: NMFS will present workshops on recordkeeping and reporting requirements for the Alaska groundfish fisheries.

DATES: Workshops will be held on several dates. See SUPPLEMENTARY INFORMATION for specific dates and times.

ADDRESSES: The workshops will be held at several locations. See SUPPLEMENTARY INFORMATION specific locations where the workshops will be held.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS and the U.S. Coast Guard North Pacific Regional Fisheries Training Center will present an integrated approach to clarify and simplify NMFS 2000 recordkeeping and reporting requirements for the Alaska groundfish fisheries, to introduce the new shoreside processor electronic logbook delivery report, and to provide information on required permits and instructions on completion and submittal of the logsheets and reporting forms to record information for the American Fisheries Act, open-access groundfish, Western Alaska Community Development Quota Program, Individual Fishing Quota Program, and the at-sea scale program. Instructions on completion of fish tickets and the Commercial Operators Annual Report will be presented by Alaska Department of Fish and Game staff. Comments from the fishing industry will be welcome on the recordkeeping and reporting program and on any related issues.

Special Accommodations

These workshops will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patsy Bearden at 907–586–7228 at least 7 working days prior to the meeting date.

Dates of Workshops

Wednesday, December 15, 1999, 10:00 a.m.–2:00 p.m., Alaska local time (A.l.t.);

Thursday, December 16, 1999, 7 p.m., A.l.t.;

Friday, December 17, 1999, 10:00 a.m.–2:00 p.m., A.l.t.;

Thursday, January 6, 2000, 10:00 a.m.–2:00 p.m., Washington local time; and

Wednesday, February 9, 2000, 10:00 a.m.–2:00 p.m., A.l.t.

Location of Workshops

December 15, 1999, Bidarka Inn, 575 Sterling Highway, Homer, AK;

December 16, 1999, U.S. Coast Guard, North Pacific Regional Training Center, Kodiak, AK;

December 17, 1999, U.S. Coast Guard, North Pacific Regional Training Center, Kodiak, AK;

January 6, 2000, NMFS Alaska Fishery Science Center, 7600 Sand Point Way, NE, Seattle, WA; and

February 9, 2000, Westmark Shee Atika Hotel, 300 Seward Street, Sitka, AK.

Dated: December 9, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–32530 Filed 12–10–99; 4:54 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 241
Thursday, December 16, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 301, 318, and 320

[Docket No. 98–027R]

Meat Produced by Advanced Meat/Bone Separation Machinery and Recovery Systems

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) issued a proposed rule on April 13, 1998 (63 FR 17959) to clarify the regulations and to supplement the rules for ensuring compliance with the regulatory requirements for deriving meat using advances in mechanical meat/bone separation machinery and recovery (AMR) systems. The comment period closed on June 12, 1998. After consideration of the comments and additional information received by FSIS, the Agency is reopening the comment period for an additional 30 days to give the public an opportunity to review and comment on the methods and results used by the Agricultural Research Service to derive new iron values. The public also is encouraged to review and comment on materials submitted by a meat industry group regarding economic effects and worker safety issues relevant to the proposed rule.

DATES: Comments must be received on or before January 18, 2000.

ADDRESSES: Information used by FSIS in developing the proposed excess iron requirement and other information concerning economic consequences of the 1998 proposal will be available in the FSIS Docket Room and on the FSIS web site at *http://www.fsis.usda.gov.* Submit one original and two copies of written comments on the new materials to the FSIS Docket Clerk, Docket 97–027P, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. All comments submitted in response to this notice will be available for public inspection in the Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, FSIS at (202) 720–5627 or FAX (202) 690–0486.

SUPPLEMENTARY INFORMATION:

Background

In 1994, FSIS published a final rule (59 FR 62552; December 6, 1994) to amend the Federal meat inspection regulations by amending the definition of meat to include product resulting from advanced meat/bone separation machinery and recovery systems, or AMR. Advances made in recovery technology precipitated the 1994 rulemaking. The final rule reflected the Agency's position that calcium content limits and the physical composition of the bones were sufficient to ensure that the plant's production process was in control, and that the characteristics and composition of the resulting product were consistent with those of meat.

In 1996, in response to concerns raised by consumer groups and members of industry, FSIS issued a notice to solicit data and information regarding compliance requirements in the final rule. In 1996, the Agency also conducted a survey of the AMR beef product produced from neckbones from establishments covered by the final rule. The data and statistical analysis of the data were presented to the public in a report entitled ''Advanced Meat Recovery System Survey Project,'' dated February 21, 1997. As a result of a histological examination of the 1996 neckbone survey samples for hematopoietic cells (blood cell precursors), the Agency tentatively concluded that a large proportion of neckbone samples included more than a negligible amount of bone marrow. Further, the AMR product, with respect to other food chemistry properties, was not comparable to corresponding hand-deboned product, even though a high percentage of the AMR product satisfied the requirement regarding calcium. FSIS concluded that demonstrating compliance with the required limit on calcium content was not sufficient to ensure that the resulting product is comparable to meat derived by hand deboning.

In 1998, FSIS issued a 1998 proposed rule the objectives of which were: (1) ''To ensure that the characteristics and composition of the resulting product are consistent with those of meat,'' and (2) ''To ensure that the regulations provide clear standards * * * that include adequate markers for bone-related components at greater than unavoidable defect levels (levels consistent with defects anticipated when meat is separated from bone by hand).''

Accordingly, FSIS proposed that no more than a negligible amount of bone marrow could be in a product labeled as meat. FSIS also proposed to change the calcium requirement from 150 mg/100 g for a lot to 130 mg/100 g, and to add a requirement for ''excess'' iron, to ensure that no more than a negligible amount of bone marrow would be present. In addition, FSIS advised that it considered the previous criteria to be not adequate because they called for subjective judgment and focused on the physical condition of the bones at an intermediate step, rather than on the product being recovered. The Agency also proposed noncompliance criteria for spinal cord and central nervous system tissue.

The 1998 proposed ''excess'' iron standard was developed using data from the 1996 survey and was based on the observed relation between iron levels, adjusted by protein content, and a semi-qualitative measure of the levels of bone marrow cells in the AMR product. However, FSIS received comments on this proposed criterion that criticized the FSIS methodology and the measurement procedures that were used in developing the standard. The measurement procedures used during the 1996 FSIS survey employed a wet ash digestion procedure. In contrast, Agricultural Research Service (ARS) scientists, using a method that employs dry ash procedures for digestion, obtained iron results that were approximately double those obtained by the FSIS methodology. Further, the results obtained by the dry ash method were more consistent with levels reported in the former Agriculture Handbook 8 (now called USDA Nutrient Database for Standard Reference, Release 12).

FSIS received the ARS data, including the new values for iron, after the

comment period closed. Therefore, FSIS is making the ARS method and results available for public review, evaluation, and comment. A comparison of the results of the dry ash and wet ash procedures is provided in a technical paper available in the FSIS Docket Room and on the FSIS homepage.

Information on Economic Effects and Worker Safety Submitted by the Meat Industry

FSIS also invites comment on materials provided by an *ad hoc* committee representing the meat industry on the evolution and application of the meat/bone separation and recovery technology, potential worker safety effects, and the economic effects of provisions in the proposed rule.

The industry's information on worker safety estimates that if the proposed rule were adopted, meat plant employees would choose to revert to using vibrating hand-held knives, and that about 20 percent of meat establishment employees would be likely to experience cumulative trauma disorders.

According to the industry's economic analysis of the likely effects of the 1998 proposal, the estimated cost impact to the meat industry would be approximately $210 million for plant retro-fitting and reconfiguration, capital cost loss, new labor costs, and yield loss. The cost estimates were based on the assumption that the meat industry would no longer use the advanced meat/bone separation and recovery systems. The industry's report on AMR and the product that is produced emphasizes the efficiency of the technology and its benefits in improving worker safety and suggests that the concerns raised about the 1994 rule, and addressed in our 1998 proposed amendment to that rule, give rise to essentially economic issues, not food safety concerns. FSIS welcomes comment on the industry-supplied materials.

Additional Public Notification

FSIS has considered the potential civil rights impact of the AMR rules and proposed amendments on minorities, women, and persons with disabilities. Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this rulemaking, and request for further comment, and are informed about the mechanism for providing comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

FSIS provides a weekly Constituent Update, which is communicated via fax to more than 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent FAX list, FAX your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done in Washington, DC, on: December 8, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–32440 Filed 12–15–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–70–AD]

Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to BHTC Model 407 helicopters. This proposal would require modifying the door latch assemblies on all four crew and passenger doors. This proposal is prompted by an incident that occurred during a manufacturer's flight test, in which a door latch assembly broke, preventing occupants in the helicopter from opening the door. The actions specified by the proposed AD are intended to prevent a door latch rod assembly from disengaging from the door handle and preventing helicopter occupants from opening the door.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–70–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–70–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–70–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

Transport Canada, which is the airworthiness authority for Canada, has notified the FAA that an unsafe condition may exist on BHTC Model 407 helicopters. Transport Canada advises that a door latch rod assembly can disengage from the door handle and prevent the helicopter occupants from opening the door.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin No. 407–98–18, dated May 27, 1998 (ASB), which specifies modifying the attachment of two rod assemblies in the door latch assemblies on all four crew and passenger doors within the next 100 hours time-in-service. Transport Canada classified this alert service bulletin as mandatory and issued AD No. CF–98–19, dated July 28, 1998, in order to assure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of the Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 407 helicopters of the same type design registered in the United States, the proposed AD would require modifying each door latch assembly, part number (P/N) 20898–401, –402, –405, and –406. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

The FAA estimates that 146 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per helicopter to accomplish the modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $210. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $83,220.

The regulations proposed herein would not impose substantial direct compliance costs on state and local governments or 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. Therefore, in accordance with Executive Order 13132, the FAA has not consulted with state or local authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron Canada: Docket No. 98–SW–70–AD.

Applicability: Model 407 helicopters, serial numbers 53000 through 53228, with door latch assemblies, part number (P/N) 20898–401, –402, –405, and –406, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopter that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 100 hours time-in-service, unless accomplished previously.

To prevent a door latch rod assembly from disengaging from the door handle and preventing helicopter occupants from opening the door, accomplish the following:

(a) Modify each door latch assembly, P/N 20898–401, -402, -405, and -406, in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 407–98–18, dated May 27, 1998.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–98–19, dated July 28, 1998.

Issued in Fort Worth, Texas, on December 9, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–32585 Filed 12–15–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 186–99]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act

system of records from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act, 5 U.S.C. 552a. The system of records is the ''Worksite Enforcement Activity Record and Index (LYNX), JUSTICE/INS–025.''

The ''Worksite Enforcement Activity and Records Index (LYNX), JUSTICE/INS–025'' relates to each enforcement inspection or investigation pursued under the Immigration and Nationality Act, Section 274A(e), involving a specific individual employer. The exemptions are necessary to avoid interference during the conduct of criminal, civil, or administrative actions or investigations. Specifically, the exemptions are necessary to prevent subjects of investigations from frustrating the investigatory process. The exemptions are necessary to avoid interference during the conduct of civil or administrative actions or investigations.

DATE: Submit any comments by January 18, 2000.

ADDRESSES: Address all comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill—202–307–1823.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register,** the Department of Justice provides a description of the ''Worksite Enforcement Activity and Records Index (LYNX), JUSTICE/INS–025.'' This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have ''a significant economic impact on a substantial number of small entities.''

List of Subjects in Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Dated: December 6, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend part 16 of Title 28 of the Code of Federal Regulations as follows:

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.99 by adding paragraphs (m) and (n) to read as follows:

§ 16.99 Exemption of the Immigration and Naturalization Service Systems-limited access

* * * * *

(m) The Worksite Enforcement Activity and Records Index (LYNX) (JUSTICE/INS–025) system of records is exempt under the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5), and (8); and (g); but only to the extent that this system contains records within the scope of subsection (j)(2), and to the extent that records in this system are subject to exemption therefrom. In addition, this system of records is also exempt in part under the provisions of 5 U.S.C. 552a (k)(2) from subsections (c)(3); (d); and (e)(1), but only to the extent that this system contains records within the scope of subsection (k)(2), and to the extent that records in this system are subject to exemption therefrom.

(n) The following justifications apply to the exemptions from particular subsections:

(1) From subsection (c)(3) for reasons stated in paragraph (h)(1) above.

(2) From subsection (c)(4) for reasons stated in paragraph (h)(2) above.

(3) From the access and amendment provisions of subsection (d) for reasons stated in paragraph (h)(3) above.

(4) From subsection (e)(1) for reasons stated in paragraph (h)(4) above.

(5) From subsection (e)(2) for reasons stated in paragraph (h)(5) above.

(6) From subsection (e)(3) for reasons stated in paragraph (h)(6) above.

(7) From subsection (e)(5) for reasons stated in paragraph (h)(7) above.

(8) From subsection (e)(8) for reasons stated in paragraph (h)(8) above.

(9) From subsection (g) to the extent that the system is exempt from the access and amendment provisions of subsection (d).

[FR Doc. 99–32615 Filed 12–15–99; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 185–99]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act, 5 U.S.C. 552a. The system of records is: the ''Immigration and Naturalization Service, Attorney/Representative Complaint/Petition Files, JUSTICE/INS–022.''

The ''Immigration and Naturalization Service (INS), Attorney/Representative Complaint/Petition Files, JUSTICE/INS–022'' relates to complaints filed against nonagency attorneys and/or representatives who have engaged in unethical or unprofessional activities. The exemptions are necessary to avoid interference during the conduct of criminal, civil, or administrative actions or investigations. Specifically, the exemptions are necessary to prevent subjects of investigations from frustrating the investigatory process. The exemptions are necessary to avoid interference during the conduct of civil or administrative actions or investigations.

DATE: Submit any comments by January 18, 2000.

ADDRESSES: Address all comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill—202–307–1823.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register,** the Department of Justice provides a description of the ''Attorney/Representative Complaint/Petition Files, JUSTICE/INS–022.'' This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have ''a significant economic impact on a substantial number of small entities.''

List of Subjects in Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Dated: December 6, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend part 16 of Title 28 of the Code of Federal Regulations as follows:

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g) 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534, 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.99 by adding paragraphs (k) and (l) to read as follows:

§ 16.99 Exemption of the Immigration and Naturalization Service Systems-limited access.

* * * * *

(k) The Attorney/Representative Complaint/Petition File (JUSTICE/INS–022) system of records is exempt under the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3) and (4); (d); (e)(1); (2), (3), (5), and (8); and (g); but only to the extent that this system contains records within the scope of subsection (j)(2), and to the extent that records in this system are subject to exemption therefrom. In addition, this system of records is also exempt in part under the provisions of 5 U.S.C. 552a (k)(2) from subsections (c)(3); (d); and (e)(1), but only to the extent that this system contains records within the scope of subsection (k)(2), and to the extent that records in this system are subject to exempt therefrom.

(l) The following justification apply to the exemptions from particular subsections:

(1) From subsection (c)(3) for reasons stated in paragraph (h)(1) of this section.

(2) From subsection (c)(4) for reasons stated in paragraph (h)(2) above.

(3) From the access and amendment provisions of subsection (d) for reasons stated in paragraph (h)(3) above.

(4) From subsection (e)(1) for reasons stated in paragraph (h)(4) above.

(5) From subsection (e)(2) for reasons stated in paragraph (h)(5) above.

(6) From subsection (e)(3) for reasons stated in paragraph (h)(6) above.

(7) From subsection (e)(5) for reasons stated in paragraph (h)(7) above.

(8) From subsection (e)(8) for reasons stated in paragraph (h)(8) above.

(9) From subsection (g) to the extent that their system is exempt from the access and amendment provisions of subsection (d).

[FR Doc. 99–32614 Filed 12–15–99; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 217 and 219

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Proposed rule extension of public comment period.

SUMMARY: On October 5, 1999, the Forest Service published a proposed rule to guide land and resource management planning on national forests and grasslands (64 FR 54074). The public comment period for this proposed rule is scheduled to end on January 4, 2000. In response to requests, the Forest Service is extending the public comment period for an additional 30 days.

DATES: Comments must be submitted in writing and received by February 3, 2000.

ADDRESSES: Send written comments on the proposed planning rule to the CAET–USDA, Attn. Planning Rule, Forest Service, USDA 200 East Broadway, Room 103, Post Office Box 7669, Missoula, MT 59807; or via email to planreg/wo__caet@fs.fed.us; or via facsimile to (406) 329–3021.

Comments, including names and addresses when provided, are subject to public inspection and copying. The public may inspect comments received on this proposed rule in the Office of Deputy Chief, Third Floor, Southwest Wing, Yates Building, 14th and Independence Ave., SW, Washington, DC between the hours of 8:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Bob Cunningham, Ecosystem Management Coordination Staff, telephone: (202) 205–7820.

Dated: December 9, 1999.

Hilda Diaz-Soltero,

Associate Chief for Natural Resources.

[FR Doc. 99–32525 Filed 12–15–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB36

Land Uses; Special Uses; Recovery of Costs for Processing Special Use Applications and Monitoring Compliance With Special Use Authorizations; Meetings

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; meetings.

SUMMARY: On November 24, 1999, the Department of Agriculture, Forest Service, published proposed regulations for recovering costs associated with processing applications for special use authorizations to use and occupy National Forest System lands and monitoring compliance with these special use authorizations. The provisions of this proposed rule would apply to applications and authorizations for use of National Forest System lands. The Forest Service is scheduling seven public meetings to present information on the proposed cost recovery regulations.

DATES: The meetings are scheduled from January 4 through January 13, 2000. Comments must be received in writing by January 24, 2000.

ADDRESSES: The meetings will be held at the locations and times listed in the table under **SUPPLEMENTARY INFORMATION**. Send written comments to Director, Lands Staff, 2720, 4th Floor-South, Sidney R. Yates Federal Building, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. Submit electronic comments (as an ASCII file if possible) to: gtlands4/wo@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Randy Karstaedt, Lands Staff, (202) 205–1256 or Alice Carlton, Recreation, Heritage, and Wilderness Resources Staff, (202) 205–1145.

SUPPLEMENTARY INFORMATION: The seven public meetings will provide an opportunity for the public to learn about the proposed regulations for recovery of costs for processing special use applications and monitoring compliance with special use authorizations. Participants will be briefed on the major themes of the proposed regulations, which were published in the **Federal Register** on November 24, 1999 (64 FR 66342).

The meetings will be held at the locations and times listed in the following table:

Date	City	Location	Time
Tuesday, January 4	Washington, DC	Sydney Yates Federal Building, 14th & Independence, SW, Second Floor, Roosevelt Room.	10 a.m.–12 noon
Thursday, January 6	Manchester, NH	The Highlander Inn, Coldwell Room, 2 Highlander Way	1–3 p.m.
Thursday, January 6	Seattle, WA	Hilton Seattle Airport, Columbia West Room 17620 Pacific Highway South.	1–3 p.m.
Monday, January 10	Atlanta, GA	USFS Southern Regional Office, 1720 Peachtree Rd, NW	1–3 p.m.
Tuesday, January 11	Sacramento, CA	Holiday Inn Capitol Plaza, Fresno Room 300 J Street	1–3 p.m.
Wednesday, January 12	Salt Lake City, UT	Hilton Hotel, 150 West, 500 South	10 a.m.–12 noon
Thursday, January 13	Denver, CO	Marriott Denver West, 1717 Denver West Blvd. Golden, CO	1–3 p.m.

Dated: December 10, 1999.

Hilda Diaz-Soltero,

Associate Chief for Natural Resources.

[FR Doc. 99–32664 Filed 12–15–99; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–9927; FRL–6503–9]

Approval and Promulgation of State Implementation Plans (SIP) for the State of Alabama—Call for 1-hour Attainment Demonstration for the Birmingham, Alabama Marginal Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a State Implementation Plan (SIP) call to require the State of Alabama to submit a 1-hour ozone attainment SIP for the Birmingham marginal nonattainment area within six months of final action on the SIP call. EPA is proposing to issue this SIP call, because violations of the 1-hour ozone national ambient air quality standards (NAAQS) have continued to be recorded in the Birmingham area after the required attainment date of November 15, 1993. Exceedances of the 1-hour ozone NAAQS occurred in the Birmingham area during the 1995, 1996, 1997, and 1998 ozone seasons. There are more than 3 exceedances of the 1-hour ozone NAAQS during the most recent 3 year period (96–98), indicating continuing violations of the NAAQS. EPA is authorized under section 110(k)(5) of the Clean Air Act (CAA) to issue this SIP call requiring the State of Alabama to develop a 1-hour ozone attainment SIP revision for the Birmingham area. If the State of Alabama fails to submit an attainment SIP in response to this SIP call, EPA will issue a finding that the State failed to submit a required SIP pursuant to section 179(a) of the CAA. The finding would start the clocks for mandatory sanctions and development of a federal implementation plan (FIP).

DATES: Comments on this proposed action must be received in writing by January 18, 2000.

ADDRESSES: Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below.

Environmental Protection Agency, Region 4 Air Planning Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The telephone number is (404) 562–9038.

SUPPLEMENTARY INFORMATION: The supplemental information is organized in the following order:

I. Background
II. Why EPA is proposing a SIP call for the Birmingham marginal ozone nonattainment area.
III. What happens if the State of Alabama does not submit a SIP responding to this SIP call?

I. Background

On November 15, 1990, Jefferson and Shelby Counties, Alabama, were designated as marginal ozone nonattainment areas. Section 182(f)(1)(A) of the Clean Air Act (CAA) provides for an exemption for New Source Review offsets for nitrogen oxides (NO_X) in ozone nonattainment areas where a state shows and EPA agrees that additional NO_X reductions would not contribute to attainment of the ozone standard in that area. In 1992, the Alabama Department of Environmental Management (ADEM) requested and received from EPA a NO_X exemption under this statutory provision for the Birmingham marginal ozone nonattainment area. At the time of the request, the Birmingham area was required to attain the NAAQS for ozone by November 15, 1993. Given this deadline, offsets from new sources of NO_X applying for a permit to locate in the Birmingham area after November 15, 1992, would not in practice have been achieved prior to the expected ozone attainment date. Based on this information, EPA determined that the State of Alabama met the requirements of sections 182(a) and 182(f) of the CAA for marginal nonattainment areas. Furthermore, EPA determined that the application of NO_X provisions would not have contributed to the timely attainment of the ozone standard and subsequently approved the NO_X exemption for the Birmingham area. (58 FR 45439).

Section 107(d)(3)(E) of the CAA, set forth five specific requirements that states must include in a redesignation request in order for EPA to redesignate an area from nonattainment to attainment. The EPA provided guidance on redesignations in the General Preamble for the Implementation of the CAA, 57 FR 13498 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992). The primary memorandum providing further guidance with respect to section 107(d)(3)(E) of the amended Act is dated September 4, 1992, and issued by the Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Calcagni Memorandum).

The State of Alabama through the Alabama Department of Environmental Management (ADEM) submitted a request for redesignation of the Birmingham marginal ozone nonattainment area to attainment on March 16, 1995. The request included information showing that the Birmingham area had three years of air quality attainment data from 1990–1993, thus meeting the requirement for the area to attain the 1-hour ozone NAAQS by November 15, 1993. The area continued to maintain the ozone NAAQS through 1994. The submittal was rendered administratively complete on April 11, 1995. Supplemental information needed for the submittal to be approvable initially requested from ADEM in a February 15, 1995, letter addressing the prehearing submittal, was submitted on July 21, 1995. A direct

final rule approving the redesignation request was signed by the Regional Administrator and forwarded to the EPA Federal Register Office on August 15, 1995. The direct final rule as drafted contained a 30 day period for public comment on the redesignation request.

Prior to publication of the document and therefore prior to close of the administrative record, EPA determined that the area registered a violation of the ozone NAAQS on August 18, 1995. The EPA directed the Office of Federal Register to recall the document from being published. The ambient data was quality assured according to established procedures for validating such monitoring data. Subsequently, EPA withdrew the approval notice, and disapproved the maintenance plan and redesignation request. EPA also revoked the nitrogen oxides (NO_X) waiver for the Birmingham area which was previously granted based on a determination that the area had clean air quality data (62 FR 49158, September 19, 1997). Additional exceedances of the 1-hour ozone NAAQS were recorded in the Birmingham area during the 1996 and 1997 ozone seasons, prompting EPA to request that the State of Alabama adopt a federally enforceable commitment to submit a SIP that would provide for the attainment of the 1-hour ozone NAAQS. ADEM submitted the final commitment without Board adoption, precluding approval into the federally enforceable SIP.

II. Why EPA Is Proposing a SIP Call for the Birmingham Marginal Ozone Nonattainment Area

To assure that SIPs provide for the attainment and maintenance of the relevant NAAQS, section 110(k)(5) of the CAA authorizes EPA to find that a SIP is substantially inadequate to attain or maintain a NAAQS, and to require (''call for'') the State to submit, within a specified period, a SIP revision to correct the inadequacy. This CAA requirement for a SIP revision is known as a ''SIP call.'' The CAA authorizes EPA to allow a state up to 18 months to respond to a SIP call. EPA is proposing to issue this SIP call, because violations of the 1-hour ozone NAAQS have continued to be recorded in the Birmingham area after the required attainment date of November 15, 1993. EPA is authorized under section 110(k)(5) to issue this SIP call requiring the State of Alabama to develop a 1-hour ozone attainment SIP revision for the Birmingham area. In consideration of the length of time that has passed since the required attainment date of November 15, 1993, and the substantial air quality modeling already completed, EPA believes it is reasonable to require the State of Alabama to make the submittal within six months of finalization of this SIP call.

III. What Happens If the State of Alabama Does Not Submit a SIP Responding to This SIP Call?

Section 179(a) sets forth four findings that form the basis for application of sanctions. The first finding, that a State has failed to submit a plan or one or more elements of a plan required under the CAA, is the finding relevant to this rulemaking. If the State of Alabama fails to submit the required plan in response to this SIP call, EPA will issue a finding under section 179(a) of the CAA that the State failed to make a required SIP submittal. If within 18 months of the finding, the State of Alabama has not submitted an attainment SIP that EPA determines is complete, then the emission offset sanction will apply automatically pursuant to CAA section 179(a) and 40 CFR 52.31. Under this sanction, the ratio of emission reductions that must be obtained to offset increased emissions caused by new major sources or modifications to major sources in the Birmingham area must be at least two to one. If the State of Alabama does not make a complete submission within six months after the offset sanction applies, then the highway funding sanction will apply, in accordance with 40 CFR 52.31. In addition, sanctions would apply in the same manner if the State of Alabama submits a plan that EPA determines is incomplete or that EPA disapproves. Finally, the CAA section 110(c) provides that EPA promulgate a FIP no later than 24 months after a finding of failure to submit a SIP under section 179(a) unless the State of Alabama has submitted and EPA has approved the attainment plan.

Proposed Action

EPA is proposing to issue a SIP call to the State of Alabama for a 1-hour ozone attainment SIP revision for the Birmingham nonattainment area and to require the State of Alabama to submit a plan within six months of a final SIP call. In addition, EPA is proposing that the sanctions contained in sections 179(a) and (b) of the CAA and in 40 CFR 50.31 will apply if EPA makes a finding relevant to this required attainment demonstration plan for Birmingham. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the person listed in the **ADDRESSES** section.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not economically significant as determined under Executive Order 12866 and it

does not involve decisions intended to mitigate environmental health or safety risks that may disproportionately affect children.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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 officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)(RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (Public Law No. 104–121)(SBREFA), provides that whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available an initial regulatory flexibility analysis, unless it certifies that the proposed rule, if promulgated, will not have ''a significant economic impact on a substantial number of small entities,'' 5 U.S.C. 605(b). Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. See, *Motor and Equip, MFRS. Ass'n* v. *Nichols,* 142 F.3d 449 (D.C. Cir. 1998); *United Distribution Cos.* v. *FERC,* 88 F.3d 1105, 1170 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the rule).

The SIP Call would not establish requirements applicable to small entities. Instead, it would require Alabama to develop, adopt, and submit an attainment demonstration and would leave to Alabama the task of determining how to obtain those reductions, including which entities to regulate. Moreover, because Alabama would have discretion to choose which sources to regulate and how much emissions reductions each selected source would have to achieve EPA could not predict the effect of the rule on small entities.

For these reasons, EPA appropriately certified that the proposed rule would not have a significant impact on a substantial number of small entities. Accordingly, the Agency did not prepare an initial RFA for the proposed rule.

This rule would not have a significant impact on a substantial number of small entities because the rule does not establish requirements applicable to small entities. Therefore, I certify that this action will 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 approval action promulgated 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.

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 a new regulation. To comply with NTTAA, 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.

The 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 6, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–31724 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI23–01–6258; FRL–6510–2]

Approval and Promulgation of State Implementation Plans; Michigan; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The United States Environmental Protection Agency (EPA) is extending the comment period for a proposed action published November 9, 1999 (64 FR 61046). On November 9, 1999, the EPA proposed disapproval of requested revisions to the Michigan State Implementation Plan (SIP). The SIP revisions relate to the review of new and modified stationary sources of air pollution. At the request of the Michigan Department of Environmental Quality, the EPA is extending the comment period for 45 days.

DATES: The comment period is extended until January 24, 2000.

ADDRESSES: Send written comments to: Robert Miller, Chief, Permits and Grants Section (MI/MN/WI), Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Eaton Weiler, Environmental Engineer, Permits and Grants Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6041.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, New source review, Nitrogen dioxide, Ozone, Volatile Organic Compounds, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 6, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99–32648 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1819, and 1852

Elimination of Elements as a Category in Evaluations

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the NASA FAR Supplement (NFS) by eliminating the term ''elements'' as a category in evaluations. NASA does not numerically weight and score ''elements'' and therefore they have ceased to have significance in the evaluation and award of NASA's contracts.

DATES: Comments should be submitted on or before February 14, 2000.

ADDRESSES: Interested parties should submit written comments to Paul Brundage, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20456. Comments may also be submitted by e-mail to paul.brundage@hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: Paul Brundage, (202) 358–0481.

SUPPLEMENTARY INFORMATION:

A. Background

NASA does not numerically weight and score ''elements'' and therefore they have ceased to have significance in the evaluation and award of NASA's contracts. This proposed change will eliminate the term ''element'' as a category in evaluations from NFS Parts 1815, 1819, and 1852.

B. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the change modifies administrative procedures and does not impose any new requirements on offerors or contractors.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose record keeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Lists of Subjects in 48 CFR Parts 1815, 1819, and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1815, 1819, and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1815, 1819, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

2. In section 1815.303, paragraph (b)(i)(A) is amended by removing the words ''and elements,''.

3. In section 1815.304–70, paragraphs (a) and (b) are revised to read as follows:

1815.304–70 NASA evaluation factors.

(a) Typically, NASA establishes three evaluation factors: Mission Suitability, Cost/Price, and Past Performance. Evaluation factors may be further defined by subfactors. Evaluation subfactors should be structured to identify significant discriminators, or ''key swingers''—the essential information required to support a source selection decision. Too many subfactors undermine effective proposal evaluation. All evaluation subfactors should be clearly defined to avoid overlap and redundancy.

(b) Mission Suitability factor.

(1) This factor indicates the merit or excellence of the work to be performed or product to be delivered. It includes, as appropriate, both technical and management subfactors. Mission Suitability shall be numerically weighted and scored on a 1000-point scale.

(2) The Mission Suitability factor may identify evaluation subfactors to further define the content of the factor. Each Mission Suitability subfactor shall be weighted and scored. The adjectival rating percentages in 1815.305(a)(3)(A) shall be applied to the subfactor weight to determine the point score. The number of Mission Suitability subfactors is limited to five. The Mission Suitability evaluation subfactors and their weights shall be identified in the RFP.

(3) For cost reimbursement acquisitions, the Mission Suitability evaluation shall also include the results of any cost realism analysis. The RFP shall notify offerors that the realism of proposed costs may significantly affect their Mission Suitability scores.

* * * * *

4. In section 1815.370, paragraphs (b), (d)(4), and (h)(2) are revised; paragraphs (h)(3)(ii) is amended by removing ''elements,''; paragraph (i)(3) is amended by removing ''and elements,''; and paragraphs (i)(6)(ii) and (i)(7) are revised to read as follows:

1815.370 NASA source evaluation boards.

* * * * *

(b) The SEB assists the SSA by providing expert analyses of the offerors' proposals in relation to the evaluation factors and subfactors contained in the solicitation. The SEB will prepare and present its findings to the SSA, avoiding trade-off judgments among either the individual offerors or among the evaluation factors. The SEB will not make recommendations for selection to the SSA.

* * * * *

(d) * * *

(4) An SEB committee functions as a factfinding arm of the SEB, usually in a broad grouping of related disciplines (e.g., technical or management). The committee evaluates in detail each proposal, or portion thereof, assigned by the SEB in accordance with the approved evaluation factors and subfactors and summarizes its evaluation in a written report to the SEB. The committee will also respond to requirements assigned by the SEB, including further justification or reconsideration of its findings. Committee chairpersons shall manage the administrative and procedural matters of their committees.

* * * * *

(h) * * *

(2) The presentation shall focus on the significant strengths, deficiencies, and significant weaknesses found in the proposals, the probable cost of each proposal, and any significant issues and

problems identified by the SEB. This presentation must explain any applicable special standards of responsibility; evaluation factors and subfactors; the significant strengths and significant weaknesses of the offerors; the Government cost estimate, if applicable; the offerors' proposed cost/price; the probable cost; the proposed fee arrangements; and the final adjectival ratings and scores to the subfactor level.

(i) * * *

(6) * * *

(ii) Directly relate the significant strengths, deficiencies, and significant weaknesses to the evaluation factors and subfactors.

* * * * *

(7) *Final Mission Suitability Ratings and Scores.* Summarizes the evaluation subfactors, the maximum points achievable, and the scores of the offerors in the competitive range.

* * * * *

PART 1819—SMALL BUSINESS PROGRAMS

5. In section 1819.7206, paragraph (a) is amended by removing the words ''or element''.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. In section 1852.217–71, ''(OCTOBER 1998)'' is revised to read ''(MONTH/YEAR)'', and paragraph (g) is amended by removing the words ''and elements''.

7. In section 1852.217–72, ''(OCTOBER 1998)'' is revised to read ''(MONTH/YEAR)'', and paragraph (g) is amended by removing the words ''and elements''.

[FR Doc. 99–32658 Filed 12–15–99; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF34

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for the Santa Ana Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), reopen the comment period on the proposal to list the Santa Ana Sucker (Catostomus santaanae) as a threatened species. The comment period is extended to accommodate the public notice requirement of the Endangered Species Act of 1973, as amended, (Act) and to consider new scientific information. In addition, reopening of the comment period will allow further opportunity for all interested parties to submit comments on the proposal, which is available (see **ADDRESSES** section). We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully consider in the final determination.

DATES: The reopened comment period closes January 3, 2000.

ADDRESSES: Comments and materials concerning this proposed rule should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California, 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Glen Knowles, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section) at (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 1999, the Service published a rule proposing threatened status for the Santa Ana Sucker (Catostomus santaanae) in the **Federal Register** (64 FR 3915). The original comment period closed on March 29, 1999. Section 4(b)(5)(D) of the Act (16 U.S.C. 1531 *et seq.*) requires us to ''publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur.'' To accommodate this requirement, we are reopening the comment period for this proposal to list the Santa Ana sucker as a threatened species. The comment period now closes on January 3, 2000. Written comments should be submitted to the Service (see ADDRESSES section).

The Santa Ana Sucker was once one of the most common fish species in southern California. Today, the species is reduced to approximately 25 percent of its former range. These declines occurred coincident with the urbanization of the Los Angeles metropolitan area. The species is threatened by potential habitat destruction, natural and human-induced changes in streamflows, urban development and related land-use practices, intensive recreation, the introduction of non-native competitors and predators, and demographics associated with small populations. Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional occurrences of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on the Santa Ana Sucker or its habitat;

(5) Information regarding the introduction of the Santa Clara River population and the role it may play in the recovery of this species.

Comments previously submitted during the first comment period need not be resubmitted, as they will be fully considered in the final determination.

Author: The primary author of this notice is Glen Knowles (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 10, 1999.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 99–32576 Filed 12–15–99; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 64, No. 241
Thursday, December 16, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Pipestone Forest Health Project, Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of vegetation management through timber harvest and prescribed burning; road maintenance, reconstruction and construction; and habitat improvement projects such as instream fisheries habitat enhancement in that portion of the Pipestone landscape assessment area which encompasses the Pipe and Bobtail Creek drainages. The southern and northernmost extent of the landscape assessment area are located approximately 1 and 20 air miles, respectively, from Libby, Montana.

The proposed activities are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The purposes of the project are to improve forest health, improve watershed and fisheries habitat, and contribute to a sustained yield of timber.

The EIS will tier to the Kootenai National Forest Land and Resource Management Plan as amended by the Inland Native Fish Strategy (INFS), Final Environmental Impact Statement (FEIS), and Record of Decision (ROD) of September, 1987, which provides overall guidance for forest management of the area.

DATES: Written comments and suggestions should be received on or before January 18, 2000.

ADDRESSES: The Responsible Official is Bob Castaneda, the Kootenai National Forest Supervisor, 1101 U.S. Hwy 2 West, Libby, Montana 59923. Written comments and suggestions concerning this analysis may be sent to Malcom Edwards, Libby District Ranger, 12557 U.S. Hwy 37, Libby, Montana 59923.

FOR FURTHER INFORMATION CONTACT: Kirsten Kaiser, Project Coordinator, Libby Ranger District. Phone: (406) 293–7773.

SUPPLEMENTARY INFORMATION: The portion of the landscape assessment area being analyzed is approximately 81,300 acres; approximately 68,000 acres are under Forest Service ownership and approximately 13,200 acres are under private ownership. All proposed activities would occur on National Forest lands within the assessment area that includes all or parts of T34N, R32W, Section 36; T34N, R31W, Sections 11, 14, 15, 21–36; T34N, R30W, Section 1; T33N R32W, Sections 1, 12, 23–25, 36; T33N, R31W, Sections 1–36; T33N, R30W, Sections 18–20, 29–33; T32N, R32W, Sections 1, 12–13, 24, 25, 36; T32N, R31W, Sections 1–36; T32N, R30W, Sections 5–10, 15–21, 29–32; T31N, R31W, Sections 1–22, 29, 30; T31N, R30W, Sections 4–9, 17, 18; Principal Montana Meridian.

The assessment area includes the Gold Hill West Roadless Area. Prescribed burning is proposed in this roadless area. All remaining proposed activities are outside the boundaries of any inventoried roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or by any past or present legislative wilderness proposals.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individual delineated management areas (MAs). Most of the proposed timber harvest activities encompass five predominant MAs: 11, 12, 15, 16, 17. Briefly described, MA 11 is managed to maintain or enhance the winter range habitat effectiveness for big game species and produce a programmed yield of timber. MA 12 is managed to maintain or enhance the summer range habitat effectiveness for big game species and produce a programmed yield of timber. MA 15 focuses upon timber production using various silvicultural practices while providing for other resource values. MA 16 is managed to produce timber while providing for a pleasing view. MA 17 is managed to maintain or enhance a natural appearing landscape and produce a programmed yield of timber. Minor amounts of timber harvest and/or other proposed activities such as prescribed burning are found in other MAs, including 6, 13, 14, 18, 19.

Purpose and Need

The primary purpose and need for the project is to: (1) Improve forest health by reducing tree densities, changing species composition, stimulating natural processes, reducing insect and disease, and improving visual condition; (2) improve watershed health and fisheries habitat by improving habitat conditions, stabilizing stream segments, and reducing road effects; (3) contribute to a sustained yield of timber through improvement of forest health.

Proposed Activities

The Forest Service proposes to harvest approximately 18,000 CCF (hundred cubic feet), equivalent to 7.5 MMBF (million board feet) of timber through the application of a variety of harvest methods on approximately 1738 acres of forestland. Silvicultural systems include 378 acres of regeneration harvest, 1103 acres of commercial thinning type applications, 206 acres of salvage, and 51 acres of removal of small diameter material. Some treatments would feather or thin stands adjacent to existing units with abrupt edges to improve the visual setting for outdoor recreation.

The proposal also includes approximately 325 acres of prescribed burning in association with commercial timber harvest and approximately 3695 acres of prescribed burning without commercial timber harvest. Prescribed burning without timber harvest is proposed within management area 13 (designated old growth) and the Gold Hill West Roadless Area.

The Interdisciplinary Team (IDT) and District Ranger will consider firewood gathering opportunities for the public on roads to be opened for logging activities and/or on roads to be decommissioned will be considered by the IDT and District Ranger.

The proposal includes constructing an estimated 0.68 miles of specified permanent road to access vegetation treatment areas. A temporary increase in

open road densities (ORDs) associated with proposed management activities may result in the need for a site-specific Forest Plan ORD amendment in MA 12 (big game summer range).

The proposal includes expansion of the Upper Pipe Creek Gravel Pit to provide for mineral material necessary to maintain, reconstruct, construct and/or improve roads in the assessment area.

The proposal includes creation of cavity habitat through tree inoculation (inoculation kills the tree) resulting in habitat for cavity nesting species where cavity habitat is limited by past management activities.

In addition to the above activities, the following watershed and fisheries improvement activities are proposed which would include: (1) Placement of large woody debris in Deception Creek; (2) instream habitat enhancement work (placement of structures) in Pipe Creek; (3) habitat and stream stability improvement projects in Bobtail Creek; (4) approximately 30 miles of road reconstruction and maintenance; (5) maintenance and improvement of the East Fork Pipe Creek Road; (6) decommissioning approximately 56 miles of road.

Range of Alternatives

The Forest Service will consider a range of alternatives. A ''no action'' alternative in which none of the proposed activities would be implemented would be considered. Additional alternatives may be considered to achieve the project's purpose and need and to respond to specific resource issues and public concerns.

Preliminary Issues

Tentatively, several issues have been identified during the initial and informal communication phase with the public and internal communication with Forest Service personnel. These issues are briefly described below:

Cumulative Effects. What are the effects to various resource value of past and foreseeable activities on public and private lands within the project area?

Road Access and Decommissioning. What effect would decommissioning efforts have on public access?

Grizzly Bear. What effect would proposed activities have on the threatened grizzly bear?

Water Quality and Fisheries Habitat. What effects would the proposed actions have on water quality and bull trout habitat?

Noxious/invasive weeds. What effect will the proposed activities have on the control or spread of noxious weeds?

Timber Supply and Economics. How will the proposed activities affect timber supplies and produce economic benefits to local communities?

Public Involvement and Scoping

Beginning in March of 1997, preliminary efforts were made to involve the public in looking at opportunities for restoration and management of the Pipestone landscape assessment area. Public participation has consisted of a series of informational mailings, notices in local and regional newspapers, field trips, local television advertisements, a radio address, and an open house. Taking into account the comments received and information gathered during the preliminary analysis, it was decided to prepare an EIS for the Pipestone landscape assessment area. Comments received prior to this notice will be included in the documentation for the EIS.

This environmental analysis and decisionmaking process will enable interested and affected people to participate and contribute to the final decision. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, Tribes, local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will assist in identifying potential issues, identifying issues to be analyzed in depth, identifying alternatives to the proposed action, and considering additional alternatives which will be derived from issues identified during scoping activities.

Estimated Dates for Filing

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by July, 2000. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register.** The comment period on the Draft EIS will be a minimum of 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register.**

The Final EIS is scheduled to be completed by October of 2000. In the Final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewers Obligations

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

The Responsible Official, Kootenai Forest Supervisor Bob Castaneda, will decide which, if any, of the proposed projects will be implemented. This decision will document reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: December 6, 1999.

Bob Castaneda,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 99–32606 Filed 12–15–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Emergency Watershed Protection Program

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Availability of the Draft Programmatic Environmental Impact Statement.

SUMMARY: The Natural Resources Conservation Service (NRCS) announces the availability of the Draft Programmatic Environmental Impact Statement (PEIS), in compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) for the Emergency Watershed Protection (EWP) Program. The draft PEIS assesses the potential environmental impacts of alternatives for administration of the EWP Program, which provides funding and assistance to localities requesting EWP assistance to address watershed impairments, caused by a natural disaster, which pose an immediate threat to life and property.

The original PEIS for the EWP Program was prepared in 1975. NRCS has conducted a comprehensive review of the program that has resulted in changes to improve the environmental, economic, and technical soundness of activities conducted under the program. This draft PEIS supports management decisions on how best to revise the EWP Program to continue to effectively and efficiently meet EWP statutory requirements. It analyzes a range of reasonable alternatives to ensure compliance with all applicable laws and regulations while minimizing, to the greatest extent practicable, any potential adverse environmental or socioeconomic impacts.

Comments Invited

To ensure that the full range of issues and alternatives related to the EWP Program have been addressed, NRCS invites comments on this draft PEIS. Written comments should be postmarked by close of business on February 14, 2000, to ensure consideration. Comments postmarked after this date will be considered to the extent practicable.

WHERE TO COMMENT: Written comments on the draft PEIS and requests for copies of the draft PEIS should be directed to: EWP–PEIS, Post Office Box 745, Falls Church, Virginia 22040–0745; telephone (toll free): 1–877–534–8692; or e-mail at ewp@mangi.com.

FOR FURTHER INFORMATION CONTACT: For matters relating to the EWP Program, please contact the Director, Watersheds and Wetlands Division, USDA–NRCS, Post Office Box 2890, Washington, DC 20013–2890; telephone: (202) 720–3527.

For matters relating to USDA/NRCS compliance with NEPA, please contact: Andree DuVarney, National Environmental Specialist, Ecological Sciences Division, USDA–NRCS, Post Office Box 2890, Washington, DC 20013–2890; telephone: (202) 720–4925.

Information may also be obtained from the NRCS Worldwide website at: http://www.ftw.nrcs.usda.gov/BCS/enviro/nepa.htm (general NEPA compliance information); http://www.ftw.nrcs.usda.gov/programs.html (EWP Program).

SUPPLEMENTARY INFORMATION: The EWP Program funds and provides technical assistance to sponsoring organizations (entities of government) to implement emergency measures for runoff retardation and soil erosion prevention to assist in relieving imminent hazards to life and property from floods, drought, and the products of erosion created by natural disasters that have caused or are causing sudden impairment of a watershed. The program is authorized by Section 216 of the Flood Control Act of May 17, 1950 (Pub. L. 81–516; 33 U.S.C. 701b–1) and by Section 403 of Title IV of the Agricultural Credit Act of 1978, (Pub. L. 95–334), as amended by Section 382 of the Federal Agricultural Improvement and Reform Act of 1996 (Pub. L. 104–127) 16 U.S.C. 2204. NRCS regulations implementing the EWP Program are set forth in 7 CFR part 624.

NEPA only requires a PEIS be prepared for major Federal actions significantly affecting the environment. It is NRCS' preliminary opinion that the programmatic decisions being made about the EWP Program do not constitute such action, particularly when considered on a nation-wide basis. Nonetheless, NRCS considers NEPA and the PEIS process to be a useful tool to assist decision makers under certain circumstances. Therefore, the agency has made the decision to prepare a PEIS in this case to take full advantage of NEPA's public participation provisions, as a means of considering the concerns of individual members of the public and the State and local government sponsors who play a critical role in the EWP Program and to fully consider the impacts of alternative EWP Program policies and activities.

The final PEIS on the EWP Program will supersede the PEIS prepared on the program in 1975. The purpose of the draft PEIS is to assess the impacts of a range of EWP programmatic alternatives. It will also factor in changes that are being proposed to the administrative rule, such as the use of floodplain easements to address recurring hazards. NRCS expects that States may desire to tier to the national programmatic NEPA analysis to facilitate rapid response to EWP Program emergency requirements in the future, while maintaining adequate environmental review coverage for the necessary decision making.

Proposed Action Alternative

The proposed action is for NRCS to continue administering the EWP Program but with some revision for efficiency and effectiveness in program delivery, and to continue providing funding and technical assistance to aid appropriately sponsored entities in restoring watershed components to pre-disaster conditions.

Some of the changes NRCS is proposing action include:

1. Eliminate the terms ''exigency'' and ''non-exigency'';
2. Stipulate that ''Urgent and Compelling'' situations be addressed immediately upon discovery;
3. Set priorities for funding EWP sites;
4. Establish a cost-share rate of up to 75 percent for all EWP projects (except for projects in limited resource areas, where sponsors may receive up to 90 percent);
5. Stipulate that measures be economically, environmentally, and socially defensible;
6. Improve pre-disaster recovery readiness through interagency coordination, training, and planning;
7. Allow repair of impairments to agricultural lands using sound engineering alternatives;
8. Limit repair of sites to twice in a 10-year period;
9. Eliminate the requirement that multiple beneficiaries (property owners) be threatened before a site would be eligible for EWP Program repairs;
10. Apply principles of natural stream dynamics and bioengineering to the design of EWP practices;
11. Simplify the purchase of agricultural easements;
12. Repair enduring (structural or long-life) conservation practices;
13. Fund part of improved solutions;

14. Allow disaster recovery work in floodplain areas away from streams and in upland areas; and

15. Purchase easements on non-agricultural lands.

Signed at Washington, DC, on December 9, 1999.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service.

[FR Doc. 99–32526 Filed 12–15–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–028. Applicant: National Institutes of Health, National Institute of Mental Health, Division of Intramural Research Programs, Laboratory on Genetics, 9000 Rockville Pike, Building 36, Room 3D06, Bethesda, MD 20892–4094. Instrument: Robot and Microplate Filler with accessories, Models Q–BOT and Q–Fill. Manufacturer: GENETIX, United Kingdom. Intended Use: The instrument is intended to be used for studies of cDNAs, genes, and mRNAs in support of research on the genomics of the nervous system with initial efforts focusing on the discovery of new genes and the study of gene expression patterns in mouse and human brains. Application accepted by Commissioner of Customs: December 2, 1999.

Docket Number: 99–029. Applicant: University of Florida, Department of Electrical and Computer Engineering, 337 Larsen Hall, PO Box 116200, Building 722, Gainesville, FL 32611–6200. Instrument: Fiber Raman Laser, Model FRL–1480–600. Manufacturer: IP Fibre Devices Ltd., United Kingdom. Intended Use: The instrument will be used as a pump source to pump Er-doped waveguide lasers in lithium niobate that are being developed. The laser will also be used as a demonstration of the principle of optical pumping for the courses of the Photonics sequence (EEL 5441, EEL 6443) in the Electrical and Computer Engineering Department. Application accepted by Commissioner of Customs: November 30, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–32672 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Vermont, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 99–023. Applicant: University of Vermont, Burlington, VT 05405. Instrument: Microforge, Model MF–830. Manufacturer: Narishige Scientific Instrument Lab., Japan. Intended Use: See notice at 64 FR 57865, October 27, 1999. Reasons: The foreign instrument provides ultra-fine finishing of microelectrode tips for patch clamp studies using advanced fine polishing technology to eliminate imperfections on the tip surface that could damage delicate cell membranes. Advice received from: National Institutes of Health, October 21, 1999.

Docket Number: 99–024. Applicant: University of Vermont, Burlington, VT 05405. Instrument: Glass Microelectrode Puller, Model PP–830. Manufacturer: Narishige Scientific Instrument Lab., Japan. Intended Use: See notice at 64 FR 57865, October 27, 1999. Reasons: The foreign instrument provides: (1) A built-in power source to avoid voltage fluctuations, (2) ultra-precise tuning of heater settings and (3) a digital display for monitoring settings while fabricating microelectrodes for patch clamp studies. Advice received from: National Institutes of Health, October 21, 1999.

The National Institutes of Health advised in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–32671 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120999C]

Northwest Region Federal Fisheries Permits; Proposed Information Collection; Comment Request

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 14, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to William L. Robinson, NMFS, 7600 Sand Point Way NE, Seattle WA 98112, 206-526-6140.

SUPPLEMENTARY INFORMATION:

I. Abstract

Three data collections dealing with Federal fishery permits affect participants in the groundfish fishery off Washington, Oregon, and California (WOC). The three data collections involve: (1) exempted fishing permits (previously called experimental fishing permits); (2) limited entry permits for commercial fishermen; and (3) Federal permits for groundfish processing vessels over 125 ft (38 m) in length.

Exempted (experimental) fishing permits are issued to applicants for fishing activities that would otherwise be prohibited. The information provided by applications allows NMFS to evaluate the consequences of the exempted fishing activity and weigh the benefits and costs. Permittees are required to file reports on the results of the experiments and in some cases individual vessels are required to provide minimal data reports. This information allows NMFS to evaluate techniques used and decide if management regulations should be changed.

A Federal permit is required to commercially catch groundfish, and permits are endorsed for one or more of three gear types (trawl, longline, and fish pot). Participation in the fishery and access to permits have been limited as a way of controlling the overall fleet harvest capacity. Limited entry permits must be renewed annually and are transferable.

NOAA is also considering the implementation of a requirement that fish processing vessels over 125 ft (38 m) in length obtain a Federal fisheries permit to process groundfish in the WOC fishing area. Such a requirement may be needed to obtain adequate information on which to base both in-season and between-season management decisions affecting the Pacific groundfish resource, to know the number of vessels operating for the purpose of deployment of observers, and for enforcement monitoring.

II. Method of Collection

Permit applications are made on NMFS forms. The exempted fishing data reports from individual vessels which may be a verbal data collection submitted in person, faxed, or submitted by telephone by the vessel owner or operator to NMFS or the states of Washington, Oregon, or California.

III. Data

OMB Number: 0648–0203
Form Number: None
Type of Review: Regular submission

Affected public: Business or other for-profit (owners and operators of vessels that fish for or process groundfish in ocean waters 0–200 nautical miles off of Washington, Oregon, or California.

Estimated Number of Respondents: 796

Estimated Time Per Response: 20 minutes for a limited entry or at-sea processor permit application; 60 minutes of an exempted fishing application; 60 minutes for a summary report of actions under an exempted fishing permit, and 10 minutes for data reports on exempted fishing permit activities

Estimated Total Annual Burden Hours: 598

Estimated Total Annual Cost to Public: $26,214

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 7, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 99–32544 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120999E]

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

Title: Application Form for Membership on a National Marine SanctuaryAdvisory Council.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: In use without OMB approval.

Burden Hours: 75 hours.

Number of Respondents: 75.

Average Hours Per Response: 1 hour.

Needs and Uses: Section 315 of the National Marine Sanctuaries Act allows the Secretary of Commerce to establish one or more advisory councils to provide advice regarding the designation and management of national marine sanctuaries. The Councils also provide a variety of different perspectives and interests and help link the sanctuary to the community. Councils are individually chartered for each sanctuary to meet the needs of that sanctuary. Once a council has been chartered, the Sanctuary Manager begins a process to recruit members for that council by providing notice to the public and asking interested parties to apply for the available seats. An application and guidelines for a narrative submission must be submitted to the Sanctuary Manager. The application is used to choose the best applicants to serve as members on the Council.

Affected Public: Individuals or households, businesses or other for-profit organizations, or not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 724 17th Street, NW, Washington, DC 20503.

Dated: December 6, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–32545 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120899E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) Economic Subcommittee will hold a meeting which is open to the public.

DATES: The meeting will begin on Thursday, January 13, 2000, at 1 p.m. and will continue through 4 p.m. Friday, January 14, 2000. The Thursday session may go into the evening until business for the day is completed. The Friday session will begin at 8 a.m. An opportunity for public comment will be provided at 4 p.m. on Thursday.

ADDRESSES: The meeting will be held in the conference room at the Pacific Fishery Management Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop a discussion paper about overcapacity in Pacific coast groundfish fisheries and potential ways the Council may choose to consider to reduce capacity in these fisheries. The purpose of the discussion paper is to help the Council develop an understanding of the capacity problem, and highlight the methods, information, and resources needed for evaluating and developing capacity reduction programs.

Although non-emergency issues not contained in this notice may come before the economic subcommittee for discussion, those issues will not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the SSC Economic Subcommittee's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: December 10, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–32590 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110599A]

Marine Mammals; File No. 368D

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 938, issued to Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039–0450 [Principal Investigator**:** Dr. James T. Harvey], was amended to extend the expiration date to December 31, 2000.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, (301/713–2289).

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR part 222–226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 8, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–32547 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bahrain

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bahrain and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2000 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bahrain and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I 237, 239pt. [1], 331–336, 338, 339, 340–342, 345, 347, 348, 350–352, 359pt. [2], 431, 433–436, 438, 440, 442–448, 459pt. [3], 631, 633–636, 638, 639, 640–647, 648, 649, 650–652, 659pt. [4], 831, 833–836, 838, 840, 842–847, 850–852, 858 and 859pt. [5], as a group.	51,902,949 square meters equivalent.
Sublevels in Group I	
338/339	721,202 dozen.
340/640	346,020 dozen of which not more than 259,514 dozen shall be in Categories 340–Y/640–Y [6].

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 359pt.: all HTS numbers except 6406.99.1550.

[3] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[4] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[5] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[6] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 4, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32622 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Burma (Myanmar)

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Burma (Myanmar) and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the availability of the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Burma (Myanmar) and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	99,757 dozen.
342/642	26,945 dozen.
347/348	139,759 dozen.
351/651	42,347 dozen.
448	2,458 dozen.
647/648/847	26,061 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated September 30, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32623 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of January 20, 1999, between the Governments of the United States and Cambodia establishes limits for the period January 1, 2000 through December 31, 2000.

These limits may be revised if Cambodia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Cambodia.

Moreover, these limits may be revised in light of the U.S. determination as to whether working conditions in the Cambodian textile and apparel sector substantially comply with Cambodian labor law and internationally recognized core labor standards (see **Federal Register** notice 64 FR 60428, published on November 5, 1999).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

The special carryforward for Categories 338/339 and 347/348/647/648 is being deducted from the 2000 limits. Normal carryforward is being deducted for all categories except Categories 331/631.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement, dated January 20, 1999, between the Governments of the United States and Cambodia, you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Cambodia and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	1,643,000 dozen pairs.
334/634	170,000 dozen.
335/635	65,000 dozen.
338/339	2,400,000 dozen.
340/640	750,000 dozen.
345	94,000 dozen.
347/348/647/648	2,760,000 dozen.
352/652	600,000 dozen.
438	85,500 dozen.
445/446	104,500 dozen.
638/639	900,000 dozen.
645/646	250,000 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Cambodia.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated February 1, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Cambodia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Cambodia.

Moreover, these limits may be revised in light of the U.S. determination as to whether working conditions in the Cambodian textile and apparel sector substantially comply with Cambodian labor law and internationally recognized core labor standards (see **Federal Register** notice 64 FR 60428, published on November 5, 1999).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32626 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limit for textile products, produced or manufactured in Fiji and exported during the period January 1, 2000 through December 31, 2000 is based on a limit notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit for the 2000 period. The limit for Categories 338/339/638/639 and the sublimit for Categories 338–S/339–S/638–S/639–S are being reduced for carryforward applied to the 1999 limit and sublimit.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 338/339/638/639, produced or manufactured in Fiji and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of 1,451,252 dozen of which not more than 1,209,378 dozen shall be in Categories 338–S/339–S/638–S/639–S [1].

The limit set forth above is subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limit for that year (see directive dated October 2, 1998) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32624 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 16, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 68247, published on December 10, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on December 16, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	65,394,273 square meters.
313	47,648,650 square meters.
314	9,215,724 square meters.
315	14,508,280 square meters.

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers in Category 638 except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers in Category 639 except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

Category	Adjusted twelve-month limit [1]
317	31,907,432 square meters.
334/634	150,003 dozen.
335/635	670,087 dozen.
345	208,402 dozen.
347/348	799,857 dozen.
363	54,667,160 numbers.
369–D [2]	1,536,548 kilograms.
369–S [3]	842,613 kilograms.
647/648	671,546 dozen.
Group II.	
200, 201, 220–227, 237, 239pt. [4], 300, 301, 331–333, 350, 352, 359pt. [5], 360–362, 600–604, 606 [6], 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt. [7], 666, 669pt. [8], 670, 831, 833–838, 840–858 and 859pt. [9], as a group.	142,664,194 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[5] Category 359pt.: all HTS numbers except 6406.99.1550.

[6] Category 606: all HTS numbers except 5403.31.0040 (for administrative purposes Category 606 is designated as 606(1)).

[7] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[8] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[9] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32620 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Suspension of Group II Restriction for Certain Man-Made Fiber Textile Products Produced or Manufactured in India

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending suspension of the Group II restriction for certain products from India.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Lori Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A document published in the **Federal Register** on December 10, 1998 (63 FR 68248) announced the extension of the suspension of the Group II restriction for rayon filament yarn in HTS number 5403.31.0040 in Category 606 from India for the period January 1, 1998 through December 31, 1998. Also see 62 FR 60826, published on November 13, 1997.

The Committee for the Implementation of Textile Agreements has decided to extend the suspension for an additional twelve-month period beginning on January 1, 2000 and extending through December 31, 2000. A visa is still required for this product.

Anyone wishing to comment or provide data or information regarding the treatment of imports in HTS number 5403.31.0040 from India or to comment on domestic production or availability of products included in HTS number 5403.31.0040 is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Becky Geiger.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on January 1, 2000, man-made fiber textile products in HTS 5403.31.0040 in Category 606, in Group II, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, shall not be subject to the Group II quota established for the 2000 period. A visa is still required for this product.

For U.S. Customs' administrative purposes, the remaining HTS numbers in Category 606 shall be designated Category 606(1) [1].

To facilitate implementation of the Uruguay Round Agreement on Textiles and Clothing, effective on January 1, 2000, entry/entry summary procedures shall be required, and you shall continue to count imports for consumption and withdrawals from warehouse for consumption of textile products in HTS number 5403.31.0040 in Category 606(2) [2], produced or manufactured in India and exported during the period January 1, 1999 through December 31, 1999.

Also effective on January 1, 2000, entry/entry summary procedures shall be required, and you shall count imports for consumption and withdrawals from warehouse for consumption of textile products in HTS number 5403.31.0040 in Category 606(2), produced or manufactured in India and exported during the period January 1, 2000 through December 31, 2000.

Inasmuch as these imports may later be charged against the Group II level, it is important that an accurate count be taken.

The Committee for the Implementation of Textile Agreements has determined that this

[1] Category 606(1): all HTS numbers except 5403.31.0040 (Category 606(2)).

[2] Category 606(2): only HTS number 5403.31.0040.

action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32621 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in India and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998. Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
218	17,359,237 square meters.
219	78,290,621 square meters.
313	46,446,892 square meters.
314	9,320,312 square meters.
315	15,654,390 square meters.
317	44,777,942 square meters.
326	10,176,806 square meters.
334/634	166,594 dozen.
335/635	741,674 dozen.
336/636	1,053,498 dozen.
338/339	4,409,949 dozen.
340/640	2,295,317 dozen.
341	4,733,345 dozen of which not more than 2,840,005 dozen shall be in Category 341–Y [1].
342/642	1,501,893 dozen.
345	232,071 dozen.
347/348	746,646 dozen.
351/651	317,471 dozen.
363	54,248,537 numbers.
369–D [2]	1,553,985 kilograms.
369–S [3]	847,628 kilograms.
641	1,748,587 dozen.
647/648	1,015,388 dozen.
Group II	
200, 201, 220–227, 237, 239pt. [4], 300, 301, 331–333, 350, 352, 359pt. [5], 360–362, 600–604, 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt. [6], 666, 669pt. [7], 670, 831, 833–838, 840–858 and 859pt. [8], as a group.	135,993,674 square meters equivalent.

[1] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[5] Category 359pt.: all HTS numbers except 6406.99.1550.

[6] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[7] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[8] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated December 4, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32625 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kuwait

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Kuwait and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2000 period. The 2000 level for Category 361 is zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kuwait and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	326,434 dozen.
341/641	179,539 dozen.
361	–0–

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated October 14, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32627 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of September 15, 1994, as amended and extended, between the Governments of the United States and the Lao People's Democratic Republic, establishes a limit for Categories 340/640 for the period January 1, 2000 through December 31, 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limit for Categories 340/640.

This limit may be revised if Laos becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Laos.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of September 15, 1994, as amended and extended, between the Governments of the United States and the Lao People's Democratic Republic, you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Laos

and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of 175,889 dozen.

The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Lao People's Democratic Republic.

Products in the above categories exported during 1999 shall be charged to the applicable category limit for that year (see directive dated September 30, 1998) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

This limit may be revised if Laos becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Laos.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32628 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Macau and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
219	3,341,886 square meters.
225	11,696,601 square meters.
313	8,354,715 square meters.
314	1,392,452 square meters.
315	4,177,358 square meters.
317	8,354,715 square meters.
326	3,341,886 square meters.
333/334/335/833/834/835	351,109 dozen of which not more than 184,951 dozen shall be in Categories 333/335/833/835.
336/836	83,220 dozen.
338	451,997 dozen.
339	1,893,252 dozen.
340	427,814 dozen.
341	275,931 dozen.
342	124,831 dozen.
345	76,331 dozen.
347/348/847	1,069,864 dozen.
350/850	83,220 dozen.
351/851	99,866 dozen.
359–C/659–C [1]	499,324 kilograms.
359–V [2]	166,443 kilograms.
611	3,341,886 square meters.
625/626/627/628/629	8,354,715 square meters.
633/634/635	743,501 dozen.
638/639/838	2,315,282 dozen.
640	164,619 dozen.
641/840	282,937 dozen.
642/842	164,841 dozen.
645/646	385,882 dozen.
647/648	778,441 dozen.
659–S [3]	166,443 kilograms.
Group II	
400–431, 433–438, 440–448, 459pt. [4], 464 and 469pt. [5], as a group.	1,575,728 square meters equivalent.
Sublevel in Group II	
445/446	84,949 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 3, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32629 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATIONS OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Oman

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated December 13, 1993 and January 15, 1994, as amended and extended, between the Governments of the United States and the Sultanate of Oman establishes limits for textile products, produced or manufactured in Oman and exported during the period January 1, 2000 and through December 31, 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 2000 period.

These limits may be revised if Oman becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Oman.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Bilateral Textile Agreement, effected by exchange of notes dated December 13, 1993 and January 15, 1994, as amended and extended, between the Governments of the United States and the Sultanate of Oman, you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334/634	159,135 dozen.
335/635	283,704 dozen.
338/339	588,686 dozen.
340/640	283,704 dozen.
341/641	212,777 dozen.
347/348	1,014,241 dozen.
647/648/847	434,923 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Sultanate of Oman.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 3, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Oman becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Oman.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32630 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Qatar and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to

the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2000 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	523,053 dozen.
341/641	241,410 dozen.
347/348	595,476 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 3, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32631 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Sri Lanka and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits. The limits for certain categories have been reduced for carryforward applied to the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	378,998 dozen.
314	5,657,900 square meters.
331/631	3,793,314 dozen pairs.
333/633	71,342 dozen.
334/634	789,878 dozen.
335/835	347,546 dozen.
336/636/836	520,269 dozen.
338/339	1,579,758 dozen.
340/640	1,385,708 dozen.
341/641	2,416,123 dozen of which not more than 1,610,749 dozen shall be in Category 341 and not more than 1,610,749 dozen shall be in Category 641.
342/642/842	821,473 dozen.
345/845	225,173 dozen.
347/348/847	1,323,965 dozen.
350/650	147,443 dozen.
351/651	408,385 dozen.
352/652	1,783,520 dozen.
359–C/659–C [1]	1,717,200 kilograms.
360	1,885,967 numbers.
363	15,270,980 numbers.
369–D [2]	1,146,506 kilograms.
369–S [3]	955,418 kilograms.
434	7,566 dozen.
435	16,213 dozen.
440	10,808 dozen.
611	7,386,705 square meters.
635	463,397 dozen.
638/639/838	1,191,469 dozen.
644	631,903 numbers.
645/646	267,527 dozen.
647/648	1,355,213 dozen.

Category	Twelve-month restraint limit
840	366,376 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated September 30, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32632 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

December 10, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the United Arab Emirates and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC). Some limits have been reduced for carryforward used.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 2000 period. The 2000 levels for Categories 315 and 361 are zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notices 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000 in excess of the following levels of restraint:

Category	Twelve-month restraint limit
219	1,495,474 square meters.
226/313	2,557,297 square meters.
315	–0–.
317	41,254,401 square meters.
326	2,414,093 square meters.
334/634	304,773 dozen.
335/635/835	200,606 dozen.
336/636	249,666 dozen.
338/339	753,807 dozen of which not more than 502,537 dozen shall be in Categories 338–S/339–S [1].
340/640	467,320 dozen.
341/641	409,211 dozen.
342/642	325,094 dozen.
347/348	529,296 dozen of which not more than 264,647 dozen shall be in Categories 347–T/348–T [2].
351/651	220,860 dozen.
352	430,748 dozen.
361	–0–.
363	8,046,974 numbers.
369–O [3]	780,114 kilograms.
369–S [4]	112,015 kilograms.
638/639	304,773 dozen.
647/648	436,843 dozen.
847	274,297 dozen.

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[2] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[4] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 3, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–32633 Filed 12–15–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.116A; 84.116B]

Fund for the Improvement of Postsecondary Education—Comprehensive Program (Preapplications and Applications) Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities.

Eligible Applicants: Institutions of higher education or combinations of those institutions and other public and private nonprofit educational institutions and agencies.

Deadline for Transmittal of Preapplications: February 11, 2000.

Deadline for Transmittal of Final Applications: May 19, 2000.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

Deadline for Intergovernmental Review: July 18, 2000.

Applications Available: December 17, 1999.

Available Funds: It is anticipated that approximately $19,000,000 will be available for an estimated 150 new awards under the Comprehensive Program. In FY 1998, the Secretary held separate Special Focus competitions for the Controlling the Cost of Postsecondary Education Program and the Disseminating Proven Reforms Program. In order to increase, through targeted outreach efforts, the number of applications for projects on cost control and dissemination, the Secretary plans to include these topics as invitational priorities under this Comprehensive Program competition. The actual level of funding, if any, is contingent on the number and quality of applications.

Estimated Range of Awards: $50,000 to $200,000 per year.

Estimated Average Size of Awards: $127,000.

Estimated Number of Awards: 150.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98, and 99.

Priorities

Invitational Priorities

While applicants may propose any project within the scope of 20 U.S.C. 1138(a), under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Projects to make more productive use of resources to improve teaching and learning; and to increase learning productivity—that is, to transform programs and teaching to promote more student learning relative to institutional resources expended.

Invitational Priority 2—Projects to disseminate innovative postsecondary educational programs that have already been locally developed, implemented, and evaluated.

Invitational Priority 3—Projects to support new ways of ensuring equal access to postsecondary education, and to improve rates of retention and program completion, especially for low-income and underrepresented minority students, whose retention and completion rates continue to lag disturbingly behind those of other groups.

Invitational Priority 4—Projects to improve campus climates for learning by creating an environment that is safe, welcoming, and conducive to academic growth for all students.

Invitational Priority 5—Projects to support innovative reforms of undergraduate, graduate, and professional curricula that improve not only what students learn, but how they learn.

Invitational Priority 6—Projects to support the professional development of full- and part-time faculty by assessing and rewarding effective teaching; promoting new and more effective teaching methods; and improving the preparation of graduate students who will be future faculty members.

Invitational Priority 7—Projects to promote innovative school-college partnerships and to improve the preparation of K–12 teachers, in order to enhance students' preparation for, access to, and success in college.

Methods for Applying Selection Criteria

For preapplications (preliminary applications) and final applications (applications), the Secretary gives equal weight to each of the selection criteria. Within each of these criteria, the Secretary gives equal weight to each of the factors.

Selection Criteria

In evaluating preapplications and final applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 75.210.

Preapplications. In evaluating preapplications, the Secretary uses the following selection criteria:

(a) Need for project. The Secretary reviews each proposed project for its need, as determined by the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) Significance. The Secretary reviews each proposed project for its significance, as determined by the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) Quality of the project design. The Secretary reviews each proposed project for the quality of its design, as determined by the extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(d) Quality of the project evaluation. The Secretary reviews each proposed project for the quality of its evaluation, as determined by the extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Final Applications. In evaluating final applications, the Secretary uses the following selection criteria:

(a) Need for the project. The Secretary reviews each proposed project for its need, as determined by the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) Significance. The Secretary reviews each proposed project for its significance, as determined by the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) Quality of the project design. The Secretary reviews each proposed project for the quality of its design, as determined by the following factors:

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(d) Quality of the project evaluation. The Secretary reviews each proposed project for the quality of its evaluation, as determined by the following factors:

(1) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(2) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(3) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(d) The quality of the management plan. The Secretary reviews each proposed project for the quality of its management plan, as determined by the plan's adequacy to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(e) Quality of project personnel. The Secretary reviews each proposed project for the quality of project personnel who will carry out the proposed project, as determined by the following factors:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The qualifications, including relevant training and experience, of key project personnel.

(f) Adequacy of resources. The Secretary reviews each proposed project for the adequacy of its resources, as determined by the following factors:

(1) The extent to which the budget is adequate to support the proposed project.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(3) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(4) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(5) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.116A.

For Further Information Contact: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006–8544. Telephone: (202) 502–7500. The application text may be obtained from the Internet address http://www.ed.gov/FIPSE/

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact listed in the preceding paragraph.

Individuals with disabilities also may obtain a copy of the application package in an alternate format by contacting that person. However, the Department is not able to reproduce in alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official

edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at http://www/access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 1138–1138d.

Dated: December 9, 1999.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–32670 Filed 12–15–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.235H]

Special Demonstration Programs; Correction Notice; Notice of Changes in Application Kit and Extension of Deadline Dates

Applicable Regulations: A notice inviting applications for new awards for fiscal year (FY) 2000 was published in the **Federal Register** on August 27, 1999 (64 FR 46897). That application notice cited applicable regulations as follows: a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and b) The regulations for this program in 34 CFR part 369.

Please note that the statutory changes in sections 7 and 303(b) of the Rehabilitation Act of 1973, as amended, supersede the following sections of the regulations in 34 CFR part 369:

1. Section 369.1(b)(2), which limited special demonstration programs to those providing vocational rehabilitation services.

2. Section 369.2(b), which limited eligibility for assistance to those entities providing vocational rehabilitation services.

3. Section 369.4, which contained definitions. The applicable definitions are in section 7 of the Rehabilitation Act of 1973, as amended.

In addition, the following changes should be made to the application kit, which was sent to potential applicants interested in applying for this competition:

1. 34 CFR part 369 applies except for §§ 369.1(b)(2), 369.2(b), and 369.4.

2. Item 11 in Section A of the application kit, including the ''SPECIAL PROJECTS DON'T DO'' provision, does not apply.

Deadline for Transmittal of Applications: The deadline has been extended to March 3, 2000.

Deadline for Intergovernmental Review: May 2, 2000.

FOR FURTHER INFORMATION CONTACT: Pamela Martin or Alfreda Reeves, U.S. Department of Education, 400 Maryland Avenue, SW., room 3314, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 205–8494 or (202) 205–9361. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

FOR APPLICATIONS CONTACT: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (ed pubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.235H.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Program Authority: 29 U.S.C. 773(b).

Dated: December 10, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–32529 Filed 12–15–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on November 12, 1998, an arbitration panel rendered a decision in the matter of *Steven Erickson* v. *Washington Department of Services for the Blind (Docket No. R–S/97–1).* This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a) upon receipt of a complaint filed by petitioner, Steven Erickson.

FOR FURTHER INFORMATION: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington DC 20202–2738. Telephone: (202) 205–9317. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Access at: http://www.access.gpo.gov/nara/index.html.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (the Act), (20 U.S.C. 107d–2(c)), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged violation of the Act by the Washington Department of Services for the Blind, the State licensing agency (SLA), in denying Mr. Steven Erickson's request to operate 21 vending machines located outside his snack bar facility. A summary of the facts is as follows: Mr. Steven Erickson, the complainant, was licensed by the SLA on May 1, 1992, to operate a snack bar facility, which included vending machines, at the Madigan Army Hospital Medical Center in Fort Lewis, Washington.

In addition to the vending machines located inside the snack bar and operated by the complainant, there were 21 other vending machines at various locations throughout the hospital center. These vending machines were operated and serviced by a private vending company through a contract with the SLA. During 1992 and 1993, as required under the Act, Mr. Erickson received all income generated from the 21 vending machines. In 1995, complainant submitted a request to the SLA that he be permitted to operate the 21 vending machines. This request was denied by the SLA. Mr. Erickson challenged the SLA's refusal to allow him to operate these vending machines.

The SLA alleged that, as the agency designated to administer the Randolph-Sheppard program in the State of Washington, it had the responsibility to arrange for the placement and operation of vending equipment at the Madigan Army Hospital Medical Center. The SLA further alleged that it had valid business reasons for its decision to contract out the operation of the 21 vending machines to a private vending company.

Mr. Erickson requested and received an administrative review of this matter on February 5, 1996. As a result of an adverse decision, the complainant requested an evidentiary hearing, which was held on March 14, 1996. The hearing officer issued a final order on May 9, 1996, finding that the decision by the SLA to contract out the 21 vending machines to a private contractor was a lawful exercise of the agency's discretion and should be affirmed. Mr. Erickson filed for reconsideration of the decision on May 15, 1996. The SLA denied the petition for reconsideration on May 24, 1996. The SLA adopted the hearing officer's decision as final agency action, and it is this decision that Mr. Erickson sought to have reviewed by a Federal arbitration panel. A Federal arbitration hearing on this matter was held on September 24 and 25, 1997.

Arbitration Panel Decision

The issues before the arbitration panel as raised in the complaint were: (1) Whether the order and actions of the Director of the SLA failed to give priority to blind vendors as required by the State statute; (2) whether there was substantial evidence to support the Administrative Law Judge's (ALJ) conclusion that only profits from vending machines inside the snack bar facility were included in the vendor agreement between complainant and the SLA; (3) whether the order and actions of the SLA are arbitrary and capricious with regard to determining which public facilities are available for contracting to blind vendors; (4) whether there was substantial evidence to support the ALJ's finding that the operation of the vending machines by the complainant would place an undue financial burden on the SLA; and (5) whether the SLA correctly concluded that vending machines at the Madigan Army Hospital Medical Center outside the snack bar are not available to blind vendors.

The majority of the arbitration panel found that neither the Act, its implementing regulations, nor the State regulations precluded the SLA from determining that it best served the objectives and needs of the community of blind vendors to divide the permit into two components consisting of a blind vendor's snack bar/espresso bar/cart and a vending machine route operated by a private vending company. This arrangement allowed for the distribution of a percentage of the profits to the SLA, thus allowing the SLA to serve the collective needs of all of the blind vendors.

The panel further concluded that, while the complainant had every right to seek to improve his economic status, his needs conflicted with the SLA's concerns and needs to serve the broader interests of all the blind vendors in the program. In the view of the SLA, licensing individual blind vendors to operate vending machine routes could leave the program without adequate funds to serve the collective needs of all of the blind vendors.

Accordingly, the majority of the panel found that the SLA acted within the scope of its authority. The division of the permit at the Madigan Army Hospital Medical Center was lawful, and deference must be given to the SLA's expertise in administering the Act in the broad interest of all the blind vendors.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: December 10, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–32668 Filed 12–15–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on September 25, 1998, an arbitration panel rendered a decision in the matter of *David J. Stewart* v. *Alabama Department of Rehabilitation Services (Docket No. R–S/97–12).* This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a) upon receipt of a complaint filed by petitioner, David J. Stewart.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington DC 20202–2738. Telephone: (202) 205–9317. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)) (the Act), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged improper denial of Mr. David J. Stewart's request to bid on a vending location at Fort McClellan, Anniston, Alabama by the Alabama Department of Rehabilitation Services, the State licensing agency (SLA). A summary of the facts is as follows: In May 1994, the United States Army through the Directorate of Contracting issued a solicitation for bids to provide food services at Fort McClellan, Anniston, Alabama. The advertised solicitation merely referred to the provision of food services. There was no mention that the facility was to be operated as a cafeteria-type operation, nor were there any restrictions limiting applicants to only persons with cafeteria training or experience.

The SLA issued a memorandum to licensed blind vendors and licensees informing them that a bid proposal for the food services contract at Fort McClellan, Anniston, Alabama was available. The successful bidder would be involved in a joint venture with KCA, a private food service company that would be responsible for the operation of three 1,000-personnel dining facilities serving three meals per day, seven days per week, and one 500-personnel dining facility serving three meals a day, Monday through Friday. The SLA listed the operation of a food service facility as required experience.

The complainant, David J. Stewart, submitted his bid application along with 12 other applicants. The complainant, who operated a vending route, did not have any prior experience at that time in operating a cafeteria. However, in 1990 Mr. Stewart and five other blind licensees completed a cafeteria training program conducted by the E. H. Gentry Technical Facility under the auspices of the SLA.

Following the close of the bidding process, the selection committee, which included SLA staff and members of the Committee of Blind Vendors, reviewed the applicants' eligibility, qualifications, and experience. In addition, each applicant was given points for vendor appraisals and seniority. The selection committee awarded the Fort McClellan cafeteria food service to the vendor who had received the highest total number of points.

Mr. Stewart requested and received a State evidentiary fair hearing on this matter on February 7, 1997. In April 1997, the Hearing Officer affirmed the SLA's decision to award the Fort McClellan facility to another vendor. The SLA adopted the Hearing Officer's decision as final agency action, and it is this decision that Mr. Stewart sought to have reviewed by a Federal arbitration panel. A Federal arbitration hearing on this matter was held on July 30, 1998.

Arbitration Panel Decision

The issue before the arbitration panel was whether the Alabama Department of Rehabilitation Services violated its policies and procedures governing the Business Enterprise Program of Alabama during the advertisement and selection of a vendor/manager for the Fort McClellan facility.

The majority of the panel found that there was no evidence to support the complainant's allegations. Specifically, the panel found that the SLA's announcement of the bid opening at the Fort McClellan facility tracked the language of the United States Army's solicitation for food service and could not be construed as misleading. The panel found that it was not within the SLA's authority to unilaterally alter the terms of the solicitation or set aside its own job qualifications. The majority also found that the selection of the members to serve on the selection committee was consistent with and conducted in accordance with existing procedures and practices that had been in effect for years without any showing of prejudice to the complainant. Further, the panel found that the successful applicant, who had the highest total number of points among the applicants considered and was unanimously selected as the manager of the Fort McClellan facility, had food service experience as advertised in the United States Army's solicitation. The selection committee fully considered Mr. Stewart's completion of a cafeteria training program, which was a factor, but was not an employment guarantee as complainant's position implied.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: December 10, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–32669 Filed 12–15–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Program Interest for Medical Research Using Isotopes

AGENCY: Department of Energy (DOE).

ACTION: Notice of program interest.

SUMMARY: The Office of Isotope Programs, Office of Nuclear Energy (NE) solicits responses for research programs for new and innovative uses of isotopes, including alpha emitting isotopes in the diagnosis and therapy of cancer, HIV and other infectious diseases or other innovative medical applications. The diagnosis and therapy of many diseases with the use of isotopes will be the subject of a high risk/high impact research program the Department calls the Advanced Nuclear Medicine Initiative (ANMI). The Department wishes to encourage research in these areas by providing resources for the required research.

DATES: Opening date: December 10, 1999, and closing date: January 28, 2000.

ADDRESSES: Complete details, instructions on how to apply, and the forms may be obtained from the DOE NE home page on the internet at: *http://www.ne.doe.gov.* The formal solicitation document will be disseminated electronically as solicitation number DE–PS01–00NE22740 through the Department's Industry Interactive Procurement System (IIPS) Homepage located at *http://doe-iips.pr.doe.gov.*

FOR FURTHER INFORMATION CONTACT: John Pantaleo, Program Manager at 301–903–2525 and Richard G. Lewis, Contracting Officer at 202–426–0066.

SUPPLEMENTARY INFORMATION: This program is not intended to support human clinical trials. Researchers with innovative ideas in the use of isotopes for diagnosis and therapy of many diseases have had difficulty obtaining funding for areas of research that are not closely tied to specific isotopes, means of delivery and disease. The purpose of the ANMI is to support broad-based research on new uses of isotopes, including alpha emitters for the

diagnosis and therapy of life threatening disease or other innovative medical applications. The Department is looking for applications in these areas with the view toward providing funding or the required isotopes as part of a research program. Effective October 1st, 1999, the IIPS system became the primary way for the Office of Headquarters Procurement Services to conduct competitive acquisitions and financial assistance transactions. IIPS provides the medium for disseminating solicitations, receiving financial assistance applications and proposals, evaluating, and awarding various instruments in a paperless environment. To get more information about IIPS and to register your organization, go to http://doe-iips.pr.doe.gov. Follow the link on the IIPS home page to the Secure Services Page. Registration is a prerequisite to the submission of an application, and applicants are encouraged to register as soon as possible. When registering, all applicants should use the same North American Industry Classification System number 325412. A help document, which describes how IIPS works, can be found at the bottom of the Secure Services Page.

Issued in Washington, DC on December 10, 1999.

Richard G. Lewis,

Contracting Officer, Program Services Division.

[FR Doc. 99–32636 Filed 12–15–99; 8:45 am]

BILLING CODE 6450–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–133–000]

Algonquin Gas Transmission Company; Notice of Tariff Filing

December 10, 1999.

Take notice that on December 7, 1999 Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 2000.

Algonquin states that the purpose of this filing is to revised the Gas Research Institute (GRI) surcharges to be effective January 1, 2000, in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998).

Specifically, Algonquin states that the filing complies with the surcharges set forth in Appendix A to the Stipulation and Agreement as follows: (1) a GRI volumetric surcharge of 0.72 cents per dekatherm will be charged on all non-discounted firm commodity and interruptible transportation services; (2) a 1.6 cents per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to small customers qualifying for service under Algonquin's Rate Schedules AFT–1S and AFT–ES; (3) a reservation surcharge of 20.0 cents per dekatherm per month will be charged on non-discounted firm high load factor customers, *i.e.,* greater than 50% load factor; and (4) a reservation surcharge of 12.3 cents per dekatherm per month will be charged on non-discounted firm low load factor customers, *i.e.,* less than or equal to 50% load factor.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–32542 Filed 12–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–131–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 10, 1999.

Take notice that on December 7, 1999 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets in the above captioned docket bear a proposed effective date of January 1, 2000.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedule FSS and SST. The costs of the above referenced storage service comprise the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–32540 Filed 12–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–40–000]

Florida Gas Transmission Company; Notice of Application

December 10, 1999.

Take notice that on December 1, 1999, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP00–40–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, for a certificate of public convenience and necessity authorizing FGT to: (1) Construct, own and operate certain pipeline facilities on FGT's system; (2) acquire an undivided interest in an existing interstate supply lateral; (3) roll-in the costs associated with the proposed expansion of its facilities; (4) approve certain rate and accounting treatment related to the proposed facilities; and (5) approve the submitted *pro forma* tariff sheets, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, FGT proposes to: (1) Acquire an undivided interest in Koch Gateway Pipeline Company's (Koch Gateway) Mobile Bay Lateral in Mobile County, Alabama that will give FGT capacity of 300,000 Dth per day; (2) construct approximately 215 miles of various diameter pipeline, additional compression totaling 89,765 horsepower, four delivery points, one new supply measurement station, and various other miscellaneous facilities (located in George County, Mississippi; Mobile and Baldwin Counties, Alabama; and Suwannee, Columbia; Bradford, Clay, Putnam, Marion, Citrus, Hernando, Hillsborough, Polk, Lake, Seminole, Volusia, Washington, Bay, Gadsden, Orange, Osceola, Santa Rosa, Gadsden, Taylor, and Gilchrist Counties, Florida); and (3) rehabilitate and re-certificate 15.7 miles of pipeline located in Washington County, Florida that was previously abandoned in place. FGT refers to the proposed project as the Phase V Expansion and estimates the total cost to be $436.8 million, including an estimated $10 million for the proposed acquisition of an interest in the Mobile Bay Lateral. Koch Gateway filed a concurrent application in Docket No. CP00–39–000 for permission and approval to abandon, by sale to FGT, an undivided interest in its Mobile Bay Lateral facilities.

It is indicated in FGT's application that the additional summer capacity that will be created by the proposed Phase V Expansion is 371,015 MMBtu per day. FGT states that it held open seasons for transportation service on the Phase V Expansion and for turnback capacity. As a result of those open seasons, 2,364 MMBbtu per day of capacity (on an annual daily average) was turned back, and FGT executed firm transportation service agreements having 20 year terms with eight parties for service pursuant to FGT's Rate Schedule FTS–2. The maximum daily transportation quantities in the agreements are set forth on a seasonal basis and, net of turn-back volumes, amount to 371,015 MMBtu per day for the summer months and, over the entire year, amount to an annual daily average of 269,695 MMBtu per day.

FGT requests that the Commission find that the costs of the proposed Phase V Expansion can be rolled-in to establish rates for service under its incrementally priced Rate Schedule FTS–2. FGT states that the maximum rates applicable to Rate Schedule FTS–2 are expected to be lower as a result of such rolling-in of costs and thus, will not requires subsidies from existing shippers. FGT has agreed to a negotiated rate with one shipper, Southern Company Services, Inc. (Southern Company), that is below the currently effective maximum 100% load factor rate applicable to Rate Schedule FTS–2. FGT has submitted, for approval, *pro forma* tariff sheets reflecting the negotiated rate with Southern Company, and changes to the General Terms and Conditions of FGT's tariff to permit FGT to track and recover certain power costs associated with the installation of two electric drive compressor units.

FGT requests that the Commission issue a preliminary determination on non-environmental issues by July 1, 2000, and a final determination on all certificate issues on or before January 1, 2001, to enable FGT to render service on a proposed in-service date of April 1, 2002. However, FGT asks that it be allowed to phase-in gas deliveries to two expansion shippers (Florida Power & Light Company, and Southern Company) requiring early deliveries, commencing on October 1, 2001, for power generating plant preparation and testing. At the time that certain Phase V Expansion facilities are placed in-service to provide such early deliveries, FGT requests authorization to cease calculating AFUDC on those specific facilities and capture and defer, as a regulatory asset, depreciation and a calculated amount for pretax return, from the time these certain facilities are placed in-service until the entire Phase V Expansion is placed in-service.

Any questions regarding the application should be directed to Mr. Stephen T. Veatch, Director of Certificates and Regulatory Reporting, Suite 3997, 1400 Smith Street, Houston, Texas 77002 or call (713) 853–6549.

Any person desiring to be heard or making any protest with reference to said application should on or before December 30, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the

Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for FGT to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–32534 Filed 12–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–28–001]

Florida Gas Transmission Company; Notice of Compliance Filing

December 10, 1999.

Take notice that on December 7, 1999, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective December 15, 1999.

Fourth Revised Sheet No. 125A
Fifth Revised Sheet No. 129
Third Revised Sheet No. 129A
First Revised Sheet No. 129C
First Revised Sheet No. 163B
Third Revised Sheet No. 163C
First Revised Sheet No. 163D
Second Revised Sheet No. 163E
Second Revised Sheet No. 163H
Fourth Revised Sheet No. 184B
First Revised Sheet No. 184D

FGT states that on October 15, 1999, in Docket No. RP00–28–000, FGT submitted pro forma changes to the General Terms and Conditions (GTC) of this Tariff (October 15 Filing) in compliance with the Commission's May 26, 1999 order in Docket Nos. RP99–186–000 and 001 and the ''Notice of Extension of Time'' dated July 28, 1999 in the same docket. The October 15 Filing included pro forma tariff changes to: (1) conform the non-compliance penalties tied to a specific index to the highest/lowest indices used for cashing out monthly imbalances, (2) clarify that the deferred fuel accounting will be separately shown on the Annual Report as it is in the Tariff and that only the net over or under recovery of fuel will be carried to the Balancing Tools Account as currently provided for in the Balancing Tools Account provisions of Section 19.1A.3, and (3) delete section 19.1B.4 of the GTC which requires FGT to make a tariff filing to increase non-compliance penalties when system balancing costs exceed revenues. The pro forma tariff changes were approved by Commission order dated November 26, 1999 (November 26 Order) FGT states that the filing is submitted in complaicne with the November 26, Order to implement the approved tariff changes.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–32539 Filed 12–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–43–000]

Gas Transport, Inc., Great Lakes Gas Transport, LLC; Notice of Application

December 10, 1999.

Take notice that on December 3, 1999, Gas Transport, Inc. (GTI) and Great Lakes Gas Transport (GLGT) (Applicants) jointly filed in Docket No. CP00–43–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing GLGT to acquire and operate interstate pipeline facilities and to transport natural gas in interstate commerce, and for an order permitting GTI to abandon such facilities and services, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

Communications concerning this filing should be addressed to: Rick Giannantonio, FirstEnergy Corp., 76 South Main Street, Akron, Ohio 44308, Telephone: (330) 384–5893, Facsimile: (330) 384–3875.

Kevin J. McIntyre, Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001, Telephone: (202) 879–3939, Facsimile: (202) 626–1700.

Applicants state that GTI is merging with and into GLGT, thereby effectively transferring its interstate pipeline facilities and contracts to GLGT. It is indicated that upon such merger, and related certificate transfer, GLGT (a newly formed corporation) will become a ''natural-gas company'' under the Natural Gas Act and a successor in interest to GTI's interstate pipeline business.

It is stated that the proposal will have no adverse effect on GTI's jurisdictional ratepayers. There will be no change in the services previously found to be required by the public convenience and necessity. Applicants submit that the requested certificate amendments are in the public convenience and necessity.

Specifically that Applicants request that the Commission:

(1) issue a certificate of public convenience and necessity allowing GLGT to acquire the facilities and properties as proposed in the filing and approve the abandonment of such facilities and properties by GTI, which will result from GTI's merger with and into GLGT;

(2) issue a certificate of public convenience and necessity authorizing GLGT to undertake the transportation of natural gas and other services proposed in the filing and approve the abandonment of jurisdictional services by GTI;

(3) order that GLGT may adopt GTI's FERC Gas Tariff;

(4) order the substitution of GLGT for GTI with respect to all existing certificate and as applicant in all

pending rate, certificate and other proceedings filed before the FERC.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 6, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment and that a grant of the certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Applicants to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–32536 Filed 12–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–39–000]

Koch Gateway Pipeline Company; Notice of Application

December 10, 1999.

Take notice that on December 1, 1999, Koch Gateway Pipeline Company (Koch Gateway), a Delaware corporation, P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP00–39–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA), and Section 157.18 of the Federal Energy Regulatory Commission's (Commission) Regulations for permission and approval to abandon by sale an undivided interest in certain pipeline facilities located in Mobile County, Alabama, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Specifically, Koch Gateway requests authorization to abandon by sale to Florida Gas Transmission Company (FGT) an undivided interest in Koch Gateway's Mobile Bay Lateral such that FGT acquires an ownership interest giving FGT the right to 300,000 Dth per day of capacity. This application is made in conjunction with an application by FGT in Docket No. CP00–40–000 for a significant expansion of its system (Phase V Expansion). Koch Gateway states that it believes no existing customer will be affected by the proposed abandonment.

If there are any further questions regarding this project, the following individual may be contacted: Kyle Stephens, Director of Certificates, Koch Gateway Pipeline Company, P.O. Box 1478, Houston, Texas 77251–1478, at (713) 544–7309.

Any person desiring to be heard or to make any protest with reference to said application should, on or before December 30, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a protest or motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations Under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this document if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely, filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Koch Gateway to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–32533 Filed 12–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Questar Pipeline Company; Notice of Application

December 10, 1999.

Take notice that on December 2, 1999, Questar Pipeline Company (Questar), 180 East 100 South, Salt Lake City, Utah 84111, filed in Docket No. CP00–41–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for authorization to expand the capacity of its existing Fidlar Compressor Station (Fidlar Station), located in Uintah County, Utah, by (1) installing and operating one additional new turbine driven compressor, (2) restaging an existing turbine driven compressor (Unit No. 1) and (3) increasing the maximum allowable operating pressure (MAOP)of its existing Maine Line No. 80, located in Unitah and Daggett Counties, Utah, all as more fully set forth in the application that is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Questar states that it owns and operates Fidlar Station, which comprises three principal transmission compressor units, as part of its interstate transmission system and that the proposed installation of a new 4,829 ISO HP turbine-driven compressor unit will boost main-line pressure and provide additional firm capacity of approximately 58,850 Dth of natural gas per day on its system. Questar asserts that the restaging of the existing compressor Unit No. 1 is necessary to accommodate the increased operating pressure of the station and that the

increase in the MAOP of its Main Line No. 80 from the currency certified pressure of 936 psig to 1,000 psig is required to transport the increased volumes to delivery points on its northern transmission system. Questar further states that the restaging of the existing compressor Unit No. 1 will not result in any increased capacity. Questar emphasizes that all construction activities with the installation of the new compressor, as well as the restaging of Unit No. 1, will take place entirely within the fenced confines of Fidlar Station and that increasing the MAOP of Main Line No. 80 will not require any construction of additional facilities. Questar seeks Commission certification of the Main Line No. 80 MAOP based on the previously established hydrostatic tests conducted pursuant to DOT guidelines for the project.

Questar estimates the total cost of the proposed Fidlar Station expansion project to be $3,325,000, including Section 2.55(a) facilities, and requests that it receive rolled-in pricing treatment for the project. Questar explains that it has entered into a firm transportation agreement with a subscribing customer for 50,000 Dth per day or 85 percent of the incremental new capacity and that the project requires no financial subsidies from existing Questar shippers. Questar further explains that the expansion will increase service reliability, provide greater flexibility and access to new natural-gas supplies for existing shippers, and have no adverse impact to existing landowners or other interstate pipeline customers.

Questar states that, in accordance with Order No. 603, the address, and telephone number for a Questar contact person is: Alan K. Allred, Questar Regulated Services Company, 180 East 100 South, P.O. Box 45360, Salt Lake City, Utah 84145–0360, 1–801–324–5768.

Any person desiring to be heard or to make any protest with reference to said application should, on or before December 30, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a protest or motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered, a person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all comments filed by other parties or issued by the Commission and not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervener status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on the application if no motion to intervene is timely filed, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Questar to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–32535 Filed 12–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–048]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 10, 1999.

Take notice that on November 30, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective December 1, 1999:

Second Revised Sheet No. 8E
First Revised Sheet No. 8L

REGT states that the purpose of this filing is to reflect the implementation of a new negotiated rate contract and a revision to an existing negotiated rate contract.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–32538 Filed 12–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–132–000]

Texas Eastern Transmission Corporation; Notice of Tariff Filing

December 10, 1999.

Take notice that on December 7, 1999, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective January 1, 2000.

Texas Eastern states that the purpose of this filing is to revise the Gas Research Institute (GRI) surcharges to be effective January 1, 2000 in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on rh'g, 83 FERC ¶ 61,331 (1998).

Specifically, Texas Eastern states that the filing complies with the surcharge set forth in Appendix A to the Stipulation and Agreement as follows: (1) a GRI volumetric surcharge of 0.72 cents per dekatherm will be charged on all non-discounted firm commodity and interruptible transportation services; (2) a 1.6 cents per dekatherm surcharge will be charged on all non-discounted firm commodity units delivered to customers qualifying for service under Texas Eastern's Rate Schedule SCT; (3) a reservation surcharge of 20.0 cents per dekatherm per month will be charged on non-discounted firm high load factor customers, i.e., greater than 50% load factor; and (4) a reservation surcharge of 12.3 cents per dekatherm per month will be charged on non-discounted firm low load factor customers, i.e., less than or equal to 50% load factor.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–32541 Filed 12–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–44–000]

Texas Gas Transmission Corporation; Notice of Application

December 10, 1999.

Take notice that on December 6, 1999, Texas Gas Transmission Corporation, (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP00–44–000 an application pursuant to Section 7(c) of the Natural Gas Act, for the construction and operation of two new gas compressors located at its Midland 3 Compressor Station in Muhlenberg County, Kentucky, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222).

Texas Gas proposes to construct and operate two new electric motor driven compressors to be housed inside a new compressor building. It is indicated that each compressor package shall consist of a Dresser-Rand 1250 horsepower compressor frame with four compressors driven by a constant speed, 900 rpm electric motor. Texas Gas states that although the total horsepower of the station will be technically increased, it will not operate the station in a manner which would cause the existing certificated levels of total storage capacity or maximum daily deliverability to be exceeded. It is then stated that Texas Gas will use the new units in conjunction with the existing gas compressors in order to ensure the maintenance of the current certificated capabilities of the field, which have been jeopardized by the age and condition of the existing engines. In addition, Texas Gas states that the combination of the electric driven compressors and the existing units provides additional operational flexibility which could not be realized if Texas Gas chose to simply replace the existing compressors.

Texas Gas estimates a construction cost of $6,321,015, which will be financed from funds on hands. Also, Texas Gun submits that, due to the nature of this project and the benefits it provides to existing customers and benefits to overall reliability, flexibility and efficiency, the Commission's Statement of Policy (88 FERC ¶ 61,227 (1999) is not applicable, and that rolled-in rate treatment is appropriate for the costs associated with the project.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 30, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to take but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission for abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–32537 Filed 12–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–415–002, et al.]

Commonwealth Chesapeake Company, L.L.C., et al., Electric Rate and Corporate Regulation Filings

December 9, 1999.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Chesapeake Company, L.L.C.

[Docket Nos. ER99–415–002 and ER00–715–000]

Take notice that on December 1, 1999, Commonwealth Chesapeake Company, L.L.C. (Commonwealth Chesapeake), tendered for filing a Notification of Change in Status and Petition for Acceptance of Revised Rate Schedule and Supplement, by which Commonwealth Chesapeake provides notice that it is now affiliated with TECO Energy, Inc., and its affiliates and Mosbacher Power Partners, L.P. and its affiliates.

Due to its affiliation with a traditional public utility, Commonwealth Chesapeake is submitting for filing an amended FERC Electric Rate Schedule No. 1 and an amended Code of Conduct.

Comment date: December 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket No. ER00–686–000]

Take notice that on November 30, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER00–687–000]

Take notice that on November 30, 1999, New England Power Company (NEP) tendered notice to the Commission of the termination pursuant to its own terms of its unit power sales contract with Bangor Hydro-Electric Company (BHE), effective October 31, 1999. Said contract was made pursuant to NEP's FERC Electric Tariff, Original Volume No. 6, and covered the period September 1, 1998 through October 31, 1999.

Copies of said notice of termination were served upon BHE and the Maine Public Utilities Commission.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Delmarva Power & Light Company

[Docket No. ER00–688–000]

Take notice that on November 30, 1999, Delmarva Power & Light Company tendered for filing a Service Agreement for Unforced Capacity Credits between Delmarva Power & Light Company and Old Dominion Electric Cooperative. The Service Agreement is a long-term agreement pursuant to Delmarva's market-based sales tariff.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Delmarva Power & Light Company

[Docket No. ER00–689–000]

Take notice that on November 30, 1999, Delmarva Power & Light Company tendered for filing a Termination Agreement between Delmarva Power & Light Company and Old Dominion Electric Cooperative. The Termination Agreement terminates service by Delmarva to Old Dominion pursuant to the Partial Requirements Service Agreement.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Central Vermont Public Service Corporation

[Docket No. ER00–690–000]

Take notice that on November 30, 1999, Central Vermont Public Service Corporation (CVPS), tendered for filing a letter stating that CVPS will not file a Forecast 2000 Cost Report for FERC Electric Tariff, Original Volume No. 3. No customers will take Tariff No. 3 service because in 1997 the Company issued a notice of termination effective December 31, 1999 to the seven customers taking such service. The Company will provide transmission service to the seven customers under its Transmission Service Tariff No. 7.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corporation

[Docket No. ER00–691–000]

Take notice that on November 30, 1999, Central Vermont Public Service Corporation (CVPS), tendered for filing a letter stating that CVPS does not plan to file a Forecast 2000 Cost Report for FERC Electric Tariff, Original Volume No. 4, since there are no customers expected to take such service.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corporation

[Docket No. ER00–692–000]

Take notice that on November 30, 1999, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 2000 Cost Report required under Paragraph Q–2 on Original Sheet No. 19 of the Rate Schedule FERC No. 135 (RS–2 rate schedule) under which CVPS sells electric power to Connecticut Valley Electric Company Inc. (Customer). CVPS states that the Cost Report reflects changes to the RS–2 rate schedule which were approved by the Commission's June 6, 1989 order in Docket No. ER88–456–000.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Alliant Energy Corporate Services Inc.

[Docket No. ER00–693–000]

Take notice that on November 30, 1999, Alliant Energy Corporate Services Inc. (ALTM), tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Madison Gas and Electric Company (MGE).

ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of November 23, 1999.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER00–694–000]

Take notice that on November 30, 1999, Arizona Public Service Company (APS), tendered for filing umbrella Service Agreements to provide Short-Term Firm Point-to-Point Transmission Service to Public Service Company of Colorado, and Short-Term Firm and Non-Firm Point-to-Point Transmission Service to NewEnergy, Inc., and City of Seattle, City Light Department under APS' Open Access Transmission Tariff.

A copy of this filing has been served on Public Service Company of Colorado, NewEnergy, Inc., City of Seattle, City Light Department, and the Arizona Corporation Commission.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Rochester Gas and Electric Corporation

[Docket No. ER00–696–000]

Take notice that on November 30, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement between RG&E and ACN Energy, Inc. (Transmission Customer) for service under RG&E's open access transmission tariff. Specifically dealing with the ''Retail Access Program'' under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1999 for the ACN Energy, Inc. Service Agreement.

A copy of this Service Agreement has been served on the Transmission Customer and the New York Public Service Commission.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER00–697–000]

Take notice that on November 30, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system East of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of November 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER00–698–000]

Take notice that on November 30, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system East of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of November 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER00–699–000]

Take notice that on November 30, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's Bid Process Supplier to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of November 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Tucson Electric Power Company

[Docket No. ER–00–700–000]

Take notice that on November 30, 1999, Tucson Electric Power Company (Tucson), tendered for filing a Notice of Cancellation of its Rate Schedule FERC No. 60 (Interchange Agreement Between Tucson and State of California Department of Water Resources dated June 6, 1984).

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Deseret Generation & Transmission Co-operative

[Docket No. ER00–701–000]

Take notice that on November 30, 1999, Deseret Generation & Transmission Co-operative tendered for filing an executed umbrella non-firm point-to-point service agreement with Reliant Energy Services, Inc. (Reliant), under its open access transmission tariff. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Deseret requests a waiver of the Commission's notice requirements for an effective date of November 30, 1999.

Reliant has been provided a copy of this filing.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Sierra Pacific Power Company

[Docket No. ER00–702–000]

Take notice that on November 30, 1999, Sierra Pacific Power Company (Sierra), tendered for filing a revision to the General Transfer Agreement (GTA) between Sierra and Bonneville Power Administration (BPA). Sierra states that the revision would decrease the total monthly facilities charge from $133,922 to $131,389 to reflect a change in the percentage of initial capital investment used to calculate the Estimated O&M Charge.

Sierra requests that the increased charge be made effective at 2400 hours on October 31, 1999.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California, the Nevada Bureau of Consumer Protection and Bonneville Power Administration.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. California Independent System Operator Corporation

[Docket No. ER00–703–000]

Take notice that on December 1, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a report on the results of certain studies which the Commission had directed the ISO to undertake in its October 30, 1997 order in *Pacific Gas and Electric Co., et al.,* 81 FERC ¶ 61,122. These studies include a study that evaluates the effectiveness of the ISO's current criterion for the creation or modification of Congestion Management Zones, a study that evaluates the ISO's methodology for calculating and assigning Transmission Losses to individual Scheduling Coordinators, and a study that evaluates the ISO's approach to Ancillary Services bid evaluation.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment date: December 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Northern Indiana Public Service Company

[Docket No. ER00–704–000]

Take notice that on December 1, 1999, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Power Sales Tariff with West Penn Power Company d/b/a Allegheny Energy (Counterparty).

Northern Indiana has requested an effective date of December 6, 1999.

Copies of this filing have been sent to Counterparty, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: December 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Delmarva Power & Light Company

[Docket No. ER00–705–000]

Take notice that on December 1, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an Interconnection Agreement between Delmarva Power & Light Company and Old Dominion Electric Cooperative. The Interconnection Agreement provides for the Interconnection of facilities at the points of interconnection between Delmarva and Old Dominion.

Comment date: December 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Ameren Services Company

[Docket No. ER00–706–000]

Take notice that on December 1, 1999, Ameren Services Company (AMS) , as Agent for Central Illinois Public Service Company (CIPS), tendered for filing changes to the Service Agreement dated December 8, 1989, between Mt. Carmel Public Utility Company and Central Illinois Public Service Company. AMS asserts that the purpose of the changes are to extend the effective date of the Agreement to April 30, 2002; replace the fuel adjustment clause with a fixed rate; and to provide discounted rates.

AMS requests that these filings be permitted to become effective September 1, 1999.

Comment date: December 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Wisconsin Electric Power Company

[Docket No. ER00–707–000]

Take notice that on December 1, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a notification indicating a name change for an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2) as requested by the customer.

Wisconsin Electric respectfully requests effective December 1, 1999, Service Agreement No. 15 with Electric Clearinghouse, Inc. is changed to Dynegy Power Marketing, Inc. (Dynegy).

Wisconsin Electric requests waiver of any applicable regulation to allow for the effective dates as requested above. Copies of the filing have been served on Dynegy, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: December 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Pacific Gas and Electric Company

[Docket No. ER00–708–000]

Take notice that on December 1, 1999, Pacific Gas and Electric Company (PG&E) tendered for filing as part of its Electric Service Tariff, Volume No. 6, PG&E Tariff Revised Original Tariff Sheet No. 10. PG&E states that the revision to the tariff sheet keeps PG&E's ISO GMC Pass-Through Tariff in conformity with the ISO GMC Tariff as accepted by the Commission on October 15, 1999. The language of PG&E's ISO GMC Pass-Through Tariff requires that it always conforms to the Commission accepted ISO GMC Tariff.

PG&E states that this filing has been served upon all the existing wholesale contract customers affected by this filing and the California Public Utilities Commission.

Comment date: December 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Consumers Energy Company

[Docket No. ER00–709–000]

Take notice that on December 1, 1999, Consumers Energy Company (Consumers), tendered for filing an executed transmission service agreement with Thumb Electric Cooperative (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreement has an effective date of January 1, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: December 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Southaven Power, LLC

[Docket No. ER00–710–000]

Take notice that on December 1, 1999, Southaven Power, LLC, an electric power developer organized under the laws of Delaware, petitioned the Commission for acceptance of its market-based rate schedule, waiver of certain requirements under Subparts B and C of Part 35 of the Commission's Regulations, and preapproval of transactions under Part 34 of the Regulations. Southaven is developing an 810 MW (summer rated) gas-fired generating facility in Southaven, Mississippi.

Comment date: December 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Northeast Utilities Service Company

[Docket No. ER00–712–000]

Take notice that on December 1, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with El Paso Power Services Company (El Paso) under the NU System Companies' Sale for Resale Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to El Paso.

NUSCO requests that the Service Agreement become effective November 3, 1999.

Comment date: December 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Cleco Utility Group Inc.

[Docket No. ER00–714–000]

Take notice that on December 1, 1999, Cleco Utility Group Inc., tendered for filing an amendment to its Electric System Interconnection Agreement providing the terms for service to Louisiana Energy and Power Authority. The amendment combines two existing delivery points and contract demands into a single new delivery point.

Comment date: December 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Northeast Generation Company

[Docket No. ER00–743–000]

Take notice that on December 8, 1999, Northeast Generation Company (NGC), tendered for filing an amendment to its September 17, 1999, application for market-based rates to ensure that it has blanket approval under Section 204 of the Federal Power Act and Part 34 of the Commission's Regulations to issue securities and assume liabilities.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Alliant Energy Corporate Services, Inc.

[Docket No. EC00–29–000]

Take notice that on December 6, 1999, Alliant Energy Corporate Services, Inc. on behalf of IES Utilities Inc. (IES), Interstate Power Company (IPC), Wisconsin Power and Light Company (WPL) and South Beloit Water, Gas & Electric Company, pursuant to section 203 of the Federal Power Act, 16 U.S.C. § 824b, filed an Application for approval to transfer operational control over IES', IPC's, WPL's and SBWGE's identified transmission facilities to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).

Alliant Energy Corporate Services, Inc. states that this filing is intended to reflect the fact that it has joined the Midwest ISO, and to allow for the transfer of control of the identified facilities to the Midwest ISO.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Middletown Power LLC

[Docket No. EG00–34–000]

Take notice that on December 7, 1999, Middletown Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating the Middletown generating station in Middletown, Connecticut (Facility) and selling electric energy at wholesale. The Facility consists of two gas- or oil-fired units, one active and one retired oil-fired unit, one gas turbine, and associated interconnection facilities necessary to connect the Facility with the grid. The total capacity is 856 MW (including the 70 MW retired unit). The applicant intends to purchase the Facility from Connecticut Light & Power Company.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

31. Devon Power LLC

[Docket No. EG00–35–000]

Take notice that on December 7th, 1999, Devon Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating the Devon generating station in Milford, Connecticut (Facility) and selling electric energy at wholesale. The Facility consists of two gas- or oil-fired units, five gas turbines, and associated interconnection facilities necessary to connect the Facility with the grid. The total capacity is 401 MW. The applicant intends to purchase the Facility from Connecticut Light & Power Company.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

32. Connecticut Jet Power LLC

[Docket No. EG00–36–000]

Take notice that on December 7, 1999, Connecticut Jet Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating six remote jet-fueled gas turbines (Facilities) and selling electric energy at wholesale. The Facilities, which have a total capacity of 127 MW, are located in Branford, Torrington, and Cos Cob, Connecticut. The applicant intends to purchase the Facilities from Connecticut Light & Power Company.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

33. Montville Power LLC

[Docket No. EG00–37–000]

Take notice that on December 7, 1999, Montville Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating the Montville generating station in Uncasville, Connecticut (Facility) and selling electric energy at wholesale. The Facility consists of one gas- or oil-fired unit, one oil-fired unit, two diesel generators, and associated interconnection facilities necessary to connect the Facility with the grid. The total capacity is 498 MW. The applicant intends to purchase the Facility from Connecticut Light & Power Company.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

34. Norwalk Power LLC

[Docket No. EG00–38–000]

Take notice that on December 7, 1999, Norwalk Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating the Norwalk Harbor generating station on Manresa Island, Connecticut (Facility) and selling electric energy at wholesale. The Facility consists of two oil-fired units, one gas turbine, and associated interconnection facilities necessary to connect the Facility with the grid. The

total capacity is 353 MW. The applicant intends to purchase the Facility from Connecticut Light & Power Company.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. PPL Bruner Island, LLC

[Docket No. EG00–39–000]

Take notice that on December 7, 1999, PPL Brunner Island, LLC (Applicant), having its principal place of business at Two North Ninth Street, Allentown, PA 18101, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Delaware limited liability company formed in connection with a proposed corporate realignment of PP&L Resources, Inc. for the purpose of owning and operating the Brunner Island Steam Electric Station (Brunner Island SES), currently owned by its public utility affiliate, PP&L, Inc. The Applicant is an indirect subsidiary of PP&L Resources, Inc., a public utility holding company exempt from registration under Section 3(a)(1) of the Public Utility Holding Company Act of 1935.

As a result of the corporate realignment of PP&L Resources, Inc., Applicant will own the Brunner Island SES, which includes three coal and supplemental oil-fired steam turbine generators and three diesel-fired generators with a combined (winter) net electric capability of 1,492.2 MW.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

36. PPL Holtwood, L.L.C.

[Docket No. EG00–40–000]

Take notice that on December 7, 1999, PPL Holtwood, L.L.C. (Applicant), having its principal place of business at Two North Ninth Street, Allentown, PA 18101, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Delaware limited liability company formed in connection with a proposed corporate realignment of PP&L Resources, Inc. for the purpose of owning and operating the Holtwood and Wallenpaupack Hydroelectric Stations, currently owned by its public utility affiliate, PP&L, Inc. (PP&L), and PP&L's ownership interest in the Safe Harbor Water Power Corporation. The Applicant is an indirect subsidiary of PP&L Resources, Inc., a public utility holding company exempt from registration under Section 3(a)(1) of the Public Utility Holding Company Act of 1935.

As a result of the corporate realignment of PP&L Resources, Inc., Applicant will own the following facilities: (1) the Wallenpaupack Hydroelectric Station, FERC Project No. 487, includes two hydroelectric generators with a station (winter) net electric capability of 44 MW; and (2) the Holtwood Hydroelectric Station, FERC Project No. 1881, includes ten hydroelectric generators with a station (winter) net electric capability of 102 MW.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

37. PPL Martins Creek, L.L.C.

[Docket No. EG00–41–000]

Take notice that on December 7, 1999, PPL Martins Creek, L.L.C. (Applicant), having its principal place of business at Two North Ninth Street, Allentown, PA 18101, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant is a Delaware limited liability company formed in connection with a proposed corporate realignment of PP&L Resources, Inc. for the purpose of owning and operating the Martins Creek Steam Electric Station (Martins Creek SES) and several combustion turbine generators (CTGs), currently owned by its public utility affiliate, PP&L, Inc. The Applicant is an indirect subsidiary of PP&L Resources, Inc., a public utility holding company exempt from registration under Section 3(a)(1) of the Public Utility Holding Company Act of 1935.

As a result of the corporate realignment, Applicant will own the following generating facilities: (1) Martins Creek SES Units 1 and 2, which includes two coal-fired steam-turbine generators and two-diesel fired generators with a combined (winter) net electric capability of 305 MW; (2) Martins Creek SES Units 3 and 4, which includes two dual gas and oil-fired steam turbine generators with a combined (winter) net electric capability of 1,680 MW; (3) Martins Creek CTGs, which includes four oil-fired CTGs with a combined (winter) net electric capability of 96 MW; (4) Allentown CTGs, which includes four oil-fired CTGs with a combined (winter) net electric capability of 72 MW; (5) Fishbach CTGs, which includes two oil-fired CTGs with a combined (winter) net electric capability of 36 MW; (6) Harrisburg CTGs, which includes four oil-fired CTGs with a combined (winter) net electric capability of 72 MW; (7) Harwood CTGs, which includes two oil-fired CTGs with a combined (winter) net electric capability of 36 MW; (8) Jenkins CTGs, which includes two oil-fired CTGs with a combined (winter) net electric capability of 36 MW; (9) Lock Haven CTG, which includes one oil-fired CTG with a (winter) net electric capability of 18 MW; (10) West Shore CTGs, which includes two oil-fired CTGs with a combined (winter) net electric capability of 36 MW; and (11) Williamsport CTGs, which includes two oil-fired CTGs with a combined (winter) net electric capability of 36 MW.

Comment date: December 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

38. The Village of Jackson Center, Ohio, The Village of Versailles, Ohio and The City of Tipp City, Ohio v. The Dayton Power & Light Company

[Docket No. EL00–24–000]

Take notice that on December 8, 1999, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), The Village of Jackson Center, Ohio, The Village of Versailles, Ohio and The City of Tipp City, Ohio (Municipals) filed a Complaint against The Dayton Power & Light Company (DP&L) to require DP&L to comply with its filed rates.

Specifically, Municipals requested the Commission issue an order (1) directing DP&L to comply with the pricing provisions of the contract as it applies to Regulation Energy Services; (2) directing DP&L to cease and desist its unlawful threats of contract rescission and confirming that DP&L has no right to rescind the contract or terminate or interrupt service thereunder; and (3) ordering DP&L to refund the overcharges collected in violation of the contract. In the alternative, Municipals request that the Commission order a phased hearing granting Municipals discovery rights during Phase I and a hearing in Phase II.

Comment date: December 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. Milford Power Limited Partnership

[Docket No. ER93–493–013]

Take notice that on November 22, 1999, Milford Power Limited Partnership filed an updated market power analysis in compliance with the Federal Energy Regulatory Commission's Letter Order issued September 71, 1993 under Docket No. ER93–493–000 and in compliance with Milford's Revised Rate Schedule No. 2 accepted for filing by the Commission in this proceeding.

Comment date: December 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. Horizon Energy Company, Panda Power Corporation, Genstar Energy, L.L.C.

[Docket Nos. ER98–380–010, ER98–447–007, ER99–2364–002]

Take notice that on December 6, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

41. The United Illuminating Company

[Docket No. ER00–695–000]

Take notice that on November 30, 1999, The United Illuminating Company (UI) tendered for filing for informational purposes its report regarding all individual Purchase Agreements and Supplements to Purchase Agreements executed under UI's Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No. 2, as amended, during the six-month period May 1, 1999 through October 31, 1999. UI states in its filing that during this period no such Purchase Agreements or Supplements to Purchase Agreements were executed.

Comment date: December 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

42. Ernest K. Hauser

[Docket No. ID–3236–001]

Take notice that on December 6, 1999, Ernest K. Hauster filed an Application for Authority to Hold Interlocking Positions in Millennium Power Partners, L.P. with its principal place of business at 7500 Old Georgetown Road, Bethesda, Maryland 20814.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

43. Niagara Mohawk Power Corporation and PSEG Power New York Inc.

[Docket No. EC00–30–000]

Take notice that on December 6, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk) and PSEG Power New York Inc. (collectively, the Applicants) tendered for filing an application under Section 203 of the Federal Power Act for approval to transfer certain limited jurisdictional facilities associated with the sale of Niagara Mohawk's interest in the Albany Steam Station located in the town of Bethlehem, County of Albany, New York. The Applicants have served copies of this filing on the New York Public Service Commission.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–32592 Filed 12–15–99; 8:45 am]

BILLING CODE 6717–01–p

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6509–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Resource Conservation and Recovery Act (RCRA) Corrective Action Information Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): RCRA Corrective Action Information Request (EPA ICR No. 1939.01). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

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

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–1999–RCIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: *rcra-docket@epa.gov.* Comments in electronic format should also be identified by the docket number F–1999–RCIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically.

The ICR is available on the Internet at <http://www.epa.gov/epaoswer/hazwaste/ca/icr>. The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the ''**Federal Register**.'' EPA will not immediately reply to commenters electronically other

than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323. For more detailed information on specific aspects of this ICR or for a draft copy of the ICR, contact Heather Harris, Office of Solid Waste 5303W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 703–308–6101, *harris.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those state project managers that are currently overseeing facilities that are on the Corrective Action GPRA Baseline.

Title: RCRA Corrective Action Information Request (EPA ICR No. 1939.01)

Abstract: This information collection is in response to an April 15, 1999 request from Congress concerning the RCRA Corrective Action program. Included in this inquiry were certain questions which only the state offices have the information to answer. EPA intends to obtain this information from the states by means of a questionnaire. The questionnaire includes facility specific questions on all RCRA Cleanup Baseline facilities, enforcement orders, state authority, and federal funding. Responses to this request will be mandatory and all information will be used to respond to Congress and to provide an accurate picture of the current state of the program.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Nine state employees were asked to complete the questionnaire for the purpose of determining the burden involved. The results are as follows: (a) The projected cost and hour burden associated with completing the entire questionnaire averaged 16.5 hours and $450 (this time and cost burden takes into account all activities associated with completing the questionnaire), (b) the estimated number of likely respondents needed to complete the questionnaire is 4.

Dated: December 2, 1999.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 99–32649 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6509–8]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This notice announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Call Sandy Farmer at (202) 260–2740, or E-mail at ''farmer.sandy@epa.gov'', and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1820.02; Phase II of the NPDES Storm Water Program (Final Rule); in 40 CFR parts 122 and 123; was approved 10/26/99; OMB No. 2040–0211; expires 10/31/2002.

EPA ICR No: 0801.12; Requirements for Generators, Transporters, and Hazardous Waste Management Facilities under the RCRA Hazardous Waste Manifest System; in 40 CFR part 262, subpart B; was approved 11/02/99; OMB No. 2050–0039; expires 03/31/2002.

EPA ICR No. 1905.01; 1999 EPCRA Implementation Status Questionnaire for State Emergency Response Commissions (SECs) Local Emergency Planning Committees (LEPs), and Certified Unified Program Agencies; was approved 11/22/99; OMB No. 2050–0165; expires 04/30/2000.

EPA ICR No. 1874.02; Revisions to the Underground Injection Control Regulations for Class V Injection Wells (Final Rule); in 40 CFR parts 144, 145, and 146; was approved 11/19/99, OMB No. 2040–0214; expires 11/30/2002.

EPA ICR No. 1910.01; Synopses of Proposed Contract Actions and Market Research Activity; was approved 12/01/99; OMB No. 2030–0039; expires 12/31/2002.

EPA ICR No. 1838.01; Industry Detailed Questionnaire: Phase II Cooling Water Intake Structures; was approved 12/02/99; OMB No. 2040–0213; expires 12/31/2002.

EPA ICR No. 0938.07; General Administrative Requirements for Assistance Programs; in 40 CFR part 30 and 31; was approved 12/02/99; OMB No. 2030–0020; expires 12/31/2002.

EPA ICR No. 1289.05; Wood Preservatives, Submission of Information Regarding Arsenic Exposure Levels in Wood; was approved 12/01/99; OMB No. 2070–0081; expires 12/31/2002.

Comment Filed and Continued

EPA ICR No. 0277.12; Application for New or Amended Pesticide Registration: Antimicrobial Program (Proposed Rule); OMB filed comment 12/02/99.

Extensions of Expiration Dates

EPA ICR No. 0275.06; Pre-award Compliance Review Report; in 40 CFR part 7; OMB No. 2090–0014; on 10/28/99 OMB extended the expiration date through 01/31/2000.

EPA ICR No. 0318.07; Clean Water Needs Survey; OMB No. 2040–0005; on 11/01/99 OMB extended the expiration date through 01/31/2000.

EPA ICR No. 1039.08; Monthly Progress Reports; OMB No. 2030–0005; on 11/30/99 OMB extended the expiration date through 03/31/2000.

EPA ICR No. 1037.05; Oral and Written Orders; OMB No. 2030–0007; on 11/30/99 OMB extended the expiration date through 03/31/2000.

EPA ICR No. 0246.06; Contractor Cumulative Claim and Reconciliation; OMB No. 2030–0016; on 12/01/99 OMB extended the expiration date through 03/31/2000.

EPA ICR No. 1541.05; For Benzene Waste Operations; in 40 CFR part 61, subpart FF; OMB No. 2060–01831; on 11/09/99 OMB extended the expiration date through 2/29/2000.

EPA ICR No. 0111.08; National Emission Standards for Asbestos; in 40 CFR part 61, subpart M; OMB No. 2060–0101; on 11/09/99 OMB extended the expiration date through 02/29/2000.

EPA ICR No. 1712.02; National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair Facilities (Surface Coating); in 40 CFR part 63, subpart II; OMB No. 2060–0330; on 11/29/99 OMB extended the expiration date through 02/29/2000.

EPA ICR No. 1573.05; Part B Permit Application, Permit Modifications, and Special Permits; in 40 CFR part 264 and 270; OMB No. 2050–0009; on 11/03/99 OMB extended the expiration date through 03/31/2000.

EPA ICR No. 0328.07; Spill Prevention Control and Countermeasures (SPCC) Plans; in 40 CFR part 112; OMB No. 2050–0021; on 11/10/99 OMB extended the expiration date through 02/29/2000.

EPA ICR No. 0276.08; Application for Experimental Use Permit (EUP) to Ship and Use Pesticide for Experimental Purposes Only; in 40 CFR part 172; OMB No. 2070–0040; on 11/04/99 OMB extended the expiration date through 02/29/2000.

Dated: December 9, 1999.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 99–32650 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6510–3]

Investigator-Initiated Grants: Request for Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for applications.

SUMMARY: This document provides information on the availability of fiscal year 2000 investigator-initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research area within the solicitation and are listed below.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance (8703R), 401 M Street SW, Washington DC 20460, telephone (800) 490–9194. The complete announcement can be accessed on the Internet from the EPA home page: http://www.epa.gov/ncerqa under ''announcements.''

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Environmental Indicators in the Estuarine Environment Research Program (joint with the National Aeronautics and Space Administration); (2) Market Mechanisms and Incentives for Environmental Management; and (3) Biomarkers for the Assessment of Exposure and Toxicity in Children. Applications must be received as follows: March 7, 2000, for topic (1); February 2, 2000, for topic (2); and February 9, 2000, for topic (3).

The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contact persons for the Environmental Indicators in the Estuarine Environment Research Program RFA are Barbara Levinson (levinson.barbara@epa.gov), telephone 202–564–6911, and Eric Lindstrom (elindstr@hq.nasa.gov), telephone 202–358–4540. Contact person for the Market Mechanisms and Incentives RFA is Matthew Clark (clark.matthew@epa.gov), telephone 202–565–2447. Contact person for the Biomarkers for the Assessment of Exposure and Toxicity in Children RFA is Chris Saint (saint.chris@epa.gov), telephone 202–564–6909.

Dated: November 15, 1999.

Norine E. Noonan,

Assistant Administrator for Research and Development.

[FR Doc. 99–32646 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6510–6]

Mobile Source Outreach Assistance Competition Fiscal Year 2000: Solicitation Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Today's document announces the availability of funding and solicits proposals from state, local, multi-state and tribal air pollution control agencies for mobile sources-related public education and outreach projects. The funding will be allocated by EPA's Office of Mobile Sources through the competitive process described in this document.

DATES: The deadline for submitting Final Proposals is Wednesday, February 23, 2000. To allow for efficient management of the competitive process, OMS is requesting agencies to submit an informal Intent to Apply by January 7, 2000. (Instructions for submitting final proposals and Intents to Apply are found in section X. below.)

ADDRESSES: This proposal can also be found in two places on the Office of Mobile Sources Web Page: ''www.epa.gov/oms/'' click on ''What's New'' or ''www.epa.gov/oms/rfp.htm''. Addresses for submitting final proposals can be found in section X. below.

FOR FURTHER INFORMATION CONTACT: Susan Bullard, Director of Outreach, USEPA Office of Mobile Sources, 401 M Street SW, Washington, 20460 (mail code 6406J). Telephone (202) 564–9856; Fax (202) 565–2085. Or email ''bullard.susan@epa.gov''

SUPPLEMENTARY INFORMATION:

Contents by Section

I. Overview and Deadlines
II. Eligible Organizations
III. Funding Issues
IV. Program Emphasis
V. Selection Criteria
VI. Evaluation and Selection

VII. Proposals
VIII. Current OMS/Section 105 Funded Outreach Projects
IX. Other Items of Interest
X. How to Apply
XI. OMS Program Contact

Deadline for informal Intent to Apply—January 7, 2000

Deadline for Final Proposal—Wednesday, FEBRUARY 23, 2000

This proposal can also be found on the Office of Mobile Sources Web Page: ''www.epa.gov/oms/'' click on ''What's New?'' or ''www.epa.gov/oms/rfp.htm''

Mobile Source Outreach Assistance Agreements 2000; Request for Proposals

Section I. Overview and Deadlines

A. Overview: Over the past three years, OMS has entered into agreements and established partnerships with a number of organizations to (1) Provide national support for community-based mobile source public education efforts supporting implementation of the Clean Air Act and, (2) Encourage responsible choices for organizational and individual actions through public education. Current outreach projects funded through OMS (listed in section VIII(U) below) emphasize transportation choices; education of vehicle owners and drivers of the future; alternative fuels; car care and the role of the automotive technician; and, related projects such as ozone mapping and small engines. EPA's Office of Mobile Sources has set aside funds from the State and Tribal Assistance Grants (STAG) account to provide support to community-based mobile source-related projects. This notice solicits proposals for public education and outreach projects which directly support state and local air management organizations in their efforts to improve air quality from mobile sources. Proposals will be accepted from state, local, tribal and multi-state air management agencies which are identified as such under section 302(b) of the Clean Air Act.

Interested persons call also obtain copies of this solicitation at no charge by accessing ''What's New?'' on the OMS Website at ''www.epa.gov/oms'' or ''www.epa.gov/oms/rfp.htm''.

B. What are the deadlines for this competition? In order to efficiently manage the selection process, the Office of Mobile Sources requests that an informal ''Intent to Apply'' be submitted by January 7, 2000 (Please provide project title or subject and email address). An ''Intent to Apply'' simply states in the form of e-mail, phone, or fax that your organization intends to submit a proposal to be received by the deadline. Submitting an ''Intent to Apply'' does not commit an organization to submit a final proposal. Those not submitting an Intent to Apply may still apply by the deadline.

The deadline for submitting completed final proposals (original and six copies) is Wednesday, February 23, 2000. The Office of Mobile Sources expects to complete the Evaluation/Selection process in early April, 2000.

Section II. Eligible Organizations

C. Who is eligible to submit proposals? According to funding policies associated with the State and Tribal Assistance Grants regulations (STAG funds), proposals can be accepted only from air pollution control agencies as defined under section 302(b) of the Clean Air Act, (for projects to be undertaken will have replicability to other communities nationally), as well as multi-state organizations supporting section 302(b) agencies. OMS has no discretion over this requirement. Interested air management or related organizations which are not air pollution control agencies as defined under section 302(b) of the Clean Air Act are encouraged to create partnerships with eligible organizations. In that situation, the eligible organization would be required to submit the final proposal and serve as the funding recipient if selected.

Section III. Funding Issues

D: What is the amount of available funding? A minimum of $550K.

E. How will funds be allocated? The competition process will be managed by OMS and selected cooperative agreements will be awarded by EPA's Regional offices and funded through either section 103 (for multi-state organizations as defined by law only) or section 105 authority (state and local air pollution control agencies.) OMS has no discretion over this requirement.

F. How many agreements will be awarded? Approximately six agreements will be awarded, none to exceed $100,000. The total dollar amount of the final awards must be within available funding.

G. Are matching funds required? Possibly. Clean Air Act section 105 mandates that eligible agencies provide matching funds of at least 40%. Therefore, if an air pollution control agency submits a proposal for which they do not already have sufficient matching funds, they must include a statement in their proposal indicating that the match could be met if their proposal is selected. Organizations unable to meet a required match must be considered ineligible. (This requirement does not apply to multi state organizations.) Organizations which are unclear as to their matching status are recommended to contact their EPA Regional Grant Coordinator.

H. Can funding be used to acquire services or fund partnerships? Yes—subgrants and other procurement services are allowed. Because the method used to fund subgrants is not a federal matter, procedures governing your organization's procurement practices must be followed. Please indicate any intent to enter into such agreements in the proposal.

Section IV. Program Emphasis

This program is designed to provide seed money to initiate new projects or advance existing projects that are new in some way (e.g. new audiences, new locations, new approaches.)

I. Program Emphasis
—Voluntary Measures
—Commuter Choice initiatives
—Transportation choices
—Car care (testing, repair, maintenance)
—On Board Diagnostics (OBD)
—Alternative fuels
—Involving youth in mobile source issues/environmental education
—Other mobile source issues (including but not limited to: diesel, particulate matter, heavy duty engines; nonroad engines; and ozone mapping/forecasting.)

Section V. Selection Criteria

J. Primary Criteria
—Addresses environmental goals of improved air quality from mobile sources
—Presents a strong public health message
—Demonstrates national or regional applicability/transferability
—Provides for at least minimal replication for use by other organizations in the budget
—Demonstrates effectiveness of delivery mechanism to reach targeted audience
—Exhibits clearly-stated and appropriate levels of funding
—Includes effective evaluation methods
—Reflects potential for sustainability

K. Other Factors to be Considered
—Innovation in public awareness
—Effectiveness of collaborative activities and partnerships with other stakeholders needed to effectively develop or implement the project
—Integration with existing programs
—Willingness to coordinate with other OMS-funded outreach activities

L. Presentation Criteria
—Completeness
—Action-oriented
—Clearly-stated objectives
—Reasonable time frames

Section VI. Evaluation and Selection

M. The Evaluation Team is chosen to address a full range of mobile source and EPA program expertise. In addition, each EPA Regional office is given the opportunity to review those proposals generated by eligible organizations within that Region. The Evaluation Team will base its evaluation solely on the criteria referenced in this *Solicitation Notice*. Completed evaluations will be referred to a Selection Committee representing OMS senior managers and Regional representatives who are responsible for further consideration and final selection. To ensure equity and objectivity throughout the process, the OMS Program Contact (listed below) and staff who facilitate the process and participate in pre-application assistance, do not serve as members of either the Evaluation Team or the Selection Committee.

Section VII. Proposals

N. What must be included in the proposal? Proposals should be approximately 5–7 pages in length (*please do not include binders or spiral binding*) and must include:

(1) a brief statement that candidate organization is defined as an air pollution control agency under section 302(b) of the Clean Air Act

(2) a statement that any required match will be met

(3) a concise statement of project background/objectives highlighting relationship to improving air quality from mobile sources

(4) a detailed project summary—description of specific actions to be undertaken, including estimated time line for each task

(5) associated work products to be developed

(6) explanation of project benefits

(7) detailed explanation of how project outcomes will be designed for replication in other communities

(8) a detailed budget estimate (clearly explain how funds will be used, including estimated cost for each task.) (Note: Budget estimates should include funding for participation in the Annual Mobile Source Outreach and Partnerships Meeting typically held in Washington, DC in late fall/early winter)

(9) projected time frame for project from initiation through completion

(10) project contact(s) (must provide name, organization, phone, fax, and e-mail)

O. Will 2-year proposals be considered? Yes. If a proposal with a 2-year project period is submitted, OMS requires that the budget and cost estimate be designed to indicate what will be accomplished in each of the first and second years.

P. May an eligible organization submit more than one proposal? An organization may submit more than one proposal only if the proposals are for different projects.

Q. May an eligible organization resubmit a proposal which was previously submitted to the Mobile Source Outreach Assistance Competition, but was not selected? Yes. The proposals received by OMS in previous competitions were generally of very high quality. Clearly, all proposals of merit could not be selected due to limited resources available.

R. May an eligible organization submit a proposal for this fiscal year, even if it were previously awarded funding under this program? Yes. Applicants awarded funding in previous competitions may submit new proposals to fund a different project. This program is designed to provide seed money to initiate new projects or advance existing projects that are new in some way (e.g. new audiences, new locations, new approaches.)

S. Does this funding expire at the end of FY 00? No. The statute states that State and Tribal Assistance Grants (STAG) for environmental programs remain available until expended (''no-year money'').

T. Ineligible proposals. Proposals will be determined to be ineligible if:

(1) The candidate organization is not currently defined as an air pollution control agency under section 302(b) of the Clean Air Act; (2) A required match cannot be met; (3) The proposal is incomplete (proposals must address each component outlined in section VII. N.); or (4) The proposal is costmarked after the deadline.

Section VIII. Current OMS/Section 105 Funded Outreach Projects

U. The following offers a brief sketch of projects funded through the Office of Mobile Sources, either with section 105 funding (indicated by year of funding) or projects that are intended to be national in scope, supported by OMS program funding (indicated by an asterisk '''').*

(**Note:** Some web sites provided offer information on a variety of air quality efforts being undertaken by the funded organization.)

Transportation Choices

''Reusable City'' (1997)

Illinois EPA and the Chicago Museum of Science and Industry Contact: Betsy Tracey, 217/782–0408, ''epa2212@epa.state.il.us''

The project is designed to:

— enhance the air quality and mobile source component of ''Reusable City''—a permanent environmental science exhibit at the Chicago Museum of Science and Industry

— present basic science, describe health effects, explain citizen role in contributing to mobile source emissions, explain ''calls to action'' such as Ozone Action Days,'' foster critical problem-solving and decision-making skills

— create ''real'' meteorological station measuring actual ambient conditions outside the Museum, an interactive learning device (computer with CD ROM) and supporting materials to illustrate the relationship between meteorology and ozone. The user can become an ozone forecaster.

— Ribbon-cutting, June 24, 1998

Screen Seen'' (1998)

Maine Department of Environmental Protection Judy Landers, 207/287–2437, ''judy.landers@state.me.us''

The project includes:

— full screen cinema commercials for ''captive'' audience of moviegoers

— 20-minute rotation of messages (visual images, trivia questions—OBD, PM, heavy duty, health message)

— posting of all slides on the ''WWW;'' Maine will assist states in adapting

''Chattanooga Lifestyle Campaign: Improving Chattanooga's Air Quality Through Voluntary Citizen Behavior Change of Transportation Choices'' (1997)

Chattanooga-Hamilton County Air Pollution Control Board Contact: Bob Colby, 423/867–4321, ''colby—bob@mail.chattanooga.gov''

Working with the Global Action Plan (GAP), the project goal will be to enhance the mobile source component of Chattanooga's Household EcoTeam Project. The project includes:

— 4-month tracking of specific actions to reduce auto emissions through transportation choices in 50 households

— peer support and handbook to support family involvement

— follow up research to determine sustainability of new transportation practices

— two-part national technology transfer—invitational conference for local, state and federal air quality managers after demonstration period; broad-based outreach through presentations at meetings and conferences

*''It All Adds Up To Cleaner Air'': Transportation/Air Quality Public Information Initiative **

Contacts: Joann Jackson Stephens (EPA/OMS), 734/214–4276; ''jackson-stephens.joann@epa.gov''; Kathy Daniel (DOT/FHWA), 202/366–6276; ''kathleen.daniel@fhwa.dot.gov''; Abbe Marner (DOT/FTA), 202/366–4317; ''abbe.marner@fta.dot.gov''; (''www.epa.gov/oms/traq/traqpedo/italladd'')

This DOT/EPA collaborative effort is:
— community-based with support from federal agencies to increase public awareness of impact of travel behavior on air quality, and increase driving public's awareness of alternative modes of transportation and importance of travel choices on traffic congestion and air quality
— built on results from 3 pilot community sites—Dover, DE; Milwaukee, WI; and San Francisco, CA
— nationally available to 14 Demonstration Communities (received limited grant funding) and more than 60 ''Materials Only'' Communities in 1999
— designed to include coalition-building, environmental education for youth, production of informational materials for public and media, and evaluation of changes in public awareness and actions
— being conducted in cooperation with the Alliance for Clean Air and Transportation, a national public-private partnership created to address public education on transportation and air quality

''Public Outreach on Congestion Relief Pricing and Cash-Out Parking'' (1998)

NY Department of Environmental Conservation/Tri-State Transportation Campaign Janine Bauer (Tri-State), 212/777–8181, ''jbauer@tstc.org'' Dave Shaw (NYDEC), 518/457–7231, ''djshaw@gw.dec.state.ny.us''

The project is:
— researching, producing and disseminating educational materials about market based pricing mechanisms to reduce auto travel
— building on work with cash-out parking demo projects and Pricing Project Implementation on I–287/Tappan Zee Corridor
— sending clear public health message

''Air World''—Interactive Information Kiosk (1997)

Ventura County Air Pollution Control Board Contact: Barbara Page, 805/645–1415, ''barbara@vcapcd.org''

This initiative:
— created a stand-alone bilingual interactive information kiosk for the public focusing on transportation-related air quality issues with content which reflects national, state and local issues
— produced products including a prototype kiosk (providing other air quality management agencies with 60–70% of actual programming needed to produce a similar kiosk for their citizens—video, graphics, animation) and an instructional handbook

''Rideshare,'' ''Smoking Vehicles,'' ''Mow Down Smog'' (1999)

Texas Natural Resource Conservation Commission/Alamo Area Council of Governments Contacts: Mike Fishburn (TNRCC), 512/239–1934, ''mfishbur@tntcc.state.tx.us''; Contact: Liza Cardenas (AACOG), 210/362–5213, ''l.cardenas@aacog.dst.tx.us''; (''www.aacog.dst.tx.us'')

In partnership with the Alamo Area Rideshare Program, ''Ridesharing'' is designed to:
— encourage commuters through radio and cinema advertisements to consider carpooling as an alternative form of transportation
— educate consumers on the benefits of ride-sharing and trip reduction (cost savings, improved air quality, reduced congestion and enhanced quality of life) Building on the Texas ''Smoking Vehicle Program,'' ''Smoking Vehicles'':
— educates the public that vehicle smoke which is polluting the air is a result of mechanical problems
— encourages the public to call in license plates numbers of smoking vehicles triggering a letter and response card to the motorist advising of the smoking vehicle report
— informs the public through billboards on major highways

''Mown Down Smog'' is:
— a cash voucher program to encourage the public to trade in gasoline-powered lawn mowers for electric mowers

''Neighborhood Transportation Choices'' (1999)

Spokane County Air Pollution Control Authority Contact: Lisa Woodard, 509/477–4727 x115, ''publicinfo@scapca.org''

This project is designed to:
— create a sustainable, neighborhood-based education and outreach effort
— focus on personal as well as commuter trips
— produce informational materials including video and neighborhood action kits
— achieve an overall 10–15% reduction in weekly vehicle miles traveled, vehicle trips and auto emissions
— improve air quality and public health by making safe and smart car use second nature for families as recycling is now

*''Commuter Choice'' **

American Management Association (AMA) Contacts: Courtney Brockman, 202/347–1977, ''cbrockman@amanet.org'' (''www.amanet.org'')

Outreach support to the Commuter Choice program will include:
— a coalition of companies and organizations involved in Commuter Choice
— a website to provide an array of information
— a committee of representatives from key agencies to accomplish the objectives of the program

''Reducing Cold Starts/Diesel Emissions'' (1999)

New York Department of Environmental Conservation/Tri-State Transportation Campaign Contacts: Dave Shaw (NYDEC), 518/457–7231, ''djshaw@gw.dec.state.ny.us'' Janine Bauer (Tri-State), 212–268–7474, ''jbauer@tstc.org'' (''www.tstc.org'')

The project is designed to:
— raise awareness among a wide variety of audiences of the air quality impacts of cold automobile engine starts and diesel soot from trucks
— educate and motivate through media, posters, community meetings, Earth Day handouts and other known effective outreach mechanisms
— encourage people who live near and use train stations to walk or bike, reducing pollution from cars and trucks through avoided trips, cleaner fuels and mode shifts

''Clean Air Fair 2000'' Community Outreach Program (1999)

Mojave Desert Air Quality Management District Contact: Violette Roberts, 760/245–1661 x 6104, ''vroberts@mdaqmd.ca.gov'' (''www.mdaqmd.ca.gov'')

The project is:
— promoting public awareness about mobile sources, air quality and public health
— developing and providing educational tools needed for the public to make informed decisions regarding purchase and use of mobile sources (car care, smog checks, less polluting lawn equipment, natural gas vehicles)
— launching a comprehensive marketing campaign to increase attendance at annual ''Clean Air Fair''

—designed to serve as a blueprint for other communities

Involving Youth in Mobile Source Issues

*''Let Kid Lead: Youth VMT Initiative'' (''Creating Community-Based Solutions to Community-Defined Problems'')**

Academy for Educational Development (AED) Contacts: Bill Smith, 202/884–8750, ''bsmith@aed.org;'' Rick Bossi, 202/884–8898, ''rbossi@aed.org'' (''www.letkidslead.org/home.html'') (''www.aed.org'')

The purpose of this youth-based program, which has entered into partnership with Kansas City, Tampa and Boston as its pilot sites is to:

—create a replicable and sustainable program for involving youth and families in reducing growth in vehicle miles traveled (VMT)
—enable youth to communicate about travel choices, solve problems and make sound travel decisions to minimize VMT
—share successful practices, lessons learned and tools developed in the pilot sites with other communities
—serve as a blueprint for communities interested in including a youth component in efforts to reduce growth of VMT

''Easy Breathers'' (1998)

Wisconsin Department of Natural Resources Sara Burr, 608/266–2621, ''burrs@dnr.state.wi.us'' (''www.dnr.state.wi.us'')

The project is:

—a national educational effort focusing on the *science* of mobiles sources
—raising awareness and understanding high schools, technical and community colleges and business communities
—being integrated/coordinated with the Wisconsin Partners for Clean Air (involved in pilot activities for transportation/air quality initiative) and the ''Cleaner Cars'' driver education curriculum module developed by the Environmental Health Center
—a multimedia approach (interactive CD, poster, research materials, link to websites)

''Smog City: Interactive Air Pollution Simulator'' (''www.smogcity.com'') (1998)

Sacramento Metropolitan Air Quality Management District Contact: Kerry Shearer, 916/386–6180, ''cleanair@sna.com'' (''www.spareheair.com'')

''Smog City'' is:

—designed for users to manipulate multiple on-screen controls with their mouse to control variables within ''Smog City,'' and the simulation will be able to respond to that input based information
—colorful, challenging, completely interactive, instantly applicable in the classroom ''I Can See for Miles'' (1999)

Jefferson County Department of Health/Jefferson County Department of Environmental Protection (Alabama) Contacts: Sam Bell (JCDH), 205/930–1366, ''sbell@jcdh.org''; Mike Higginbotham (JCDEP), 205/325–8712, ''higginbothamm@jcc.co.jefferson.al.us''

''I Can See for Miles'':

—began with a Family Bike Day
—is taking the message of mobile source reductions to children and youth attending summer camps
—includes development of an ozone website directed at students

Educating Future Drivers and Consumers

*''Cleaner Cars Module: An Initiative to Encourage Responsible Car Maintenance and Driving Habits Among Future Drivers.''**

Environmental Health Center (National Safety Council) Contact: Bud Ward, 202/974–2461, ''wardb@nsc.org'' (''www.nsc.org/ehc/mse.htm)

Networking and coordinating with other similar projects across the country, this effort has:

—developed a driver education curriculum module for new drivers linking benefits of responsible maintenance to responsible driving for use in 3000+ public and private driver education programs nationwide
—Products including teacher plans, exercises, information wheel, interactive CD ROM, overheads
—Available now!

*NESCAUM Driver Education Pilot of ''Cleaner Cars Module''**

Contact: Ginger Lawrence, 617/367–8540, ''glawrence@nescaum.org'' (''www.nescaum.org'')

This effort:

—piloted the driver education curriculum module developed by the Environmental Health Center (see above) in several cities in the northeast

''I.D.L.E. in Dade'' (1997)

Dade County Department of Environmental Resources Management Contact: Kristin Buch, 305/372–6895, ''kbuch@co.miami-dade.fl.us''

The program:

—educates new drivers on the air quality impacts of driving, use of alternative fuels and transportation choices
—encourages responsible maintenance and driving practices
—teach critical-thinking, problem-solving, and decision-making skills through educational videos, informational handouts, creative hands-on demonstrations and design contests

*''A Fresh Breath: Transportation Education for a Pollution-Free Tomorrow''/Annual Tour de Sol** (1998–2000)

Northeast Sustainable Energy Association (NESEA) Contacts: Chris Mason, 413/774–6051, ''cmason@nesea.org''; Nancy Hazard, 413/774–6051, ''nhazard@nesea.org''; (''www.nesea.org/transp-home.htm'')

Designed as a teacher training course, these projects:

—create educational resources that bring issues of transportation and the environment into middle school classrooms
—are delivered through workshops which get young people involved in making informed and environmentally sound transportation choices, and
—the annual Tour de Sol, US electric vehicle championship (which will travel from New York to Washington DC May 12–19, 2000)

*''Going Places, Making Choices: Transportation and the Environment''**

National 4–H Council Contact: Cindy Sturtevant, 301/961–2965, ''csturtevant@fourhcouncil.edu'' (''www.fourhcouncil.edu/whatsnew/utop.htm'')

This project:

—supports effective distribution of an existing transportation/air quality/climate change curriculum to help high school age youth understand and respond to real life issues of transportation and personal mobility choices affecting their quality of life
—has distributed more than 3,000 copies of the curriculum

Dealing With In-Use Emissions

''On Board Diagnostics II—Outreach to Technicians and Consumers'' (1998)

Utah Department of Air Quality/Division of Air Quality Bill Colbert (Utah DAQ), 801/536–4423, ''bcolbert@deq.state.ut.us''; Joe Thomas (Weber State University), 801/536–4175, ''jthomas@deq.state.ut.us''; (''www.eq.state.ut.us/eqair/aq home.htm'')

The national OBDII Trainer the Trainer Workshop Series is:

—designed to on 2 tracks to support state I/M regulators and technical and

communication staff (Technical Track and Public Awareness Track)

*''OBD Training Course for Technicians''**

Service Technicians Society (STS) Contact: 412/772–7166

STS is:

—Developing a training course on-board diagnostic systems for technicians. The video will be completed in mid-2000.

''Motivating Timely Repair of Vehicles not subject to I/M through Remote Sensing, Public Outreach, and Repair Community Incentives'' (1998)

Oregon Department of Environmental Quality Contact: Nina DeConcini (Oregon DEQ), 503/229–6788, ''deconcini.nina@deq.state.or.us''; Ken Mays (Central Oregon Community College), 541/383–7753

This project will:

—raise awareness of highly polluting vehicles and their impact on public health

—motivate community actions to encourage repair of high emitting vehicles NOT subject to I/M

—mobilize the repair industry to offer repair incentives for vehicles identified as high emitters

—stimulate communities to use resources to promote and evaluate effectiveness of the program

*''Car Care for Clean Air'' Pilot Project**

Contact: Bill Colbert, Utah DAQ 801/536–4423, ''bcolbert@ deq.state.ut.us'' (''www.eq.state. ut.us/eqair/aq home.htm)

This pilot project was designed to:

—raise public awareness of ways in which automotive service affects air quality

—create coalitions to identify ways to improve vehicle maintenance practices—elevating the number, skill sets, performance and image of vehicle maintenance technicians

—encourage environmentally-sound transportation choices in anticipation of 2002 Olympics and beyond

''The Air Repair Communications Project'' (1997)

Missouri Department of Natural Resources Contact: Kerry Cordray, 573–751–4817, ''nrcordk@mail.dnr.mo.us'' (''www.dnr.state.mo.us'')

A bi-state effort in partnership with the American Lung Association of Eastern Missouri, the ''Air Repair Communications Project'' is:

—focusing on enhanced inspection and maintenance

—based on extensive market research

—creating replicable materials including media kits, psas, exhibits, articles for newsletters, brochure to educate on enhanced I/M, theater screen slides, video to be distributed through Blockbuster;

—undertaking activities including car care clinics, community presentations, training and materials development for transportation management associations, participation at commuter fairs, open houses for public information exchange; make I/M program information available through posting on the WWW and other outreach tools

Alternative Fuels

''EVs for Tourists in Martha's Vineyard'' (1999)

Massachusetts Department of Environmental Protection Contact: Kristin MacFadyen, 617/556–1135, ''kristin.macfadyen@state.ma.us''

The project was designed:

—as a pilot project to promote the use of electric vehicles and bring visibility to alternative fuels

—to create a display and educational events agenda

—improve air quality by displacing gasoline vehicles with electric vehicles

—educate auto technician students about alternative fuels and show successful and practical applications of electric vehicle repair

—prove by example that electric vehicles are a real world solution to dirty air

''Clean Fuel Fleets''—''One Stop'' Information Resource Program (1999)

Georgia Department of Natural Resources/Clean Air Campaign/Clean Cities Contacts: William Cook (GA DNR), 404/362–2781, ''william cook@mail.dnr.state.ga.us''; Kent Igleheart (Clean Air Campaign), 404/524–4400, ''kai@4cleanair.com'' (''www.4cleanair.com'')

This project will:

—use a variety of tools to reach different audiences, including fleet operators and the general public

—create tools to include an interactive CD ROM, a ''one stop'' website, a national toll-free hotline, fleet managers' workshop, newsletters, fax alerts and theater slides

Heavy Duty

''Heavy Duty Vehicle Emission Reduction Outreach Program'' (1998)

San Joaquin Valley United Air Pollution Control District Contact: Dave Mitchell/Janis Parker, 209/497–1075, ''sjvuapcd@psnw.com''

This comprehensive marketing program is:

—targeting owners/operators of heavy duty on-road and non-road engines and demonstrating operating advantages

—informing potential participants of all available local, state, and federal incentives for using clean technology

—participating in annual Tulare Farm and Equipment Show (display/product show and breakout session)

Off Road

''Clean Snowmobiles: Workshops, Challenge 2000, and Partnerships'' (1999)

Montana Department of Environmental Quality Contact: Howard Haines, 406/444–6773, ''hhaines@state.mt.us'' (''www.sae.org/students/snowfact.htm'' ''www.sae.org/students/snownews.htm'')

The partnerships will:

—build on results from recent technical studies that reduce emissions from snowmobiles

—develop an education effort targeted at voluntary public use of pollution reducing technologies

—support a clean snowmobile design competition (in partnership with the Society of Automotive Engineers)

—establish a regional clearinghouse for relevant technologies

Small Engines

''Cash for Clippers'' (1997)

Maryland Department of the Environment Contact: Tad Aburn, 410/631–3245. ''gaburn@mde.state.md.us''

This program:

—educated consumers about pollution prevention, ground-level ozone, MDE's forecasting program, and the impact of lawn and garden equipment

—offered rebates toward purchase of non-gasoline powered lawn mowers

—developed economic incentives to prevent pollution, foster creativity and innovation within the private and public sectors

Environmental Justice

''Outreach to Hispanic and Chinese Communities'' (1999)

Bay Area Air Quality Management District Contact: Theresa Lee, 415/749–4905, ''tlee@baaqmd.gov''

The project will:

—begin with development of ''trial'' messages for radio and television focusing on the relationship of mobile sources, air quality and health, the importance of proper car maintenance, and advantages of carpooling

—include focus groups, production and placement of ads

—be designed for hand off to other communities

Programs in Support of NAAQS

*''Air Pollution, Motor Vehicles and Public Health''**

American Lung Association (ALA) Contact: Katherine Pruitt, 202/785–3355, ''kpruitt@lungusa.org'' (''www.lungusa.org'')

Mini-grants provided to 15 local lung associations (through ALA competitive process) for public education efforts which address a wide range of mobile source issues.

Projects are designed to:

—send a strong public health message focused on children and asthma designed to raise public awareness of air quality and the impact of mobile sources

—be implemented in ozone season 2000

''Integrate the Televised Ozone Map with Mobile Source Outreach Initiatives'' (1997)

NESCAUM/MARAMA/OTC Collaboration Contact: Ginger Lawrence, NESCAUM, 617/367–8540 (''www.nescaum.org'')

This project:

—expanded the scope of the animated ozone map to 14 states+ represented by NESCAUM, MARAMA and OTC

—encourages region-wide distribution and use of the map, conduct public outreach to inform and motivate voluntary mobile source ozone abatement actions, and development of outreach materials for meteorologists and the public

—provides technical assistance to other regions of the country interested in the benefits of ozone mapping and forecasting, through creation of a web site and other outreach activities

*Ozone and Particulate Matter Outreach**

STAPPA/ALAPCO Contact: David Wallenberg, 202/624–7864, ''*davew@sso.org*'' (''www.4cleanair.org'')

STAPPA/ALAPCO is developing dynamic education and outreach materials to help state and local air agencies communicate the ozone and PM decisions and potential implications to elected officials, the media and the public. The project: produced and distributed an informational video on PM 2.5—''Small Town Saves World'' to every state and local air agency. The video is designed to educate important constituents including state and local elected officials, civic and business groups and high school and college students.

SECTION IX. Other Items of Interest

V. Is there other information I should have before applying? Yes.

—Submission of an Intent to Apply or a final proposal does not guarantee funding.

—Supplementary information, including letters of recommendation, will not be reviewed by the evaluators.

—Only those organizations selected will be required to submit a complete ''Application for Federal Assistance and Budget Information (SF 424 and SF 424A) to the appropriate EPA Regional Office.''

Section X. How to Apply

W. How do I apply? Intents to Apply may take the form of email, fax or phone call to the Program Contact listed below. Include organization, contact, phone and project title/subject. Please Submit Informal Intents to Apply by January 7, 2000.

Completed Proposals must be postmarked or received on or before midnight, Wednesday, February 23, 2000 (original + 6—no binders or spiral binding please!)

Via regular mail to: Susan Bullard, Director of Outreach, US EPA Office of Mobile Sources, Mail Code 6406J, 401 M Street SW, Washington, DC 20460.

Express mail must be received by no later than midnight on Wednesday, February 23, at the following address: Susan Bullard, Director of Outreach, US EPA Office of Mobile Sources, 501 Third Street NW, Room 5304D, (202) 564–9856, (202) 564–9403 (backup number for expressed proposals only).

[Note: Proposals may be e-mailed or faxed only as a placeholder, and must be followed by a hard copy original and 6 copies postmarked or received no later than the deadline.]

Deadline for Completed Final Proposals Must be received or postmarked no later than midnight on Wednesday, February 23, 2000.

Section XI. OMS Program Contact

Susan Bullard, Director of Outreach, EPA Office of Mobile Sources, 401 M Street SW (Mail Code 6406J), Washington, DC 20460, (Phone) 202/564–9856, (Fax) 202/565–2085, ''bullard.susan@epa.gov''.

Donald E. Zinger,

Assistant Director, Office of Mobile Sources.

[FR Doc. 99–32644 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00283; FRL–6398–8]

Pollution Prevention Grants and Announcement of Financial Assistance Programs Eligible for Review; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces that EPA expects to have approximately $5 million available in fiscal year 2000 grant/cooperative agreement funds under the Pollution Prevention Incentives for States (PPIS) grant program. Grants/cooperative agreements will be awarded under the authority of the Pollution Prevention Act of 1990. The Pollution Prevention Act provides funds to state and tribal programs that address the reduction or elimination of pollution across all environmental media (air, land, and water) and to strengthen the efficiency and effectiveness of State technical assistance programs in providing source reduction information to businesses. This notice also establishes the criteria to be used by applicants to draft funding proposals.

DATES: The deadlines for submission of applications and proposals for funding will be set by each EPA region. Contact the EPA Regional Pollution Prevention Coordinator for specific dates.

ADDRESSES: Proposals and applications must be submitted to the respective EPA Regional Pollution Prevention Coordinator at the address listed in Unit XI of this document.

FOR FURTHER INFORMATION CONTACT: For general information about the grant program contact: Christopher Kent, Pollution Prevention Division (7409) Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M Str., SW, Washington, Dc 20460; telephone (202) 260–3480; email address kent.christopher@epa.gov.

For technical and regionally specific information contact: The EPA Regional Pollution Prevention Coordinator listed under Unit XI of this notice.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to me?

This action is directed to State governments, State programs or departments as well as other State institutions, such as universities as well as all federally recognized Native American Tribes. Local governments,

private universities, private nonprofit entities, private businesses, and individuals are not eligible for this grant program. If you have any questions regarding the applicability of this action to a particular entity, contact the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

Electronically. You may obtain electronic copies of this document and certain other related documents that might be available electronically, from the EPA Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**-- Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgst. These documents will also be available at the EPA P2 web site http://www.epa.gov/p2 or to access them directly within the P2 site http://www.epa.gov/p2/ppis.htm.

II. What Action is the Agency Taking?

This notice announces that EPA expects to have approximately $5 million in grant/cooperative agreement funds available in FY 2000 for FY 2001 pollution prevention activities.

III. Background of the Pollution Prevention Incentives for States Grant Program

More than $55 million has been awarded to over 100 state and tribal organizations under EPA's multimedia pollution prevention grant program, since its inception in 1989. During the past 10 years, PPIS funds have enabled state programs to implement a wide range of pollution prevention activities including over 8,000 pollution prevention assessments, 1,200 workshops, and the development of over 500 pollution prevention case studies. PPIS grants also provide economic benefits to small businesses by funding state technical assistance programs focused on helping the businesses develop more efficient production technologies and operate more cost effectively. The goal of the PPIS grant program is to assist businesses and industries in identifying better environmental strategies and solutions for complying with Federal and state environmental regulations. PPIS grants are designed to effect the compatibility of businesses environmental and economic decision making, and improving competitiveness without increasing environmental impacts. Successes include decreases in facility emissions and discharges which lead to less stringent regulatory and permitting requirements, increases in production rates that correlate to decreasing environmental costs, elevated investments in new and better technologies, and savings that directly impact the overall profitability of a business. The majority of the PPIS grants fund state-based projects in the areas of technical assistance and training, education and outreach, regulatory integration, data collection and research, demonstration projects, and recognition programs.

In November 1990, the Pollution Prevention Act of 1990 (the Act) (Public Law 101–508) was enacted, establishing as national policy that pollution should be prevented or reduced at the source whenever feasible.

1. Section 6603 of the Act defines source reduction as any practice that:

i. Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal.

ii. Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

EPA further defines pollution prevention as the use of other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources, or protection of natural resources by conservation.

2. Section 6605 of the Act authorizes EPA to make matching grants to states to promote the use of source reduction techniques by businesses. In evaluating grant applications, the Act directs EPA to consider whether the proposed state program will:

i. Make technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice and to assist in the development of source reduction plans.

ii. Target assistance to businesses for which lack of information is an impediment to source reduction.

iii. Provide training in source reduction techniques.

IV. Availability of FY 2000 funds

EPA expects to have approximately $5 million in grant/cooperative agreement funds available for FY 2001 pollution prevention activities. The Agency has delegated grant making authority to the EPA regional offices. EPA regional offices are responsible for the solicitation of interest and the screening of proposals.

All applicants must address the national program criteria listed under Unit VII.2.ii. of this document. In addition, applicants may be required to meet supplemental EPA regional criteria. Interested applicants should contact their EPA Regional Pollution Prevention Coordinator, listed under Unit XI of this document for more information.

V. Catalogue of Federal Domestic Assistance

The number assigned to the PPIS program in the Catalogue of Federal Domestic Assistance is 66.708 (formerly 66.900).

VI. Matching Requirements

Organizations receiving pollution prevention grant funds are required to match Federal funds by at least 50%. For example, the Federal government will provide half of the total allowable cost of the project, and the state will provide the other half. State contributions may include dollars, in-kind goods and services, and/or third party contributions.

VII. Eligibility

1. *Applicants*. In accordance with the Act, eligible applicants for purposes of funding under this grant program include the 50 states, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a state including state universities, and all federally recognized Native American Tribes. For convenience, the term ''State'' in this notice refers to all eligible applicants. Local governments, private universities, private nonprofit entities, private businesses, and individuals are not eligible. State applicants are encouraged to establish partnerships with business and other environmental assistance providers to seamlessly deliver pollution prevention assistance. Successful applicants will be those that make the most efficient use of Federal/state government funding. In many cases, this has been accomplished through partnerships.

2. *Activities and criteria*. - i. *General*. The purpose of the PPIS grant program is to support the establishment and expansion of state and tribal multimedia pollution prevention programs. EPA specifically seeks to build state pollution prevention capabilities or to test, at the state level, innovative

pollution prevention approaches and methodologies. Funds awarded under the PPIS grant program must be used to support pollution prevention programs that address the transfer and reduction of potentially harmful pollutants across all environmental media: Air, water, and land. Programs should reflect comprehensive and coordinated pollution prevention planning and implementation efforts state-wide. States that include PPIS funding as part of their overall State Performance Partnership Agreement (PPA)/ Performance Partnership Grant (PPG) program satisfy this eligibility criteria.

ii. *2000 national program criteria.* This section describes the national program criteria EPA will use to evaluate proposals under the PPIS grant program. In addition to the national program criteria, there may be regionally specific criteria that the proposing activities are required to address. For more information on the EPA regional requirements, applicants should contact their EPA Regional Pollution Prevention Coordinator, listed under Unit XI of this document. As well as ensuring that the proposed activities meet EPA's definition of pollution prevention, the applicant's proposal must include how they intend to address the following three activities:

iii. *Promote partnering among environmental and business assistance providers.* Starting in 1994, EPA required PPIS grant applicants to identify other environmental assistance providers in their states and to work with these organizations to educate businesses on pollution prevention. EPA would like to continue to encourage cooperation among state pollution prevention programs and other environmental and business assistance providers such as the National Institute of Standards and Technology (NIST) programs, Small Business Development Centers (SBDCs), Small Business Assistance Programs (SBAPs), Office of Enforcement and Compliance Assistance (OECA) Compliance Assistance Centers, the large number of university cooperative extension programs and other business and environmental assistance programs at the state level, as well as other well established nonregulatory programs. Through the PPIS grant funds, EPA is striving to support the development of a coordinated network of state environmental service providers that leverages the expertise of the various environmental assistance organizations and shows an ability to work jointly in an effort to promote pollution prevention in the state. EPA wants to help foster a cooperative network of environmental assistance providers since cooperation among state business and environmental assistance providers is paramount in this era of shrinking Federal funded programs. EPA would like to ensure that state pollution prevention programs and other assistance providers establish cooperative working relationships which make best use of their respective areas of expertise and most effectively serve their clients. State and tribal grant applicants should identify the partnering organization(s) they plan to work with during the grant funding cycle and demonstrate or document the relationship. This can be done, for example, through a letter of agreement, a joint statement, or principles of agreement signed by both parties or multiple parties. If the partnership involves providing Federal funds to ineligible entities, the grantees shall abide by state procurement regulations, as required by state law.

iv. *Advance state environmental goals.* EPA believes it is important for the sustainability of state pollution prevention programs to complement the goals and strategies of the state's environmental strategic plans and/or the activities included under the National Environmental Performance Partnership System (NEPPS) in an effort to show that the pollution prevention work they are undertaking complements and supports the state's environmental strategic plans. If the state-environmental program lacks a single comprehensive environmental strategy, applications must show a correlation between the proposed activity and the goals or objectives of the state's environmental program. EPA believes pollution prevention programs will continue to be valuable to the state-environmental agency's top management if they can demonstrate how their actions will help advance state goals. EPA would like to ensure that pollution prevention is integrated at the state level by providing a service which supports the state's strategic plan. The grant application narrative should demonstrate how pollution prevention activities will advance state-environmental goals as stated in the state environmental strategic planning documents or either PPA or PPG.

v. *Promote accomplishments within the state's environmental programs.* EPA realizes the importance of documenting the program effectiveness and communicating those results to the affected media office. EPA wants to ensure that the environmental programs in the state are aware of the contributions of the pollution prevention program within their sectors, programs, and geographic areas by making a link between the regulatory program and the activities of the pollution prevention program. By creating this positive feedback mechanism to the state's regulatory program, the grantee can market their accomplishments and consequently help promote the sustainability of the pollution prevention program. Through the PPIS grants, EPA is working to encourage better awareness by the state regulatory and media programs of how pollution prevention and the state pollution prevention programs are helping the regulatory programs address increasingly complex environmental management problems. Applications must include what activities the pollution prevention program will undertake to ensure communication and feedback to the regulatory and other environmental programs showing how pollution prevention is helping to advance multimedia environmental protection.

3. *Identifiable measures of success.* For each of the activities identified in the application, the applicant must identify how and what criteria they are using to track the effectiveness of the activity. Measures of success should be either measures of environmental improvement, or should be directly linked to such measures. For example, success could be identified by demonstrating a direct link between the project's activities and in quantifiable reductions in pollution generated or in the natural resources used.

4. *Program management.* Awards for FY 2000 funds will be managed through the EPA regional offices. Applicants should contact their EPA Regional Pollution Prevention Coordinator, listed under Unit XI of this document, to obtain specific deadlines for submitting proposals. National funding decisions will be made by May 2000.

VIII. Information Clearinghouse and Use of P2Rx Regional Centers

The Pollution Prevention Act requires EPA to establish a source reduction clearinghouse to ''collect and compile information reported by States receiving grants under Section 6605 on the operation and success of State source reduction programs.'' The Pollution Prevention Information Clearinghouse (PPIC) was created with the idea that through technology transfer, education and public awareness, it is possible to reduce or eliminate industrial pollutants. The PPIC is a free, nonregulatory service offering reference and referral, document distribution, and a comprehensive library service. The PPIC's special collection comprises state

and Federal publications, pollution prevention manuals, training materials, conference proceedings, case studies, newsletters, and videos. For more information on this collection, please visit their web site at http://www.epa.gov/opptintr/library/libppic.htm.

A priority that EPA considers important to strengthen state P2 activities and aid the formation of partnerships with other business assistance providers is the Pollution Prevention Resource Exchange (P2Rx). EPA has allocated a portion of its state grant funds to develop and sustain regional pollution prevention centers that facilitate and serve state needs in coordinating training and information development. EPA believes that the P2Rx network, which connects and coordinates regional pollution prevention information centers, can benefit both states programs and their clients by improving the quality and availability of pollution prevention technical information, sharing information, minimizing duplication of efforts in developing materials for training and technical assistance providers, providing for the development of quality peer reviewed P2 information, and expanding their understanding of how other states are addressing the needs of business assistance providers.

To facilitate the transfer of information generated by pollution prevention grant dollars, all work products (i.e., including but not limited to flyers, fact sheets, pamphlets, handbooks, model curricula, assessment and audit tools, videos, event brochures etc.) produced with Federal PPIS funds will be shared with the appropriate regional P2Rx centers as well as a copy to the PPIC. The PPIC will catalogue these products and can serve as a repository of prevention grant information products. Please contact the EPA Regional Pollution Prevention Coordinator, listed under Unit XI of this document, for more information on the Pollution Prevention Resource Exchange. Please contact Christopher Kent (telephone: (202) 260–3480; e-mail: kent.christopher@epa.gov) for more information concerning delivery of work products for the PPIC Collection.

IX. Proposal Narrative Format

To clearly document the activities listed in the grant proposal, the narrative portion of the application should include a summary of proposed activities using the following format:

1. A description of the proposed work and a timeline of activities.

2. A list of tasks that will be carried out.

3. A list of the resulting deliverables that will be produced.

X. Progress Report

Progress reports are due to the EPA project officer every April and October after the project period is over 1 month old. A final report is due within 90 days of the end of the grant period.

In addition to the EPA project officer's regionally specific required number of copies of deliverables, please forward one copy of each of the semi-annual progress reports and the final reports (and deliverables) to the Pollution Prevention Division in Washington DC. Please address the documents to: PPIS Grant Products, Pollution Prevention Division (7409), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

The narrative in the progress reports should refer back to the stated objectives and timeline of the original grant application. Beneath each objective, the objective's current status should be reported. Any substantive diversion from a stated objective, or any deviation from the proposed timeline should be explained. Only the activities required under the grant, which meet EPA's definition of pollution prevention, should be reported.

At a minimum, the progress reports should also include the following:

1. A short summary of the accomplishments for the reporting period.

2. Progress on completing individual project tasks.

3. The planned and actual schedules for task completion.

4. Projected accomplishments for the next reporting period.

5. Data on financial expenditures by budget category.

Any printed deliverables required under the grant should be enclosed with the first report following the date the deliverable was due to be produced.

A final report will be required upon completion of the grant.

EPA is working on developing a standard electronic format for use by PPIS grantees in reporting their grant activities. Please contact the EPA Regional Pollution Prevention Coordinator, listed under Unit XI of this document, for more information on the GranTrack Reporting Form.

XI. Regional Pollution Prevention Coordinators

The EPA Regional Pollution Prevention Coordinators are:

Region I: (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) Kira Jacobs, JFK Federal Bldg. / SPP, Boston, MA 02203, (617) 918–1817, e-mail: jacobs.kira@epa.gov

Region II: (New Jersey, New York, Puerto Rico, Virgin Islands) Danielle Fuligni (SPMMB), 290 Broadway, 25th Floor, New York, NY 10007, (212) 637–3584, e-mail: fuligni.danielle@epa.gov

Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia) Jeff Burke, (3RA20), 1650 Arch St., Philadelphia PA 19103–2029, (215) 814–2761, e-mail: burke.jeff@epa.gov

Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee) Dan Ahern, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303, (404) 562–9028, e-mail: ahern.dan@epa.gov

Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin) Phil Kaplan, (DRP–8J), 77 West Jackson Blvd., Chicago, IL 60604–3590, (312) 353–4669, e-mail: kaplan.phil@epa.gov

Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, Texas) Eli Martinez, (6EN–XP), 1445 Ross Ave., 12th Floor, Suite 1200, Dallas, TX 75202, (214) 665–2119, e-mail: martinez.eli@epa.gov

Region VII: (Iowa, Kansas, Missouri, Nebraska) Marc Matthews, (ARTD/TSPP), 901 N 5th St., Kansas City, KS 66101, (913) 551–7517, e-mail: matthews.marc@epa.gov

Region XI: (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming) John Larson, (8P2–P2), 999 18th St., Suite 500, Denver, CO 80202–2405, (303) 312–6030, e-mail: larson.john@epa.gov

Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, Guam) Eileen Sheehan (WST–1–1), 75 Hawthorne Ave., San Francisco, CA 94105, (415) 744–2190, e-mail: sheehan.eileen@epa.gov

Region X: (Alaska, Idaho, Oregon, Washington) Carolyn Gangmark, 01–085, 1200 Sixth Ave., Seattle, WA 98101, (206) 553–4072, e-mail: gangmark.carolyn@epa.gov

List of Subjects

Environmental protection, Grant administration, Grants, pollution prevention.

Dated: December 6, 1999.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–32653 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6510–4]

Request for Applications: Hazardous Substances Research Centers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for applications.

SUMMARY: This document provides information on the availability of a fiscal year 2000 grants program announcement for the award of up to five Hazardous Substances Research Centers. The areas of research interest, outreach activities, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth in the announcement. Grants will be competitively awarded following peer review.

DATES: The deadline date for receipt of applications is Tuesday, March 14, 2000, no later than 4 p.m. ET.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance (8703R), 401 M Street SW, Washington, DC 20460, telephone (800) 490–9194. The complete announcement can be accessed on the Internet from the EPA home page: http://www.epa.gov/ncerqa under ''announcements.''

SUPPLEMENTARY INFORMATION: In its Request for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites grant applications to support the creation of up to five new Hazardous Substances Research Centers. The Centers will address priority hazardous substance research and training, technology transfer, and technical assistance. Awards will begin after October 1, 2000. Existing Centers approaching the conclusion of their current term of EPA support and new consortia are eligible to submit proposals to this solicitation. All proposals will be subjected to the same review process and review criteria. The RFA provides relevant background information, summarizes EPA's interest in hazardous waste research areas, and describes the application and review process.

EPA contact persons for this solicitation are Alfred A. Galli (galli.alfred@epa.gov), telephone 202–564–6887, and Thomas Veirs (veirs.thomas@epa.gov), telephone 202–564–6831.

Dated: November 15, 1999.

Norine E. Noonan,

Assistant Administrator for Research and Development.

[FR Doc. 99–32645 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34143B; FRL–6484–3]

Organophosphate Pesticides; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, dimethoate. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34143B, must be received by EPA on or before February 14, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34143B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on dimethoate, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically.* You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. *In Person.* The Agency has established an official record for this action under docket control number OPP–34143B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34143B in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental

Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier*. Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. Submit electronic comments by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34143B. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate, dimethoate. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the dimethoate preliminary risk assessments, which where released to the public on September 9, 1998 (63 FR 48213) (FRL–6030–2) through a notice in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for dimethoate. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the pesticides specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific dimethoate use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest (''pre-harvest intervals''), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, for example, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commenters may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before February 14, 2000 at the addresses given under the ''ADDRESSES'' section. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: December 8, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–32651 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–901; FRL–6393–4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–901, must be received on or before January 18, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–901 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9525; and

e-mail address: benmhend.driss@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	311 32532	Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–901. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–901 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: *''opp-docket@epa.gov,''* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–901. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 2, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Agrotol International

9F6065

EPA has received a pesticide petition (9F06065) from Agrotol International, 7322 Southwest Freeway, Suite 1400, Houston, TX 77074, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide phosphorous acid.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Agrotol International has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Agrotol International and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Agtrol International has applied for registrations of two products containing phosphorous acid as the sole active ingredient (a.i). One product, Phosphorous Acid Technical, is a manufacturing-use product containing the a.i at 71%. This product is intended for use in formulating fungicidal products for application to terrestrial food crops. The other product, Agri-Phos Agricultural Fungicide, is an end-use product containing the 56.2% mono- and dibasic sodium, potassium and ammonium salts of phosphorous acid (36.3% phosphorous acid). This product is a fungicide intended for application to terrestrial food crops, i.e., avocado, Brassica crops, caneberry, citrus, curcubit crops, ginseng, grape, hops, leafy vegetables, onions (dry bulb), pineapple, pome fruit, strawberry, and tomato.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues—plant metabolism*. Phosphorous acid is rapidly degraded in the environment to yield hydrogen and phosphite ions. Release of hydrogen ions will increase the pH of the plants surface, which will be moderated by the amount of neutralizing ions present, the buffering capacity, and the amount of dilution possible. Phosphite ions are available for uptake by plants usually in the form of ammonium, calcium, and potassium and sodium phosphites (phosphite salts).

2. *Magnitude of residue at the time of harvest and method used to determine the residue*. Magnitude of residue Agtrol has requested a waiver for all residue chemistry data requirements because phosphorous acid *per se* is not expected to be found in or on raw agricultural commodities (RAC). Phosphorous acid sprayed on plants is expected to dissociate rapidly releasing hydrogen and phosphite ions. The ions are available for uptake by plants usually in the form of ammonium, calcium and potassium and sodium phosphites (phosphite salts). Many phosphite salts are generally recognized as safe (GRAS). See 21 CFR 182.3616, 182.3637, 182.3739, 182.3766, 182.3796, and 184.1764. Moreover, natural means are expected to moderate the accumulation of these ions on plants.

3. *Analytical method*. Agtrol International has not submitted a practical analytical method for the detection and measurement of pesticide chemical residues. Phosphorous acid *per se* is not expected to be found in or on RACs, because once this chemical is released into the environment it dissociates rapidly to form hydrogen and phosphite ions.

C. Mammalian Toxicological Profile

1. *Acute toxicity*. Phosphorous acid is of high acute toxicity through the oral, dermal, and inhalation routes of exposure. Phosphorous acid is corrosive to eyes and skin. However, results of studies conducted on Agri-Phos Agricultural Fungicide, the end-use product for which Agtrol International has applied for registration, demonstrate that this product has a low order of toxicity. The acute oral LD_{50} in the rat was greater than 5,000 milligrams per kilograms (mg/kg) of bodyweight. The acute dermal LD_{50} in the rat was greater than 5,000 mg/kg of bodyweight. The acute inhalation LC_{50} in the rat was greater than 2.06 milligrams per liter (mg/L). The product was found slightly irritating to the skin of guinea pigs and produced irritation to the eyes or rabbits that cleared within 48 hours. The product was not positive in guinea pigs for skin sensitization.

2. *Developmental/reproductive effects, chronic effects and carcinogenicity*. There is adequate information available from literature sources to characterize the toxicity of phosphorous acid. Phosphorous acid can affect human health through inhalation of mist, ingestion, and contact with the skin and eyes. It will cause corrosive effects (burns or irreversible damage) to the eyes, skin, throat, digestive tract, upper respiratory tract and nose. Signs of overexposure to this chemical are severe burning of eyes and skin, possible nausea and vomiting, coughing, burning and tightness of the chest and shortness of breath. Based on corrosiveness and then current use patterns for the mineral acids, EPA did not require these studies as part of the Reregistration Eligibility Decision on Mineral Acids (EPA 738-R-029; December 1993).

3. *Endocrine disruption*. Phosphorous acid does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Further, Agtrol International is not aware of any evidence that phosphorous acid has any effect on endocrine function. Last, there is no evidence that phosphorous acid bioaccumulates in the environment.

D. Aggregate Exposure

1. *Dietary exposure—i. Food*. No dietary exposure is expected. When phosphorous acid is applied to growing crops in the environment it rapidly dissociates to form hydrogen and phosphite ions.

ii. *Drinking water—drinking water exposure*. No significant exposure is expected to result from phosphorous acid because it is likely to be biodegraded in the terrestrial and aquatic environments to hydrogen and phosphite ions. The effects on humans resulting from anticipated concentrations to these ions due to

agricultural uses will be moderated by natural means. Moreover, there is no potential for either ion to be significantly accumulated by the biota. Phosphorous acid is not regulated under the Safe Drinking Water Act; therefore; no maximum contaminant level (MCL) has been established for it.

2. *Non-dietary exposure.* The primary non-pesticidal uses of phosphorous acid are industrial in closed production systems. There are no residential, indoor, school, or day care uses proposed for this product. The proposed use pattern is for agricultural food crops. Therefore, there is no potential for non-occupational exposure to the general population.

E. Cumulative Exposure

Agri-Phos Agricultural Fungicide may share a common metabolic mechanism with other salts of phosphorous acid (such as calcium); however, due to their limited use, these other salts are not expected to pose significant contributions to the cumulative effects from the agricultural fungicidal use of Agri-Phos Agricultural Fungicide.

F. Safety Determination

1. *U.S. population.* Aggregate exposure to phosphorous acid is expected to be minimal. There is very little potential for exposure to phosphorous acid in drinking water and from non-dietary, non-occupational exposures. This chemical will be applied to agricultural food crops by commercial applicators. Once released into the environment, the chemical rapidly dissociates to form hydrogen and phosphite ions. The hydrogen ions affect pH, but this is moderated by natural means. Many phosphite salts are GRAS. See 21 CFR 182.3616, 182.3637, 182.3739, 182.3766, 182.3796, and 184.1764. Therefore, the health risk to humans is negligible based on the low toxicity of these ions and a low application rate for the a.i, and one can conclude that there is a reasonable certainty that no harm will result from aggregate exposure to phosphorous acid.

2. *Infants and children.* Aggregate exposure to phosphorous acid is expected to be minimal. There is very little potential for exposure to phosphorous acid in drinking water and from non-dietary, non-occupational exposures. This chemical will be applied to agricultural food crops by commercial applicators. Once released into the environment, the chemical rapidly dissociates to form hydrogen and phosphite ions. The hydrogen ions affect pH, but this is moderated by natural means. Many phosphite salts are GRAS. See 21 CFR 182.3616, 182.3637, 182.3739, 182.3766, 182.3796, and 184.1764. Therefore, the health risk to humans is negligible based on the low toxicity of these ions and a low application rate for the a.i, and one can conclude that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to phosphorous acid residues.

G. Effects on the Immune and Endocrine Systems

Phosphorous acid does not belong to a class of chemicals known or suspected of having adverse effects on the immune and endocrine systems. Further, Agtrol International is not aware of any evidence that phosphorous acid has any effect on immune and endocrine functions. Last, there is no evidence that phosphorous acid bioaccumulates in the environment.

H. Existing Tolerances

No tolerances have been established for residues of phosphorous acid in RACs and or processed food/feed. Disodium phosphate, monoammonium phosphate, diammonium phosphate and potassium phosphate have been exempted from the requirement of a tolerance under 40 CFR part 180.1001.

I. International Tolerances

No maximum residue levels (MRLs) have been established for phosphorous acid by the Codex Alimentarius Commission (CODEX).

[FR Doc. 99–32654 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 30, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. James G. Sneer Revocable Living Trust, Mountain Lake, Minnesota, with James G. Sneer as trustee; to acquire 79.9 percent of the voting shares of Farmers State Corporation, Mankato, Minnesota, and thereby indirectly acquire United Prairie Bank-Jackson, Jackson, Minnesota; United Prairie Bank-Madison, Madison, Minnesota; United Prairie Bank-New Ulm, New Ulm, Minnesota; Green Lake State Bank, Spicer, Minnesota; United Prairie Bank-Slayton, Slayton, Minnesota; and United Prairie Bank, Mountain Lake, Minnesota.

Board of Governors of the Federal Reserve System, December 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–32549 Filed 12–15–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of

Governors not later than January 10, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Dime Bancorp, Inc., New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Hudson United Bancorp, Mahwah, New Jersey, and thereby indirectly acquire Hudson United Bank, Mahwah, New Jersey.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Virginia Commonwealth Financial Corporation, Culpeper, Virginia; to acquire 100 percent of the voting shares of Caroline Savings Bank, Bowling Green, Virginia.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bruning Bancshares, Inc., Bruning, Nebraska; to acquire 100 percent of the voting shares of The Commercial State Bank, Clay Center, Nebraska.

Board of Governors of the Federal Reserve System, December 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–32548 Filed 12–15–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Toronto-Dominion Bank, Toronto, Ontario, Canada; to acquire all of the shares of CTUSA, FSB, Naples, Florida, and thereby engage in operating a savings and loan association pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, December 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-32550 Filed 12-15-99; 8:45 am]

BILLING CODE 6210-01-F

OFFICE OF GOVERNMENT ETHICS

Submission for OMB Review; Comment Request: Proposed Paperwork Renewal of a Moderately Revised Version of the SF 278 Executive Branch Personnel Public Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics has submitted to the Office of Management and Budget (OMB) a moderately revised version of the OGE-sponsored Standard Form (SF) 278 Executive Branch Personnel Public Financial Disclosure Report for a three-year extension of approval under the Paperwork Reduction Act.

DATES: Comments on this proposal should be received by January 18, 2000.

ADDRESSES: Comments should be sent to Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; telephone: 202–395–7316.

FOR FURTHER INFORMATION CONTACT: William E. Gressman or Michael J. Lewandowski at the Office of Government Ethics; telephone: 202–208-8000, extension 1110 or 1185; TDD: 202–208–8025; FAX: 202–208–8037. A mark-up copy of the SF 278 form as proposed for revision may be obtained, without charge, by contacting either Mr. Gressman or Mr. Lewandowski.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics has submitted to OMB a moderately revised version of the SF 278 Executive Branch Personnel Public Financial Disclosure Report (OMB control number 3209–0001) for a three-year extension of approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The paperwork approval for the current version of the SF 278 will continue until OMB grants approval for the new revised edition of the form. Since modifications to the standard form are being proposed, OGE will also seek General Services Administration (GSA) clearance for the modified form once OMB paperwork approval for it is received. The original printed forms of the new edition will be stocked through GSA (see below) and will probably have a yellow or green background shading to help distinguish them from the existing forms that they will supersede.

The Office of Government Ethics, as the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act (the Ethics Act), 5 U.S.C. appendix, is the sponsoring agency for the Standard Form 278, the most recent edition of which is that of June 1994. The prior January 1991 edition has also remained usable until supplies are exhausted. No earlier editions can be used. The forthcoming now early 2000 edition of the SF 278 report form will supersede those prior editions and must be used instead of them once available, probably late next winter or next spring. If the new edition is not ready in time for an orderly transition before the May 2000 calendar year 1999 annual SF 278 report filing season, OGE will provide for a grace period during which the 1994 (or 1991) forms may still be used and will so inform executive branch departments and agencies. In accordance with section 102 of the Ethics Act, 5 U.S.C. appendix, section 102, and OGE's implementing financial disclosure regulations at 5 CFR part 2634, the SF 278 collects pertinent financial information from certain officers and high-level employees in the executive branch for conflicts of interest review and public disclosure. The financial information collected under the statute and regulations relates to: assets and income; transactions; gifts, reimbursements and travel expenses; liabilities; agreements or arrangements; outside positions; and compensation over $5,000 paid by a source—all subject to various reporting thresholds and exclusions.

The SF 278 is completed by candidates, nominees, new entrants,

incumbents and terminees of certain high-level positions in the executive branch of the Federal Government. The Office of Government Ethics, along with the agencies concerned, conducts the review of the SF 278 reports of Presidential nominees subject to Senate confirmation. These reports are filed by both incumbent Government officials and private citizens who have been so nominated. The Office of Government Ethics' paperwork estimates in this notice are based on the anticipated number of such nominee SF 278 reports filed by private citizens (and their private representatives—lawyers, accountants, brokers and bankers), those who file termination reports from such positions after their Government service ends, as well as Presidential and Vice Presidential candidates (whose reports OGE also reviews) who are private citizens. In light of OGE's experience over the past three years (1996–1998), the estimate of the total number, on average, of SF 278 report forms expected to be filed annually at OGE by private citizen members of the public (as opposed to current Federal employees), is being somewhat reduced to 260. The prior paperwork burden estimate was 280 OGE-processed SF 278 reports per year. The OGE estimate covers the next three years, 1999–2001, including a significant increase in SF 278 reports anticipated with the transition following the fall 2000 Presidential election.

The estimated average amount of time to complete the SF 278 report form, including review of the instructions and gathering of needed information, remains the same at three hours. Thus, the overall estimated annual public burden for the SF 278 for the private citizen/representative nominee, candidate and terminee report forms processed at OGE is being reduced from 840 to 780 hours (260 forms times 3 hours per form). Moreover, OGE estimates, based on the agency ethics program questionnaire responses for 1996–1998, that an average of some 21,500 SF 278 report forms are filed annually at departments and agencies throughout the executive branch. Most of those executive branch filers are current Federal employees at the time they file, but certain candidates for President and Vice President, nominees, new entrants and terminees complete the form either before or after their Government service. The percentage of private citizen filers branchwide is estimated at no more than 5% to 10%, or some 1,050 to 2,100 per year at most.

On July 12, 1999, OGE published a first round paperwork notice of its forthcoming request for three-year extension of paperwork approval for the SF 278. See 64 FR 37536–37539. Four comments were received from executive branch agencies, together with several in-house OGE comments. One of the agency comments recommended that the present columnar format for reporting the various categories of value for assets, income, transactions, and liabilities be changed to a letter code valuation system. The agency expressed the view that uniform use of letter codes would provide a single, consistent method for reporting values throughout the form. The agency also urged the SF 278 be changed from its present ''landscape'' (sideways) orientation to a ''portrait'' orientation. After due consideration, OGE has decided not to adopt these suggestions for the SF 278 as currently proposed for revision. Any such changes would dramatically change both the report template and the overall reporting format. At this point in the paperwork renewal process, such major changes could further delay clearance of the needed new edition of the SF 278. However, OGE will seriously consider making such changes, which appear particularly suited to the developing field of electronic forms, to the next edition of the report form in the future, possibly even in advance of the regular full three-year paperwork cycle.

In addition, OGE received two comments recommending changes to reporting categories to simplify them and to more closely track the dollar limits of certain exemptions from the personal financial interests regulation at 5 CFR part 2640. In response, OGE notes that changing reportable categories would require that Congress amend the Ethics Act which directly specifies the categories of value to be reported for income, assets, transactions and liabilities. See section 102(a)(1)(B) and (d)(1) of the Ethics Act, 5 U.S.C. appendix, section 102(a)(1)(B) and (d)(1). The Office of Government Ethics would need to carefully consider any possible recommendation for a legislative revision so that any change proposed would simplify rather than complicate the already intricate categories required. This is beyond the scope of the present paperwork process. Moreover, OGE notes that it is considering changing some of the exemptive categories under its part 2640 regulation. Thus, at the present time, OGE does not intend to seek any changes to the reporting categories.

Another commenting agency recommended that OGE make completion of the new proposed filing extension check-off box (in the reviewing officials comments box on the bottom of the front page of the SF 278 report form) optional. Upon review, OGE has determined that the benefits of incorporating the new check-off box warrant its inclusion as a required part of the form. The new box will save agency ethics officials and OGE staff follow-up time and effort in instances when a report otherwise appears to be filed late, with the necessity to ascertain if a late filing fee is due unless an OGE waiver thereof is sought and granted.

Most of the proposed moderate revisions OGE is recommending, as indicated in the first round **Federal Register** notice, result from our own experience and review for updating, though some come from agency suggestions received from time to time as well as in response to the notice. Among the new modifications proposed to the SF 278 is the incorporation into the form of certain changes in the reporting law as regards higher-category (over $1,000,000) assets, income and liabilities. To date, OGE has asked executive branch departments and agencies in a series of DAEOgrams over the years to so notify filers administratively. Moreover, as noted in the first round paperwork notice, OGE has recently determined that transactions are included in the higher-category reporting requirement. The inclusion of higher-value categories for transactions will only affect future SF 278 reports once the proposed modified form receives its final paperwork approval and is made available by OGE and GSA. As noted in the mark-up copy of the SF 278 as proposed for revision available from OGE (see the **FOR FURTHER INFORMATION CONTACT** section above), these higher categories for items of filers (including items jointly held with a spouse or dependent children) will be specified in new notes proposed on page 11 of the SF 278 instructions as well as on Schedules A, B and C of the report form.

In response to one of the agency comments noted above seeking consistency for the format of reporting of categories of value throughout, the new higher categories would now be included in additional columns (instead of write-in letter codes as previously proposed) on those schedules. For assets, transactions and liabilities, the new higher categories are: $1,000,001 to $5,000,000; $5,000,001 to $25,000,000; $25,000,001 to $50,000,000; and over $50,000,000. For income, the higher categories are: $1,000,001 to $5,000,000; and over $5,000,000. As to any such items held *solely* by a filer's spouse or dependent children, only the traditional ''over $1,000,000'' column, which is being retained, would need to be checked. In addition, OGE proposes to

include on page 5 of the form instructions a notice of the requirement to report the category of reportable trust interests, including the new higher values, for those filers who have Ethics Act qualified blind or diversified trusts (as well as a separate brief mention of the reportability of trust interests as to which the filer is a trustee). In such instances, OGE advises concerned filers and their agencies of the application of this provision, which does not apply to trusts executed prior to July 24, 1995, that preclude the beneficiary from receiving information on the total cash value of any such trust interest. See sections 20 and 22 of the Lobbying Disclosure Act of 1995, Public Law 104–65, which amended section 102(a)(1)(B), (d)(1) and (e)(1) and added new section 102(a)(8) of the Ethics Act, 5 U.S.C. appendix, section 102(a)(1)(B), (a)(8), (d)(1) and (e)(1). The Office of Government Ethics will revise its executive branchwide regulations at 5 CFR 2634.301 and 2634.302 to reflect the higher-value categories.

In addition, OGE is adding an adjustment of the gifts/travel reimbursements reporting thresholds for the SF 278 that needs to be made since GSA earlier this year raised ''minimal value'' to $260 or less for the three-year period 1999–2001 (from the prior level of $245 or less) under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. See 64 FR 13700–13701 (March 22, 1999), revising the GSA foreign gifts regulation at 41 CFR 101–49.001–5. Because the foreign gifts ''minimal value'' is now over $250, the Ethics Act financial disclosure gifts/reimbursements reporting thresholds, at 5 U.S.C. appendix, section 102(a)(2)(A) and (B), which are pegged to any such increase, are being adjusted to ''more than $260'' for the aggregation level of reporting and ''$104 or less'' for gifts and reimbursements which do not have to be counted in the aggregate threshold. In a forthcoming rulemaking, OGE will revise those reporting thresholds as found at 5 CFR 2634.304 (a), (b) and (d) of its executive branch regulations. Since OGE expects that GSA will adjust ''minimal value'' every three years, the ethics reporting thresholds for gifts and reimbursements will now likely have to be adjusted every three years as well (as coordinated with paperwork renewals, as nearly as possible).

Moreover, as noted on the mark-up copy of the form as proposed to be revised, OGE has now dropped the old reference on page 11 of the instructions to the specific dollar amount of the civil monetary penalty for prohibited uses of an SF 278 report to which access has been gained. Instead, the reference will simply be to the civil monetary penalty which can be assessed. The penalty under section 104(a) of the Ethics Act, 5 U.S.C. appendix, section 104(a), was raised effective September 29, 1999, from $10,000 to $11,000 in coordinated OGE and Department of Justice inflation adjustment rulemakings under the 1996 Debt Collection Improvement Act revisions to the 1990 Federal Civil Penalties Inflation Adjustment Act, at 28 U.S.C. 2461 note. The OGE rulemaking, in pertinent part, revised 5 CFR 2634.703 of the executive branchwide financial disclosure regulation. See OGE's amendatory rulemaking as published at 64 FR 47095-47097 (August 30, 1999) and Justice's amendatory rulemaking as published at 64 FR 47099–47104 (August 30, 1999). The removal of the specific dollar amount reference in the SF 278 instructions will avoid the need to revise or annotate the form periodically in the future when OGE and the Justice Department further adjust that civil monetary penalty pursuant to additional rulemakings, which are to be issued at least once every four years under the inflation adjustment law.

Also, now on page 3 of the instructions, OGE would parenthetically reference the extra time grantable pursuant to a filing extension—up to 45 days by the filer's agency and up to an additional 45 days by OGE. See 5 U.S.C. appendix, section 101(g)(1) of the Ethics Act and 5 CFR 2634.201(f) of OGE's regulations thereunder. In addition, as mentioned earlier, OGE is proposing to add a new check-off box in the reviewing officials comments box on the bottom of the front page of the SF 278 report form itself to show whether any filing extension has been granted and, if so, the number of days. Also, OGE is proposing to move the explanatory text on the late filing fee from page 11 to page 3 of the instructions. Further, OGE would move the definition of ''relatives'' from page 2 to page 8 to accompany the instructions on the exclusion of any gifts and reimbursements received from relatives.

Another important change OGE is proposing is the addition of a new continuation page for part I of Schedule B on transactions. In OGE's experience, many filers need more than the five spaces currently provided in that part to indicate their reportable purchases, sales and transactions. The new continuation page would add 16 more spaces for such entries, and duplicates of that page would allow for any further entries needed.

Various other, minor changes are being proposed. These include moving the Schedule A (assets and income) check-off columns for excepted investment funds and excepted and qualified trusts from under Block B ''Income'' to a separate area immediately to the left thereof. In part to make room for the addition of the new higher-value category columns, OGE would also combine the ''Other'' income and ''Actual Amount'' columns into one (at the place of the latter on the right-hand side of Schedule A). In Block A of Schedule A, OGE would clarify the summary explanatory text regarding the reporting of assets and income. On the Schedule A continuation page, OGE would drop the explanatory text in Block A as unnecessary. Likewise, OGE is proposing to drop the new Schedule B, Part I continuation page explanatory text. Moreover, upon reflection, OGE has decided (except for the noted proposed revisions to the Block A, Schedule A text) not to make any changes to the existing explanatory texts for Schedules B, C and D of the SF 278 form. The earlier proposed clarifying cross-references in the various other schedules are not necessary in light of the fuller treatment of these matters in the instructions and, for reporting periods, on the front page of the SF 278 report form itself. Further, the space available on the report schedules is very limited and should be left as uncluttered as possible. The clarifications proposed in the first round notice stage generated a number of suggestions for additional clarifications for which there is simply not enough room.

A revision that OGE does still propose to make would add express mention, in the public burden information notice on page 11 of the instructions, of a statement required pursuant to the 1995 amendments to the paperwork law to the effect that ''an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number,'' together with a parenthetical mention that such number (# 3209–0001) is displayed there and in the upper right-hand corner of the front page of the form. In that notice, OGE also proposes to drop the reference to OMB as a further point of contact for information collection comments on the SF 278. Pursuant to current procedures, OGE will be indicated from now on as the sole contact point for such comments on the form, on which OGE will coordinate with OMB if necessary. Furthermore, OGE proposes to slightly modify the wording regarding the sixth numbered routine use under the Privacy Act

statement (also on page 11 of the instructions). The modified wording will reflect the application to pending judicial or administrative proceedings of the underlying routine use h. in the OGE/GOVT–1 executive branchwide system of records. See 55 FR 6327–6331 (February 22, 1990).

Finally, various minor proposed style, format and updating changes to certain parts of the instructions and the report form are proposed, including removal of column shading from Schedules A and B (to improve readability) and indication of the new 2000 edition date.

Once finally cleared by OMB and GSA and printed by the Government Printing Office, the paper original of the 2000 edition of the SF 278 report form will be stocked and made available for purchase by departments and agencies nationwide from the GSA Federal Supply Service Customer Supply Centers.

In addition, for the past several years, OGE has placed in the Ethics Resource Library section of its Internet Web site (Uniform Resource Locator (URL) address: *http://www.usoge.gov*) a viewable and downloadable Portable Document Format (PDF) version of the current 6/94 edition of the SF 278 and is also working on a fillable version of the 6/94 edition. A fillable version of the SF 278 is available from GSA's Web site electronic library of standard and optional forms (URL address: *http://www.gsa.gov/forms/*). Moreover, OGE will develop first a PDF version and then a fillable version of the new 2000 edition of the SF 278 for placement on the OGE Web site once it is finally cleared and issued next year. Those electronic versions of the SF 278 form have been and will continue to be made available free-of-charge to executive branch departments and agencies and their employees. In addition, the forthcoming 2000 edition of the form will be included in future editions of The Ethics CD–ROM. Departments and agencies can also electronically duplicate the SF 278 without standard form exception clearance, provided that the duplication precisely parallels the original paper form to the extent technically feasible, producing a ''mirror image'' print-out thereof.

Furthermore, OGE is considering the paperwork and technical issues relating to development of so-called ''smart'' electronic forms, including the SF 278, which employ a question and answer format to elicit information on reportable interests and funnel the data onto the schedules of the report forms. Various agencies in addition to OGE are interested in this area. The Office of Government Ethics is reviewing the executive branchwide aspects of these initiatives, including a possible umbrella OGE ''generic'' paperwork clearance package.

For now, OGE notes that even with all of these electronic initiatives, the SF 278 reports, once completed by individual filers, will still need to be printed out and signed manually. Electronic filing is not authorized at the present time for SF 278 reports. However, OGE is monitoring developments under the Government Paperwork Elimination Act and the proposed OMB guidelines (together with any possible future related legislation), under which appropriate electronic availability and filing of various Government forms will generally be phased in by October 2003.

Public comment is invited on each aspect of the SF 278 Public Financial Disclosure Report as proposed for revision as set forth in this notice, including specifically views on the need for and practical utility of this collection of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology). The Office of Government Ethics, in consultation with OMB, will consider all comments received in response to this notice. The comments will also become a matter of public record.

Approved: December 9, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 99–32543 Filed 12–15–99; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Research on Employment Supports for People with Disabilities—NEW—The Office of the Assistant Secretary for Planning and Evaluation has embarked on a project to collect extensive information on the experiences of people with disabilities in competitive employment. As part of this effort they intend to conduct a series of discussions with working people with disabilities across three locations in the United States and Canada for the purpose of gaining detailed information on their employment experiences. Respondents: Individuals or households—Reporting Burden Information for Screener—Number of Respondents: 750; Burden per Response: 7 minutes; total Burden for Screener: 88 hours—Burden Information for Focus Group Registration—Number of Respondents: 375; Burden per Response: 10 minutes; Total Burden of Registration: 63 hours—Burden Information for Focus Group—Number of Respondents: 375; Burden per Response: 150 minutes; Total Burden for Focus Group: 938—Burden Information for Post-Focus Group Evaluation—Number of Respondents: 375; Burden per Response: 7 minutes; Total Burden for Evaluation: 44 hours—Total Burden: 1,133 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designate above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW, Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Hubert H. Humphrey Building, 200 Independence Ave, SW, Washington, DC 20201.

Written comments should be received within 30 days of this notice.

Dated: December 9, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–32553 Filed 12–15–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

NAME: National Committee on Vital and Health Statistics (NCVHS).

TIME AND DATE: 11 a.m.–1 p.m., December 20, 1999.

PLACE: Conference Call Participants Dial-in Number: 1–888–296–1938, Participants Code: 555668.

STATUS: Open.

PURPOSE: The NCVHS is the statutory public advisory body to the U.S. Department of Health and Human Services on health data, privacy, and health information policy. During this conference call, the Committee will discuss its proposed comments on the Notice of Proposed Rule Making (NPRM) for Standards for Privacy of Individually Identifiable Health Information, recently released by HHS as required by the Health Insurance Portability and Accountability Act of 1996.

Notice: This conference call is open to the public using the participants' dial-in telephone number and participants' code, but access may be limited by the number of available telephone lines.

CONTACT PERSONS FOR MORE INFORMATION: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from James Scanlon, NCVHS Executive Staff Director, HHS, ASPE, Room 440D, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC, 20201, telephone (202) 690–7100; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: http://www.ncvhs.hhs.gov/, where further information will be posted when available.

Dated: December 9, 1999.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–32554 Filed 12–15–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–154]

Availability of Final Toxicological Profile for Total Petroleum Hydrocarbons (TPH)

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of one final toxicological profile on unregulated hazardous substances prepared by ATSDR for the Department of Defense.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6322.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99–499) amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) or CERCLA. Section 211 of SARA also amended Title 10 of the U.S. Code, creating the Defense Environmental Restoration Program. Section 2704 (a) and (b) of Title 10 of the U.S. Code directs the Secretary of Defense to notify the Secretary of Health and Human Services of not less than 25 of the most commonly found, unregulated hazardous substances at defense facilities. The Secretary of HHS shall take necessary steps to ensure the timely preparation of toxicological profiles of these substances. Each profile includes an examination, summary and interpretation of available toxicological information and epidemiological evaluations. This information and these data are used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles include a determination of whether adequate information on the health effects of each substance is available or under development. When adequate information is not available, in cooperation with the National Toxicology Program (NTP), ATSDR may plan a program of research designed to determine these health effects.

Notice of the availability of the draft toxicological profile for public review and comment was published in the **Federal Register** on November 4, 1998 (63 FR 59568), with notice of a 90-day public comment period starting from the actual release date. Following the close of the comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into the profile.

The public comments, the classification of and response to those comments, and other data submitted in response to the **Federal Register** notice bear the docket control number ATSDR–139. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of one final toxicological profile for the Department of Defense. The following toxicological profile is now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for this profile as determined by NTIS.

Toxicological profile	NTIS order No.
1. Total Petroleum Hydrocarbons (TPHs).	PB99–163370

Dated: December 10, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–32572 Filed 12–15–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–153]

Availability of Final Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of two new final toxicological profiles, comprising the 1st set developed for the Department of Energy, prepared by ATSDR.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Norman, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6322.

SUPPLEMENTARY INFORMATION: These toxicological profiles were developed by ATSDR for hazardous substances at Department of Energy (DOE) waste sites under section 104(i)(3) and (5) of the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund). This public law directed ATSDR to prepare toxicological profiles for hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL) and that pose the most significant potential threat to human health, as determined by ATSDR and the EPA. The current ATSDR priority list of hazardous substances at DOE NPL sites was announced in the **Federal Register** on July 24, 1996 (61 FR 38451).

Notice of the availability of the draft toxicological profiles for public review and comment was published in the **Federal Register** on October 28, 1997 (62 FR 55817), with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into each profile. The public comments and other data submitted in response to the **Federal Register** notices bear the docket control number ATSDR–129. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia, (not a mailing address) between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of two new final toxicological profiles, comprising the 1st set developed for the Department of Energy. The following toxicological profiles are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

Toxicological profile	NTIS order No.	CAS No.
1. URANIUM	PB99–163362	MULTIPLE.
URANIUM 235		15117–96–1.
URANIUM HEXAFLUORIDE		7783–81–5.
URANIUM METAL		7440–61–1.
URANIUM ORE		53125–22–7.
URANIUM OCTAOXIDE		1344–59–8.
URANIUM PEROXIDE		19525–15–6.
URANIUM TETRACHLORIDE		10026–10–5.
URANIUM TETRAFLUORIDE		10049–14–6.
URANYL ACETATE		541–09–3.
URANYL NITRATE		10102–06–4.
URANYL NITRATE HEXAHYDRATE		13520–83–7.
URANYL SULFATE		1314–64–3.
2. IONIZING RADIATION	PB99–163388	NA.

Dated: December 10, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–32573 Filed 12–15–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–5199]

Medical Devices; Draft Guidance for Resorbable Adhesion Barrier Devices for Use in Abdominal and/or Pelvic Surgery; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled, ''Guidance for Resorbable Adhesion Barrier Devices for Use in Abdominal and/or Pelvic Surgery.'' This draft guidance is not final nor is it in effect at this time. This draft guidance is being issued because of the increasing interest on the part of sponsors in developing adhesion barrier products and increasing questions regarding the study requirements for development of these products. In addition, because two review groups evaluate these products for use in abdominal and/or pelvic surgery, this draft guidance was developed to encourage consistency between the two review groups when they evaluate investigational device exemption (IDE) and premarket approval application (PMA) applications for these products.

DATES: Submit written comments concerning this guidance by March 16, 2000.

ADDRESSES: Submit written requests for single copies on a 3.5′ diskette of the draft guidance entitled, ''Guidance for Resorbable Adhesion Barrier Devices for Use in Abdominal and/or Pelvic Surgery'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Written comments concerning this guidance must be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fisher Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: David B. Berkowitz, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance is being issued because of the increasing interest on the part of sponsors in developing adhesion barrier products and in answering questions regarding the study requirements for development of these products. In addition, because two branches and divisions are evaluating these products for use in abdominal and/or pelvic surgery, this guidance was developed to encourage consistency between the two review groups when they evaluate IDE and PMA applications for these products.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on resorbable adhesion barrier devices for use in abdominal and/or pelvic

surgery. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive ''Guidance for Resorbable Adhesion Barrier Devices for Use in Abdominal and/or Pelvic Surgery'' via your fax machine, call the CDRH Facts–On–Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number (1356) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. The Center for Devices and Radiological Health (CDRH) maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the draft guidance entitled ''Guidance for Resorbable Adhesion Barrier Devices for Use in Abdominal and/or Pelvic Surgery,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh.

IV. Comments

Interested persons may, on or before March 16, 2000, submit to Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 7, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–32589 Filed 12–15–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4443–N–10]

Notice of Proposed Information Collection for Public Comments for Life-Cycle Cost Analysis of Utility Combinations in Public Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date*: February 14, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information of those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Life-Cycle Cost Analysis of utility Combinations in Public Housing.

OMB Control Number: 2577–0024.

Description of the need for the information and proposed use: HUD will use the information collected to analyze the selection of the most cost effective utilities, fuels, related mechanical equipment, and methods of purchase for public housing projects.

Agency form numbers, if applicable: HUD–51994.

Members of affected public: State, Local or Tribal government and not for profit institutions.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 238 respondents (PHAs), one-time, on occasion, six hours per response, 1,428 hours total reporting burden.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 13, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Life-Cycle Cost Analysis of Utility Combinations

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB. No. 2577-0024
(Exp. 1/31/2000)

Part A—Summary

1. Public/Indian Housing Agency	2. Project Number		3. Date (mm/dd/yyyy)					
4. By (Name and Title)	5. Prepared By							
Utility Combinations	Combination No. _____		Combination No. _____		Combination No. _____		Combination No. _____	
6. Domestic Hot Water Installation								
7a. Space Heating Installation								
b. Space Heating System								
8. Space Air Conditioning Installation								
Fuel and Energy Types and Purchasing Methods	Tenant	Master-meter	Tenant	Master-meter	Tenant	Master-meter	Tenant	Master-meter
9. Lighting and Refrigeration								
10. Cooking								
11. Domestic Hot Water								
12. Space Heating								
13. Space Air Conditioning								
Initial Cost of Utility Installation								
14. Per Dwelling Unit	$		$		$		$	
15. Total	$		$		$		$	
Estimated Cost Per Unit Per Month								
16. Electricity	$		$		$		$	
17. Gas	$		$		$		$	
18. Fuel and Heating/Cooling Supplies	$		$		$		$	
19. Heating/Cooling Labor	$		$		$		$	
20. Repairs, Maintenance and Replacements (20 year average)	$		$		$		$	
21. Interest	$		$		$		$	
22. **Total Monthly Cost**	**$**		**$**		**$**		**$**	

23. Recommended: Combination No._____

24. Justification of Recommendation:

Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collecton displays a valid OMB control number.

The life-cycle cost analysis of utility combinations (LCCAUC), is necessary to compare and recommend the most cost-effective utility combination for new constructions or rehabilitation projects. The legal and regulatory authority for LCCAUC are the U.S. Housing Act of 1937, as amended in 1979 (Section 13, P.L. 96-153 dated 12/21/79); the U.S. Housing Act of 1937, as amended in 1980 (Section 5(i), P.L. 96-399 dated 10/8/80); 24 CFR 941.404; 24 CFR 968.115(d); and by 24 CFR 950.603(d). The form was previously a required format for the LCCAUC. Now, in order to reduce the burden on small entities, form HUD-51994 is optional, as long as: 1) the essential elements of the HUD-51994 analysis are included in the HA's own version of a LCCAUC, 2) energy savings for solar energy systems are calculated in accordance with recognized industry procedures, and 3) the LCCAUC is based on criteria which include installation costs and long term operation and maintenance costs. Alternatively, HAs may continue to use HUD-51994 as guidance, if established procedures, existing software, and employee skills of a HA find this form to be more expeditious and cost-effective. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

Instructions for Part A - Summary

Space is provided in Part A of this form for all applicable costs and charges for four utility combinations. Use as many sheets of Part A as are required to summarize all combinations. The data required to complete Part A should be derived from Parts B, C, and D.

Domestic Hot Water, Space Heating, and Cooling. Indicate on line 6 the type of water heating to be used in each combination (central plant or individual heaters). If individual heaters, indicate also whether automatic storage, instantaneous, etc. Indicate on line 7a the kind of space heating to be used by each combination (central, separate building plants, or individual dwelling unit systems). Show on line 7b the type of heating system (warm air, steam, water, etc.) Indicate on line 8 the type of cooling system (heat pump, chilled water, chilled air, evaporative coolers, etc.)

Fuel and Energy Types and Purchasing Methods. Enter on lines 9, 10, 11, 12, and 13 for each combination the symbols shown below to indicate the types of fuels and energy to be used for each of these items. If the service is to be supplied by the tenant, insert the appropriate symbols in the Tenant column. If it is to be supplied by the project, insert it in the Mastermeter column.

E–Electricity	C–Coal
G–Gas	PS–Purchased District Heating
LPG–Liquefied Petroleum Gas	S–Solar Energy
FO–Fuel Oil	O–Other (specify)

Initial Cost of Utility Installation. Enter in line 14 the total initial cost per dwelling unit of the facilities and equipment required for each combination as shown at the bottom of Page 2, Part D. Enter in line 15 the total initial cost for the project of the facilities and equipment obtained by multiplying the amounts entered in Line 14 by the number of dwelling units.

Estimated Cost Per Unit Month. Enter on lines 16 and 17 the costs for electricity and gas for each combination as taken from Part C, line 15 (tenant) or line 18 (mastermeter) as the case may be. Enter on lines 16-18 fuel costs (other than electricity or gas) as shown on lines 15 or 18 of Part C, and the cost of Heating/Cooling supplies as shown on line 20 of Part C. Enter on line 19 the estimated cost of Heating/Cooling Labor taken from Line 26 of Part C. Enter on line 20 the average monthly expense for Repairs, Maintenance, and Replacements, which is 1/2 of the amount shown at the bottom of Page 2 of Part D. Enter on line 21 the monthly interest charge, which is 1/2 of the interest of the initial cost as shown above on line 14 of Part A. The total of the amounts entered in lines 16 to 21 inclusive should be entered on line 22 for each combination.

Recommended Combinations. Enter opposite this heading the number of the utility combination which the Public/Indian Housing Agency recommends for the project.

Justification of Recommendation. If the utility combination recommended is the lowest estimated cost per dwelling unit, the Public/Indian Housing Agency shall state that it considers the combination suitable for the locality. If, however, a combination other than the one resulting in the lowest cost is recommended, a detailed and comprehensive justification must be submitted, using additional sheets if necessary.

Part B
General Information

1. Public Housing Agency	2. Project Number	3. Date (mm/dd/yyyy)

Please make sure the information on this form is as complete and accurate as possible. One Part B is required for each project. On lines 4 through 8, Column 1, indicate the number of dwelling units in each category listed. On lines 4 through 8, Column 4, indicate the number of buildings of the various heights entered in Column 3. Column 5 shows the total number of rooms in the buildings.

Dwelling Size	Number of Dwellings	Height of Buildings (Number of Stories)	Number of Buildings	Number of Rooms
4. One Bedroom				
5. Two Bedrooms				
6. Three Bedrooms				
7. Four Bedrooms				
8. Total				

Climatic Data. Winter/Summer design temperatures are the established base temperatures for design of heating/cooling installations in the locality. It may be obtained from the Handbook of the American Society of Heating, Refrigeration and Air-Conditioning Engineers. Annual Degree Days and Equivalent full Load Hours may be obtained from the same source or from the Weather Bureau. Average Cold Water Temperature may be obtained from the local water utility.

12a. Winter Design Temperature	°F	13a. Annual Degree Days		14. Average Cold Water Temp.	°F
12b. Summer Design Temperature	°F	13b. Equivalent Full Load Hours			

Energy and Fuel Supplies. Enter names of suppliers of electricity, gas, fuel oil and coal, together with physical characteristics as indicated. Volts, cycles, and Btu contents per unit of measure may be obtained from the respective suppliers. In space provided, list any fuel or energy other than those listed.

15.	Electricity Supplied by:	Volts	cycles
16.	Gas Supplied by:	BTU per:	
17. No.	Fuel Oil Supplied by:	BTU per:	
18.	Coal Supplied by:	BTU per:	
19. (Other)	Supplied by:	BTU per:	

Estimated Average Unit Costs. Enter the appropriate value for the combination recommended by the Public Housing Agency and the other three combinations of lowest cost. These values may be calculated from the quantities and costs shown in Part C. For retail purchases, divide costs from Line 11, Part C, by quantities from Line 8, Part C. For wholesale purchases, divide costs from Line 14 by quantities on Line 10 for the particular combination.

Estimated Average Unit Costs		Comb. No. ____		Comb. No. ____		Comb. No. ____		Comb. No. ____	
		Tenant	Mastermeter	Tenant	Mastermeter	Tenant	Mastermeter	Tenant	Mastermeter
20. Electricity	¢ per kwh								
21. Gas	¢ per Mcf or Therm.								
22. Fuel Oil	¢ per gallon or $ per barrel								
23. Coal	¢ per ton								
24. Other									

Instructions for Part B - General Information

Part B provides for the assembly of information relating to the project, to local conditions under which the project will operate, and fuel and energy available for utility services. Please make sure the information on this form is as complete and accurate as possible. One Part B is required for each project.

Dwelling Size. On lines 4 to 8, column 2, indicate the number of dwelling units in each category listed in column 1.

On lines 4 to 8, column 4, indicate the number of buildings of the various heights entered in column 3. Column 5 shows the total number of rooms for the buildings of different heights.

Climatic Data. Winter and summer design temperatures are the established bases for design of heating installlations in the locality. These may be obtained from the 'Handbook of the American Society of Heating, Refrigeration, and Air-Conditioning Engineers.' Annual Degree Days and Equivalent Full Load Hours may be obtained from the same sources or from the Weather Bureau. Average cold water temperature may be obtained from the local water utility.

Energy and Fuel Supplies. On lines 15, 16, 17, and 18, enter the names of the suppliers of electricity, gas, fuel oil and coal, together with the physical characteristics as indicated. Volts, cycles and BTU contents per unit of measurement may be obtained from the respective suppliers. Line 19 is for any fuel or energy other than those listed.

Estimated Average Unit Costs. On lines 20, 21, 22, 23 and 24, enter the appropriate values for the combination recommended by the Public Housing Agency and the other three combinations of lowest cost. These values may be calculated from the quantities and costs shown in Part C. For retail purchases, divide the costs from line 17, Part C by the quantities from line 11 Part C. Similarly for wholesale purchases, divide the costs from the line 20 by the quantities shown in line 16 for the particular combination.

Part C
Fuel and Energy Heating Supplies, Heating labor

1. Public Housing Agency	2. Project Number	3. Date (mm/dd/yyyy)
	4. Combination No.	

Fuel and Energy ©	Electricity		Gas	Oil	Coal	Other
Method of Purchase (Mastermeter or Tenant)						
Rate Schedule Designation (Rates used in determining cost on Line 15, 17 & 18)						
Average Monthly Consumption per Dwelling Unit For:	KW Demand	KWH Consumption	MCF or Therms	Gallons	Tons	Other
5. Lighting and Refrigeration						
6. Space Air Conditioning						
7. Cooking						
8. Domestic Hot Water						
9. Space Heating						
10. Street Lighting						
11. General Project use						
12. Net Total						
13. On-Site Losses						
14. Total Fuel and energy Per Dwelling Unit						
Tenant Purchases 15. Average Cost Per DU Per Month		$	$	$	$	$
Mastermeter Purchases 16. Average Project Demand and Comsumption Per Month						
17. Average Project Cost per Month		$	$	$	$	$
18. Average Cost Per DU Per Month		$	$	$	$	$

Heating/Cooling Supplies 19. Estimated Total Per Year	$
20. Cost Per DU Per Month	

Heating/Cooling Labor

21.	Chief Engineer	for	months, at $		$
22.	Engineers	for	months, at $		$
23.	Firemen	for	months, at $		$
24.	Other	for	months, at $		$
25. Total Annual Labor Cost					$
26. Labor Per Dwelling Unit Per Month					$

Instructions for Part C - Cost of Fuel, Energy, Heating Supplies, and Heating Labor

Part C of Form HUD-51994 provides for the assembly of data and computation of costs for one utility combination. Prepare separate forms for each utility combination analyzed.

Sources of Data. Data for consumption and cost should be based upon local experience where available. Otherwise data may be obtained from local distributors and from Handbook 7418.1

Fuel and Energy. On line captioned "Method of Purchase" indicate, for each type of fuel or energy, whether purchased at matermeter or tenant. On line captioned 'Rate Schedule Designation' show schedule designation of the rates used in determining the cost on lines 15, 17 and 18. On lines numbered 5 to 11 enter estimated monthly consumption in kw.-hr. per dwelling unit for each use of electric energy. Where the rate schedule includes a demand charge, insert, in the space provided, the deman in kilowatts; if demand is measured in kilvolt-amperes or horsepower, substitute the proper term in column heading. Add the demands and consumption and enter totals on Line 12. For energy and fuels purchased matermeter, insert estimated losses on line 13, and total on line 14. Proceed similarly for other fuels except that no on-site losses should be calculated for oil, coal, and similar fuels.

The blank column at the right-hand edge of the form is for any fuel or energy other than those listed. List the fuel used at head of column.

Tenant Purchases. Values for line 15 may be obtained by applying the proper rate schedules and fuel costs to demand and consumption figures on line 14 for columns representing retail purchases.

Mastermeter Purchases. Values for line 16 may be obtained by multiplying the demand and consumption figures on line 14 for columns representing mastermeter purchases by the number of dwelling units.

Values for line 17 may be obtained by applying the proper rate schedules and fuel costs to the demand and consumption figures in line 16.

Values for line 18 may be obtained by dividing the respective figures from line 17 by the number of dwelling units.

Heating/Cooling Supplies. On line 19 enter estimated total cost per year for Heating Supplies for the combination being analyzed. Divide by the number of dwelling units and again divide by 12 to obtain cost per dwelling unit per month and enter result on line 20.

Heating/Cooling Labor. For central, group, or building plants calculate the labor requirements and costs and enter in the spaces provided. On line 25 enter the total of lines 21, 22, 23, and 24. Divide the amount shown for Total Annual Labor cost in line 25, by the number of dwelling units and again divide by 12. Enter the result in line 26.

Part D (Page 1)
Initial Costs and Annual Repair, Maintenance and Replacement Expense Per Dwelling Unit

1. Public/Indian Housing Agency		2. Project Number		3. Date (mm/dd/yyyy)				

Facilities or Equipment	Combo. No. ___			Combo. No. ___			Combo. No. ___		
	Initial Cost Per DU	Annual RM & R Expense Per DU		Initial Cost Per DU	Annual RM & R Expense Per DU		Initial Cost Per DU	Annual RM & R Expense Per DU	
		Total Factor	Amount		Total Factor	Amount		Total Factor	Amount
Electric System									
Sub-station: Outdoor	$	%	$	$	%	$	$	%	$
Indoor									
Exterior Distribution									
Interior Wiring									
Checkmeters									
Gas System									
Exterior Distribution	$	%	$	$	%	$	$	%	$
Interior Piping									
Checkmeters									
Project Operated Domestic Hot Water									
Boilers & Aux. (DHW Only)	$	%	$	$	%	$	$	%	$
Firing Equipment (DHW Only)									
Tank with Heating Coil									
Circulating Pump									
Exterior Distribution									
Interior Piping									
Project Operated Space Heating/ Cooling									
Boilers & Aux. (SPH & DHW)	$	%	$	$	%	$	$	%	$
Firing Equipment (SPH & DHW)									
Exterior Distribution									
Interior Piping, Rads, etc.									
Electrical Work									
H_2O/Air Cooled Chiller									
H_2O/Air Cooled Absorption									
Comp. with Chiller									
Carried Forward	$		$	$		$	$		$

Replaces HUD-51994-A, 51994-B, 51994-C, and 51994-D, which are obsolete. Previous editions are obsolete.

HUD-51994 (7/96)
ref. Handbook.7418.1

Part D (Page 2)
Initial Costs and Annual Repair, Maintenance and Replacement Expense Per Dwelling Unit

1. Public/Indian Housing Agency		2. Project Number		3. Date (mm/dd/yyyy)	

Facilities or Equipment	Combo. No. ___			Combo. No. ___			Combo. No. ___		
	Initial Cost Per DU	Annual RM & R Expense Per DU		Initial Cost Per DU	Annual RM & R Expense Per DU		Initial Cost Per DU	Annual RM & R Expense Per DU	
		Total Factor	Amount		Total Factor	Amount		Total Factor	Amount
Brought Forward	$		$	$		$	$		$
Tenant Operated Domestic Hot Water									
Auto. Storage Heaters	$	%	$	$	%	$	$	%	$
Side Arm Heaters									
Pot Stove (coal fired)									
Storage Tank									
Hot Water Piping									
Tenant Operated Space Heating/Cooling									
Space Heaters	$	%	$	$	%	$	$	%	$
Floor Furnances									
Warm Air Furnaces									
Steam Boiler, Radiators									
Hot Water Boiler, Radiators									
Burner (oil)									
Blower									
Draft Fan									
Pump									
Electrical Work									
Conversion Burner									
Heat Pump									
Thin-Wall A/C Unit									
Other Items									
Roads	$	%	$	$	%	$	$	%	$
Boiler Room									
Basement or Crawl Space									
Flues									
Major Appliances									
Refrigerators	$	%	$	$	%	$	$	%	$
Ranges									
Washer									
Dryer									
Total Per Dwelling Unit	$		$	$		$	$		$

Replaces HUD-51994-A, 51994-B, 51994-C, and 51994-D, which are obsolete. Previous editions are obsolete.

HUD-51994 (7/96)
ref. Handbook.7418.1

[FR Doc. 99–32666 Filed 12–15–99; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4497–N–04]

Public Housing Assessment System (PHAS): Transition Assistance on Compliance With Management Indicator #5; PHA Annual Inspection of Units

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This notice is a follow-up to the PHAS notice published on October 21, 1999, which advised of transition assistance in connection with implementation of the PHAS for public housing agencies (PHAs) with fiscal years ending September 30, 1999, and December 31, 1999. The October 21, 1999, notice advised that these PHAs would not be issued a PHAS score for their 1999 fiscal years, but would be issued a management assessment score based on HUD's assessment of the PHA's management operations in accordance with 24 CFR part 902, subpart D. This notice provides information to PHAs on how to meet the requirements of Management Indicator #5 (PHA annual inspection of units and systems) of this subpart.

FOR FURTHER INFORMATION CONTACT: Wanda Funk, Real Estate Assessment Center, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC 20024; telephone REAC's Customer Service Center at (888) 245–4860 (this is a toll free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC web site at <http://www.hud.gov/reac/>.

SUPPLEMENTARY INFORMATION:

Purpose of the Notice

On September 1, 1998, HUD issued two final rules: (1) the Uniform Physical Condition Standards (UPCS) and Physical Inspection Requirements for Certain HUD Housing (63 FR 35650), with regulations codified at 24 CFR part 5; and (2) the Public Housing Assessment System (PHAS) (63 FR 46596), with regulations codified at 24 CFR part 902. The UPCS are incorporated in subpart B of the final PHAS rule. Subpart D of the PHAS rule, titled Management Operations, requires PHAs to inspect their units and systems using the UPCS (see § 902.43(a)(5)).

The PHAS rule (§ 902.60) requires PHAs with fiscal years ending (FYE) on and after September 30, 1999, to submit an electronic certification regarding their performance relative to each management indicator. Section 902.43(a)(5) of the rule which addresses Management Indicator #5 titled ''PHA annual inspection of units and systems'' requires a PHA's inspection to utilize the HUD uniform physical condition standards set forth in subpart of part 902. Therefore, a PHA's certification under § 902.60 must include a statement that the units were inspected using the UPCS.

In October 1998, HUD made available to the public through its web site a demonstration version of the UPCS inspection software that the REAC uses to conduct inspections (see http://www.hud.gov/reac/). HUD also made available through its web site the training guidebook that the REAC uses to train HUD inspectors. Additionally, the REAC just recently made available a public use version of its inspection software through its Customer Service Center.

In the next few months, HUD plans to make available a list of training vendors that have been approved to provide training to the PHAs and other HUD program participants on the UPCS. Given that these products were only recently made available by HUD, HUD recognizes that PHAs with fiscal years ending September 30, 1999, and December 31, 1999, will not be able to certify that inspections of units were made in accordance with the UPCS.

This notice therefore advises PHAs with fiscal years ending September 30, 1999, and December 31, 1999 that they may meet the requirements of Management Indicator #5 by certifying that their occupied units were inspected in accordance with HUD's Section 8 Certificate Program Housing Quality Standards (HQS).

Since 1992, PHAs have been required to conduct inspections under the regulations of the Public Housing Management Assessment Program (24 CFR part 901) using local code or the Section 8 Certificate Program Housing Quality Standards (HQS), whichever is more stringent. The standards and the items to be inspected under the HQS and the UPCS are substantially equivalent.

Consistent with HUD's October 21, 1999, notice to provide transition assistance in connection with implementation of the PHAS to PHAs with FYs ending September 30, 1999, and December 31, 1999, and given that HUD only recently released its UPCS inspection software and training guidebook, PHAs with FYEs of September 30, 1999, and December 31, 1999, that conducted annual unit and system inspections using the HQS and HQS form will be deemed to have inspected using the UPCS for the purpose of the Management Operations certification under the PHAS rule.

Dated: December 13, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

Donald J. LaVoy,

Acting Director of the Real Estate Assessment Center.

[FR Doc. 99–32665 Filed 12–15–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–003269

Applicant: Robert James, San Diego, California

The permittee requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

Permit No. TE–007581

Applicant: Tito Alejandro Marchant, Newport Beach, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) and Delhi Sands flower loving fly (Rhaphiomidas terminatus abdominalis) in conjunction with presence or absence surveys throughout each species range for the purpose of enhancing their survival.

Permit No. TE–008482

Applicant: Danielle Flynn, San Diego, California

The applicant requests a permit to take (survey by pursuit) the Quino

checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

Permit No. TE–019510

Applicant: Shauna M. Wolf, San Diego, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

Permit No. TE–019141

Applicant: Shannon Bane, Livermore, California

The applicant requests a permit to take (capture) the giant kangaroo rat (*Dipodomys ingens*) and the Alameda whipsnake (*Masticophis lateralis euryxanthus*) in conjunction with surveys in Alameda, San Joaquin, and Sacramento Counties, California, in conjunction with surveys for the purpose of enhancing their survival.

Permit No. TE–009390

Applicant: Denise Moe, Lemon Grove, California

The permittee requests an amendment to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

Permit No. TE–019947

Applicant: Scott Crawford, Tustin, California

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*), and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydras editha quino*) and the El Segundo Blue Butterfly (*Euphilotes battoides allyni*) throughout each species range in California in conjunction with surveys for the purpose of enhancing their survival.

Permit No. TE–019949

Applicant: Vipul Ramesh Joshi, San Diego, California

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (Lepidurus packardi), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*), and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydras editha quino*) throughout each species range in California in conjunction with surveys for the purpose of enhancing their survival.

Permit No. TE–019953

Applicant: Alisa Durgarian, Oakhurst, California

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) throughout each species range in California in conjunction with surveys for the purpose of enhancing their survival.

Permit No. TE–005878

Applicant: Santa Clara Valley Water District, San Jose, California

The permittee requests an amendment to: Take (harass by survey, locate and monitor nests) the California least tern (*Sterna albifrons browni*) and California clapper rail (*Rallus longirostris obsoletus*); take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*); and take (capture and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) and San Joaquin kit fox (*Vulpis macrotis mutica*) in conjunction with surveys and population monitoring throughout each species range for the purpose of enhancing their survival.

Permit No. TE–019991

Applicant: Raymond White, Palo Alto, California

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) throughout each species range in California in conjunction with surveys for the purpose of enhancing their survival.

Permit No. TE–796284

Applicant: D. Christopher Rogers, Sacramento, California

The permittee requests an amendment to take (harass by survey, collect, and sacrifice) the longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*), and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydras editha quino*) throughout each species range in California in conjunction with surveys for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received on or before January 18, 2000.

ADDRESSES: Written data or comments should be submitted to the Chief—Endangered Species, Ecological Services, Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: December 9, 1999.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–32574 Filed 12–15–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Pacific Bay Properties, Rancho Bella Vista Master Planned Community in Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Pacific Bay Properties (the Applicant) has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The Service proposes to issue a 30-year permit to the Applicant that would authorize take of up to 14 species, including the threatened coastal California gnatcatcher (*Polioptila californicus californicus*). Such take would occur during the development and management of 1,998 single family residences, associated schools, recreational facilities, and open space on 798 acres. This project would permanently eliminate 102.2 acres of suitable habitat for the 14 species: 8.9 acres of Riversidean sage scrub, 59.2 acres of disturbed Riversidean sage scrub, 0.5 acre of willow riparian woodland, 3.5 acres of southern willow scrub, 0.4 acre of disturbed southern willow scrub, and 29.7 acres of non-native grassland.

We request comments from the public on the permit application, and an Environmental Assessment, which are available for review. The permit application includes the proposed Habitat Conservation Plan (Plan) and an accompanying Implementing Agreement. The Plan describes the proposed project and the measures that the Applicant would undertake to minimize and mitigate take of the 14 species.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments should be received on or before January 18, 2000.

ADDRESSES: Written comments should be addressed to Mr. Jim Bartel, Assistant Field Supervisor, Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Comments may be sent by facsimile to (760) 431–9624.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Shaughnessy, Fish and Wildlife Biologist, at the above address or call (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Endangered Species Act and Federal regulation prohibit the ''take'' of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to include kill, harm, or harass. The Service may, under limited circumstances, issue permits to authorize incidental take; i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

The Applicant's proposed project lies within the Rancho Bella Vista Community Specific Plan Area. The Specific Plan Area is located between State Route 79 (Winchester Road) and Lake Skinner Reservoir in western Riverside County, California. The Southwestern Riverside Multiple Species Reserve and Lake Skinner Recreation Area are east of the project site. The project site includes the Skunk Hollow vernal pool and portions of Tucalota Creek. Typical land uses in the area surrounding the project site are dryland farming, grazing, a small airport, and residential development. The Applicant proposes the following land uses at the project site: residential development, schools, recreational facilities, and open space.

The Plan relies on biological data collected from a number of reports and surveys of the project site dating from 1989 through 1998. Based on these surveys and reports, the Service concluded that the project may result in the take of federally listed wildlife, harm to listed plants, or take of other species should they be listed in the future:

Coastal California gnatcatcher (*Polioptila californicus californicus*), threatened
Last Bell's vireo (*Vireo bellii pusillus*), endangered
Riverside fairy shrimp (*Streptocephalus woottoni*), endangered
Quino checkerspot butterfly (*Euphydryas editha quino*), endangered
Spreading navarretia (*Navarretia fossalis*), endangered
Thread-leaved brodiaea (*Brodiaea filifolia*), threatened
California Orcutt grass (*Orcuttia californica*), endangered
Munz's onion (*Allium munzii*), endangered
San Diego ambrosia (*Ambrosia pumila*), candidate for listing
Western spadefoot toad (*Spea hammondii*)
Southwestern pond turtle (*Clemmys marmorata pallida*)
Burrowing owl (*Speotyto cunicularia*)
Southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*)
Bell's sage sparrow (*Amphispiza belli belli*)

The Applicant proposes to implement the following measures to minimize and mitigate take of endangered species: (1) Preserve 90.4 acres of Riversidean sage scrub (91 percent of on-site acreage of this vegetation type) and 28.8 acres of disturbed Riversidean sage scrub (33 percent of on-site acreage), resulting in preservation of at least 4 of 5 pairs of coastal California gnatcatchers; and (2) Preserve 6.2 acres of riparian and wetland habitats (58 percent of on-site acreage). In addition, the Applicant has already established a 140-acre wetland conservation bank. The Plan identifies goals and objectives for management and conservation of the 14 species, including control of human access and exotics species, preservation of upland and wetland habitats, provision of open space connections through the development area, enhancement of Quino checkerspot butterfly habitat, and restoration of riparian habitats.

The Environmental Assessment considers the environmental consequences of four alternatives in addition to the Proposed Project Alternative. The Proposed Project Alternative consists of the issuance of an incidental take permit and implementation of the Plan and its Implementing Agreement, which include measures to minimize and mitigate impacts of the project on the 14 species. Under the No Action Alternative, the Service would not issue a permit and the project area would remain undeveloped.

Existing agricultural practices would likely be maintained on the property. The Applicant considered and rejected this alternative because elimination of the proposed development would also eliminate dedication and management of lands in the Conservation Bank as well as other open space areas proposed by the proposed Project Alternative. The Applicant also considered and rejected a Reduced Project Alternative and a Wetland Avoidance Alternative. Although both of these alternatives would have increased open space compared to the Proposed Project, the Applicant did not select them because the loss of additional residences would increase per unit construction cost beyond what is consistent with lot costs in the region.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application

meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If we determine that those requirements are met, we will issue a permit to the Applicant for the incidental take of the abovementioned listed species. Our final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: December 10, 1999.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 99–32575 Filed 12–15–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council meeting notice.

SUMMARY: This notice announces a meeting and tour of the Arizona Resource Advisory Council. The one-day business meeting will be held on January 21, 2000, in Phoenix, Arizona. The RAC meeting will begin at 9 a.m and will conclude at approximately 4 p.m. The meeting will be held at the BLM National Training Center, 9828 North 31st Avenue, Phoenix, Arizona. The agenda items to be covered include the review of the October 22, 1999, meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Updates on Secretarial Initiatives, regarding proposed Arizona National Monument and Las Cienegas National Conservation Area, and Barry Goldwater Range and Perry Mesa; Perry Mesa Slide Presentation; Yuma Rod & Gun Club Presentation on Game Carriers; Update Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Discussion about establishing Conservation and Minerals Subgroups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on January 21, 2000, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Denise P. Meridith,

Arizona State Director.

[FR Doc. 99–32578 Filed 12–15–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–920–1310–EI; MTM 88022]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease MTM 88022, Stillwater County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as contained in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice. 2

FOR FURTHER INFORMATION CONTACT: Elaine Kaufman, Acting Chief Fluids Adjudication Section, BLM Montana State Office, PO Box 36800, Billings, Montana 59107, 406–896–5108.

Dated: December 7, 1999.

Elaine L. Kaufman,

Acting Chief, Fluids Adjudication Section.

[FR Doc. 99–32609 Filed 12–15–99; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–1430–ET; CACA 38618]

Public Land Order No. 7423; Withdrawal of Public Lands for the South Fork of the American River; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,533 acres of public lands from mining, for a period of 50 years, for the Bureau of Land Management to protect the riparian areas, wildlife habitat, scenic quality, public access, and high value recreational resources of the South Fork of the American River. The lands have been and will remain open to mineral leasing and the Materials Act of 1947. The withdrawal from the mining laws would be subject to valid existing rights. An additional 120 acres of non-Federal lands would become subject to the withdrawal if acquired.

EFFECTIVE DATE: December 16, 1999.

FOR FURTHER INFORMATION CONTACT: John Beck, BLM Folsom Field Office, 63 Natoma Street, Folsom, California 95630, 916–985–4474.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws or the Materials Act of 1947, for the Bureau of Land Management to protect the riparian areas, wildlife habitat, scenic quality, public access, and high value recreational resources of the South Fork of the American River:

Mount Diablo Meridian

T. 11 N., R. 9 E.,
- Sec. 3, that portion of the SE¼SW¼ and the SW¼SE¼ lying Southerly of the South Boundary of State Highway 49;
- Sec. 10, SW¼NW¼, E½NW¼, and that portion of the NE¼ lying southerly of the south boundary of California State Highway 49;
- Sec. 11, the W½NW¼, N½NW¼SW¼ lying Southerly of the South boundary of California State Highway 49 as conveyed to the State of California by deed recorded January 8, 1962 in Book 577 of Official Records, page 89, and Westerly and Northerly of the centerline of the South Fork of the American River; the E½NW¼ lying Westerly and Northerly

of the centerline of the South Fork of the American River, lying Southerly of the South boundary of California State Highway 49 as conveyed to the State of California by Deed recorded January 8,1962 in Book 577 of Official Records, page 89, also lying Westerly of the following described line: Beginning at the Northwest corner of Parcel 1 as shown on that certain Parcel map filed in Book 45 of Parcel Maps at Page 34 being located on the said South boundary of State Highway 49; thence along the West boundary of said Parcel 1 South, 550.09 feet to a 1¼″ capped iron pipe stamped L.S. 2403; thence leaving said West boundary along the East boundary of that certain Parcel of land encumbered by agreement to complete Boundary Line Adjustment and Easement Agreement recorded in Book 4380 of Official Records at page 59 South 12° 54′ 45″ East, 280.34 feet; thence South 26° 20′ 07″ East, 187.26 feet to the said centerline of the South Fork of the American River and the terminus of said described line;

Sec. 21, that portion of the W½ lying Westerly of the centerline of the South Fork or the American River;

Sec. 28, that portion of the N½NW¼ lying Westerly and Northerly of the centerline of the South Fork of the American River;

Sec. 29, NW¼, NW¼SW¼, and portions of the E½ more particularly described as follows: Parcels 2, 3, and 4, as shown on the Parcel Map, filed August 17, 1979 in Book 24 of PARCEL MAPS at page 15, El Dorado County Records, California, and as amended by Certificate of Correction recorded August 31, 1989 in Book 3196 of Official Records, page 76; that portion of the S½SW¼ lying Westerly and Northerly of the centerline of the South Fork of the American River.

T. 11 N., R. 10 E.,

Sec. 27, NE¼, N½NW¼, SE¼NW¼, E½SW¼, and SE¼.

The areas described aggregate approximately 1,533 acres in El Dorado County.

2. The following non-Federal lands are located within the corridor of the South Fork of the American River. In the event, these lands return to Federal ownership, they would be subject to the terms and conditions of this withdrawal as described in Paragraph 1:

Mount Diablo Meridian

T. 11 N., R. 9 E.

Sec. 29, NE¼SW¼, and tract 3 as shown on the map, filed October 2, 1991 in book 18 of survey maps at page 129, El Dorado County Records, California;

Sec. 31, SE¼NE¼.

The areas described aggregate approximately120 acres in El Dorado County.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: December 8, 1999.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 99–32656 Filed 12–15–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–00–1610–DG]

Resource Management Plan, Pinedale Field Office, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and resource management plan, request for information for scoping process, call for coal resource information, and notice of public meetings.

SUMMARY: The Bureau of Land Management's (BLM) Pinedale Field Office invites the public to provide information on BLM-administered public lands and resources in the Snake River planning area and to identify issues and concerns to be addressed in the environmental impact statement (EIS) for the Snake River Resource Management Plan (RMP). As required in 43 CFR 3420.1–2, this notice is also the specific call for coal resource information and identification of areas where there is an interest in future leasing and development of Federal coal.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain further information or request to be placed on the mailing list for the Snake River RMP planning effort by contacting Kellie Roadifer, RMP Team Leader, or Prill Mecham, Field Manager, Pinedale Field Office, 432 East Mill Street, Pinedale, Wyoming 82941, (307) 367–5300.

SUPPLEMENTARY INFORMATION: The Snake River corridor and adjacent areas, collectively known as Jackson Hole, in Teton County, Wyoming, make up the Snake River RMP planning area.

Within the Snake River corridor, BLM-administered public lands to be addressed in the RMP include about 1,345 acres of public land surface and Federal mineral estate, plus about 740 acres of public land surface underlain by State or privately-owned mineral estate.

In addition, the BLM is responsible for administering various recreation easements on private lands within the river corridor. These easements, combined with the public land parcels, provide almost continuous recreational access to the river channel for public uses such as anchoring a boat to fish and wading in the river. A few of the Snake River levees are within these easements, supporting several miles of public access by foot and vehicle in places, but most of the easements allow access only by boat from the river.

The BLM is also responsible for administering mineral exploration and development on an additional 12,000 acres of Federal mineral estate. This mineral estate, which is mostly outside the river corridor, underlies lands owned or administered by private individuals, the State of Wyoming, or local governments.

The Snake River RMP planning area includes all lands in Jackson Hole between the Forest Service boundaries on the east, west, and south, and the National Park Service boundary on the north, for the purpose of evaluating environmental impacts (including the cumulative impacts) of BLM land-use planning decisions. However, the planning and management decisions to be made by the BLM will apply only to the BLM-administered land surface, the Federal mineral estate, and the recreational easements mentioned in the four paragraphs above.

The Snake River RMP is in the preplanning stage. Preplanning activities include identifying planning issues and concerns, developing a schedule for plan preparation, and establishing public participation activities.

Some preliminary planning issues and concerns have been identified which may be addressed by the following questions: (1) What types and levels of recreational and interpretive development are appropriate on public land surface to help satisfy existing and future demand for public recreation and education? (2) Consistent with valid existing rights, what other activities, including livestock grazing and mineral extraction, are appropriate on these lands? (3) What levels of mineral activity are appropriate for the exploration and development of the BLM-administered mineral estate? (4) What requirements or restrictions on land use will be necessary to protect important public resources such as recreational opportunities, scenic quality, wildlife habitat, sensitive plants, and cultural resources? (5) Which, if any, of the BLM-administered public lands along the Snake River meet the eligibility criteria and suitability factors to be given future consideration

for inclusion in the Wild and Scenic Rivers System?

The public is invited to identify other issues and concerns that should be addressed in the planning process and to comment on those identified by the BLM staff.

The BLM is also requesting resource data and information that will be used to further define issues and concerns, update the inventory base, help develop planning alternatives, and analyze environmental consequences. The BLM will conduct very little new inventory work; therefore, development of the RMP will rely mostly upon existing available resource information and data.

A contingent valuation methodology (CVM) survey or study is planned as part of the RMP analysis to consider the economic value of certain non-market goods and services such as clean air, open space, and wildlife habitat, associated with BLM-administered lands in the planning area. This survey will involve the collection of random public responses through questionnaires and interviews.

Pursuant to 43 CFR 3420.1–2, this notice is a formal request for coal resource information and identification of any substantiated interest in future leasing and development of Federal coal in the Snake River planning area. Specifically, information on the location, quality and quantity of Federal coal with development potential, and on surface resource values related to the twenty coal unsuitability criteria described in 43 CFR 3481.1 is requested and will be used to conduct any necessary coal screening (43 CFR 3420.1–4) during the planning process. The BLM has limited coal resource data for the planning area and will be unable to conduct further inventories. Parties interested in Federal coal leasing and development will be expected to provide coal and other resource data for their areas of interest. Information concerning areas of leasing interest, coal resource data, and other resource information related to unsuitability criteria must be submitted to the Pinedale Field Office, at the address above.

Federal coal leasing in the planning area outside designated coal production regions may be considered apart from the competitive leasing process set out in 43 CFR 3420.3 through 3420.5–2. Since the Snake River planning area is not within a coal production region, any Federal coal leasing will be considered on a case-by-case basis, called ''Leasing on Application'' under the appropriate provisions of 43 CFR part 3425 and 43 CFR 3420.1–4 through 3420.1–8. Note that the sale and issuance of Federal leases under these provisions is still done through a competitive bidding process.

Identification at this time of definite interests in future Federal coal leasing, substantiated with adequate coal and other resource data, will allow these interests to be considered in the planning process. In this way, unnecessary administrative delays or revisions in the plan may be avoided if coal lease applications are submitted in the future.

Public participation activities will be initiated with an open house to be held at the Teton County Administration Building, County Commissioners' Meeting Room, at the corner of Willow and Simpson, in Jackson, Wyoming, on Thursday, January 27, 2000, from 4 to 8 p.m. At 5 and 7 p.m., BLM representatives will give short presentations.

The public will have opportunities to participate throughout the planning process including input and comment on issues and planning criteria, and on the draft and final EIS for the resource management plan. Future public participation activities will be announced in the **Federal Register** and in the local media, and through mailings to parties included on the Snake River RMP mailing list.

Comments, including names and street addresses of respondents, will be available for public review at the Pinedale Field Office, 432 East Mill Street, Pinedale, Wyoming, during regular business hours (7:45 a.m. to 4:30 p.m.) Monday through Friday, except holidays, and may be published as part of the final environmental impact statement (FEIS). Individual respondents may request confidentiality. If individuals wish to withhold their name or address from public review or from disclosure under the Freedom of Information Act, they must state this prominently at the beginning of their comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: December 9, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–32579 Filed 12–15–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–062–1430–ET; UTU–75392]

Notice of Proposed Withdrawal and Notice of Public Meetings; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 131,340 acres of public land to protect the scenic and recreational values of portions of the Colorado, Dolores, and Green river corridors in Southeastern Utah. This notice segregates the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to mineral leasing. This notice also announces two public meetings.

DATE: Comments should be received on or before March 16, 2000.

ADDRESSES: Comments should be sent to the Moab Field Office Manager, 82 East Dogwood Avenue, Moab, Utah 84532.

FOR FURTHER INFORMATION CONTACT: Mary von Koch, Realty Specialist, Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, (435) 259–2128.

SUPPLEMENTARY INFORMATION: On, December 8, 1999, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described lands from location and entry under the United States mining laws, subject to valid existing rights.

Salt Lake Meridian

Colorado River

T. 21 S., R. 24 E.,
Sec.22, lots 2, 3, 9, and 10, SW¼NW¼, and NW¼SW¼;
Sec.23, lots 8 to 12, inclusive, and N½NE¼NW¼;
Sec.26, lots 10 to 15, inclusive, and SW¼NE¼;
Sec.27, lot 6, and SE¼NW¼;
Sec.35, lots 9 to 14, inclusive.
T. 22 S., R. 24 E.,
Sec.2, lots 2 to 6, inclusive, and SE¼NW¼;
Sec.3, lots 1 to 3, inclusive, and lots 5 to 11, inclusive;
Sec.10, lots 2 to 5, inclusive, SE¼NW¼, and NE¼SE¼;
Sec.11, lots 1 to 9, inclusive, and NW¼SW¼;
Sec.14, lot 1, NW¼NE¼, and NE¼NW¼;
Sec.15, lots 1 to 11, inclusive;
Sec.16, lot 1, and NE¼SE¼.
Sec.21, lots 1 to 9, inclusive, and NE¼SW¼;
Sec.22, lots 1 and 2;
Sec.33, SW¼SW¼.
T. 23 S., R. 23 E.,
Sec.12, SE¼SW¼, and S½SE¼;

Sec.13, lots 1 to 8, inclusive, NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec.14, lots 1 to 7, inclusive, N½NE¼, SE¼NW¼, E½SW¼, and SE¼SE¼;
Sec.23, lots 1 to 6, inclusive, E½NW¼, SW¼NE¼, and NW¼SE¼;
Sec.24, lots 1 to 9, inclusive, S½N½, and E½SW¼;
Sec.25, lots 1 to 10, inclusive, SW¼NE¼, NE¼NW¼, W½SW¼, and E½SE¼;
Sec.26, E½NE¼ and NE¼SE¼;
Sec.34, SE¼NE¼, S½SW¼, and SE¼;
Sec.35, lots 1 to 3, inclusive, S½N½, N½S½, and S½SW¼;
Sec.36, lots 1 to 10, inclusive, E½NE¼, NE¼NW¼, SW¼NW¼, N½SE¼, and SW¼SE¼.

T. 23 S., R. 24 E.,
Sec.5, lots 1 to 4, inclusive, lots 6 to 11, inclusive, SE¼NE¼, NE¼SE¼, and E½SW¼;
Sec.8, lots 1, 2, 4, 5, and 10;
Sec.17, lots 1 to 4, inclusive, S½N½, N½S½, and S½SE¼;
Sec.18, lots 1 to 10, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec.19, lots 1 and 2, NE¼, and E½NW¼;
Sec.20, N½NE¼, and SE¼NE¼;
Sec.30, lot 4;
Sec.31, lots 1 to 4, inclusive, E½W½, and E½.

T. 24 S., R. 22 E.,
Sec.25, lots 1 to 4, inclusive, NE¼, S½NW¼, and N½SW¼;
Sec.26, lots 1 to 6, inclusive;
Sec.27, lots 1 to 8, inclusive, and N½SW¼;
Sec.28, lots 1 and 2, and SW¼SE¼;
Sec.33, lots 1 to 11, inclusive, N½NW¼, and SE¼SW¼;
Sec.34, N½N½;
Sec.35, S½S½S½NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, and SE¼;
Sec.36, lots 1 and 2.

T. 24 S., R. 23 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 2 to 6, inclusive, and 9;
Sec. 3, lots 1 to 7, inclusive, S½N½, SW¼, and NW¼SE¼;
Sec. 4, lots 1, 2, 6, and 7, S½NE¼, E½SW¼, and SE¼;
Sec. 5, lots 6 and 7, and W½SE¼;
Sec. 8, lots 1 to 4, inclusive, E½SW¼, and W½E½;
Sec. 9, lots 1 to 6, inclusive, NE¼, NE¼NW¼, SW¼, and NW¼SE¼;
Sec. 10, lots 1, 3, 4 and 8, SE¼NE¼, S½SE¼, and NW¼NW¼;
Sec. 11, N½, NE¼SW¼, S½SW¼, and SE¼; secs. 12 and 13;
Sec. 14, N½ and N½S½;
Sec. 15, NE¼, NE¼NW¼, S½NW¼, and S½;
Sec. 17, lots 1 to 6, inclusive, W½NE¼, E½NW¼, SW¼NW¼, and SW¼;
Sec. 18, lots 2, 3, and 4, S½NE¼, SE¼NW¼, E½SW¼, and SE¼.
Sec. 19, lots 1 to 7, inclusive, NE¼, E½W½, and N½SE¼;
Sec. 20, lots 1 to 8, inclusive, lots 12, 13, and 14, and N½NW¼;
Sec. 21, NW¼NE¼, W½, and W½SE¼;
Sec. 24, N½;
Sec. 28, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 29, lot 1, NW¼NE¼, S½NE¼, W½, and SE¼;
Sec. 30, lots 1 to 9, inclusive, 11 and 12, SE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 31, lots 1, 2 and 3, N½NE¼, SW¼NE¼, E½NW¼, NE¼SW¼, and NW¼SE¼.

T. 24 S., R. 24 E., unsurveyed,
Sec. 5, W½;
Sec. 6;
Sec. 7, NE¼, N½SE¼, and SW¼SE¼;
Sec. 8, W½NW¼ and NW¼SW¼;
Sec. 18, NW¼NE¼, S½NE¼, and SE¼;
Secs. 19 and 20.

T. 25 S., R. 21 E.,
Sec. 31, lots 4, 5, and 6, SE¼SW¼, and NW¼SE¼;
Sec. 33, NE¼NE¼;
Sec. 34, lots 6 to 9, inclusive, and SE¼SW¼.

T. 25 S., R 22 E.,
Sec. 3, S½SW¼ and W½SE¼;
Sec. 4, lots 4 and 5, W½SW¼, SE¼SW¼, and S½SE¼;
Sec. 5, lots 1, 2, and 3;
Sec. 8, lots 1 and 2;
Sec. 9, lots 1 to 4, inclusive, and N½NW¼;
Sec. 10, lots 1 to 7, inclusive, and W½E½;
Sec. 15, lot 1, W½NE¼, NE¼NW¼, and S½NW¼;
Sec. 16, lots 1 to 4, inclusive, and N½SE¼;
Sec. 17, lots 1 to 4, inclusive;
Sec. 19, lots 1 to 4, inclusive, SE¼SW¼, and NE¼SE¼;
Sec. 20, lot 1, N½NE¼, NE¼NW¼, and SW¼NW¼;
Sec. 21, NW¼NW¼;
Sec. 30, lots 1 and 2.

T. 26 S., R 20 E.,
Sec. 1, lots 1, lots 8 to 14, inclusive, SW¼NE¼, S½NW¼, and N½SW¼;
Sec. 12, lots 1, 2, and 3, SW¼NE¼, SW¼SE¼, and E½SE¼;
Sec. 13, lots 1 and 2, and N½NE¼.

T. 26 S., R 21 E.,
Sec. 3, lots 2, lots 7 to 12, inclusive, and SW¼SE¼;
Sec. 5, lots 3 to 6, and 9 to 12, inclusive, SW¼NE¼, SE¼NW¼, and E½SW¼;
Sec. 6, lots 1 to 13, inclusive, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, and SE¼SE¼;
Sec. 7, lots 1 to 7, inclusive, NE¼, E½NW¼, N½SE¼, and SE¼SE¼;
Sec. 8, lots 1 to 8, inclusive, and E½W½;
Sec. 9, SE¼SE¼;
Sec. 10, lots 1 to 7, inclusive, and 9, 10, and 11, NE¼SE¼, and SW¼SE¼;
Sec. 11, lots 4 and 5;
Sec. 15, E½W½ and SW¼SW¼;
Sec. 16, lot 1;
Sec. 17, lots 1 to 9, inclusive, E½NW¼, and SE¼SE¼;
Sec. 18, lots 1 to 8, inclusive, E½E½, and SW¼NE¼;
Sec. 19, lots 1, 2, 3, and 5;
Sec. 20, lots 1 to 6, inclusive, and SE¼NW¼;
Sec. 21, lots 1 to 8, inclusive, NW¼NW¼, and SE¼NE¼.

T. 27 S., R. 20 E.,
Sec. 7, lot 4, SE¼SW¼, and S½SE¼;
Sec. 8, SW¼SW¼;
Sec. 12, lots 1, 2, 5, 6, 7, NW¼NE¼, E½NW¼, and W½SW¼;
Sec. 13, lots 2, 3, 6, 7, W½NW¼, and NW¼SW¼;
Sec. 15, lots 1, 3, 4, 7, N½NW¼, and, W½SE¼;
Sec. 17, lots 1, 3–5, 8, 9, E½W½, and SW¼SE¼;
Sec. 18, lots 1, 4–8, and 11–14;
Sec. 20, lots 2 , 3, 4;
Sec. 22, lots 1, 4, 5, 6, N½NE¼;
Sec. 23, lots 1, 2, 5, 6, N½NE¼, SE¼NE¼, NW¼NW¼;
Sec. 24, lots 2, 3, W½NE¼.

The area described contains 34,190 acres in Grand and San Juan Counties.

Dolores River (including the river bottom)

T. 23 S., R. 24 E.,
Sec. 1, S½S½;
Sec. 2, lots 5 and 6, SW¼SW¼, and SE¼SE¼;
Sec. 9, lots 1 to 12, inclusive, NE¼NW¼, and S½NE¼;
Sec. 10, lots 1 to 11, inclusive, NE¼NE¼, SW¼NE¼, NE¼SW¼, and SE¼SE¼;
Sec. 11, lots 1 to 8, inclusive, S½NE¼, SE¼NW¼, and S½;
Sec. 12, lots 1 to 13, inclusive, N½NE¼, SW¼NW¼, and SW¼;
Sec. 13, lots 1 to 5, inclusive, W½NE¼, N½NW¼, and W½SE¼;
Sec. 14, N½;
Sec. 15, lots 1 and 2, NE¼, E½NW¼, SW¼, and NW¼SE¼;
Sec. 16, lots 5, 6, 10, 11 and 12, NW¼SW¼, and S½SE¼ ;
Sec. 21, NW¼NE¼, N½NW¼, SW¼NW¼, and NW¼SW¼;
Sec. 22, W½NE¼, NW¼, and NE¼SW¼.

T. 23 S., R.25 E.,
Sec. 7, lots 3 and 4, E½SW¼, and SW¼SE¼;
Sec. 16, SW¼;
Sec. 17, lots 1 to 5, inclusive;
Sec. 18, lots 3 to 9, inclusive, NW¼NE¼, S½NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 19, lot 1;
Sec. 20, lots 1, 2, and 6, and SE¼NE¼;
Sec. 21, lots 1 to 11, inclusive, E½NE¼, and SW¼;
Sec. 22, lots 1 to 7, inclusive, and E½SE¼;
Sec. 26, W½;
Sec. 27, lots 1 to 8, inclusive, NE¼NE¼, S½NE¼, W½W½, and SE¼;
Sec. 28, NE¼, NE¼NW¼, and E½SE¼;
Sec. 33, E½;
Sec. 34, lots 1 to 8, inclusive, NE¼, SE¼NW¼, E½SW¼, and SE¼.

T. 23 S., R. 26 E.,
Sec. 31, SE¼;
Sec. 32, S½N½ and S½;
Sec. 33, lots 3 and 4, and E½SW¼.

T. 24 S., R. 25 E.,
Sec. 1, lots 6, 7, and 8, and NW¼SW¼;
Sec. 2, lots 3 to 12, inclusive, S½SW¼, and SW¼SE¼;
Sec. 3, lots 1 to 5, inclusive, SE¼NW¼, SW¼NE¼, and SE¼;
Sec. 9, NE¼SE¼ and S½SE¼;
Sec. 10, NE¼, SE¼NW¼, and S½;
Sec. 11, lot 1, NW¼NE¼, S½NE¼, N½NW¼, N½SE¼, SE¼SE¼, and SW¼SW¼;
Sec. 12, lots 1 to 15, inclusive, NE¼NW¼, S½SW¼, and SW¼SE¼;
Sec. 14, W½NW¼;
Sec. 15, NE¼ and E½NW¼.

T. 24 S., R. 26 E.,

Sec. 4, lots 1 to 5, inclusive, SE¼NW¼, and E½SW¼;
Sec. 5, lots 1 to 4, inclusive, S½N½, NE¼SW¼, and SE¼;
Sec. 6, lots 1, 2, and 3, S½N½, N½S½, S½SW¼, and SW¼SE¼;
Sec. 7, W½NE¼, SE¼NE¼, NW¼, and SE¼;
Sec. 8, SW¼NW¼ and W½SW¼;
Sec. 17, W½W½;
Sec. 18, E½E½;
Sec. 19, E½NE¼;
Sec. 20, W½;
Sec. 29, E½W½ and W½E½
The area described contains 16,434 acres in Grand County.

Green River (including the river bottom in non-navigable sections)

T. 12 S., R. 17 E., unsurveyed, except as noted
Sec. 24, SE¼, surveyed;
Sec. 25 (A);
Sec. 26 (A);
Sec. 27 (A), excluding W½W½;
Sec. 34 (A), excluding W½W½;
Sec. 35 (B);
Sec. 36 (B).
T. 12 S., R. 18 E.,
Sec. 3, lots 3, 4, and 8, and SW¼SW¼;
Sec. 4, lots 1 to 4, inclusive, and S½;
Sec. 5, lots 1 to 8, inclusive, lot 12, and W½SW¼;
Sec. 6, E½SE¼;
Sec. 7, E½E½, SW¼NE¼, and W½SE¼;
Sec. 8, lots 1, 4, 5, 9, and 12 to 15, inclusive, W½W½, and SE¼SW¼;
Sec. 9, lots 1, 2, 6, 7, and 8, N½NE¼, and NW¼;
Sec. 10, lots 1 to 4, and 7 to 10, inclusive, and SE¼NE¼;
Sec. 11, lots 2, 3, and 6;
Sec. 17, lots 3, 4, 7, 8, and 9, NW¼, N½SW¼, and SW¼SW¼;
Sec. 18, E½E½;
Sec. 19, lots 3 and 4, E½, and E½SW¼;
Sec. 20, lots 2, 3, 6, and 7, and W½W½;
Sec. 29, lots 2 and 3;
Sec. 30, lots 1, 3, 4, 5, 6, 10, 11, and 12;
Sec. 31, lot 5.
T. 13 S., R. 17 E., unsurveyed, except as noted
Sec. 1 (B);
Sec. 2 (A);
Sec. 3, excluding W½W½;
Sec. 10 (A), excluding N½N½, S½NW¼, and W½SW¼;
Sec. 11 (A), excluding NW¼NW¼;
Sec. 12 (B);
Sec. 15 (A);
Sec. 16, E½SE¼, surveyed;
Sec. 21, E½NE¼;
Sec. 22 (A), excluding SW¼SW¼;
Sec. 23 (B);
Sec. 26 (B);
Sec. 27, E½W½, E½;
Sec. 33 (A), excluding W½;
Sec. 34 (A);
Sec. 35 (B).
T. 13 S., R. 18 E.,
Sec. 6, lot 4.
T. 14 S., R. 17 E., unsurveyed,
Sec. 3 (B);
Sec. 4 (A);
Sec. 5, E½;
Sec. 8, SE¼;
Sec. 9 (A), excluding NW¼;
Sec. 10 (B);
Sec. 16 (A);
Sec. 17 (A), excluding W½;
Sec. 20 (A), excluding W½;
Sec. 21 (B);
Sec. 28 (B);
Sec. 29 (A), excluding N½NW¼;
Sec. 30, excluding N½N½;
Sec. 32 (A).
T. 15 S., R. 16 E., unsurveyed,
Sec. 1, E½.
T. 15 S., R. 17 E.,
Sec. 5 (A), unsurveyed;
Sec. 6, unsurveyed;
Sec. 7, lot 4, N½NE¼, SW¼NE¼, W½SE¼, and SE¼SE¼;
Sec. 8, lot 5, and N½NW¼;
Sec. 16 (B), unsurveyed;
Sec. 17 (A), unsurveyed;
Sec. 18, N½;
Sec. 20, E½E½;
Sec. 21 (A);
Sec. 28 (A), excluding SW¼NW¼ and NW¼SW¼;
Sec. 33 (A).
T. 16 S., R. 17 E., unsurveyed, except as noted
Sec. 3 (B);
Sec. 4 (A);
Sec. 5, SE¼;
Sec. 8, NE¼;
Sec. 9 (A), excluding SW¼;
Sec. 10 (B);
Sec. 16, lots 1 to 4, inclusive, and W½E½, surveyed;
Sec. 21 (A), excluding W½;
Sec. 22 (B);
Sec. 27 (A);
Sec. 28, E½E½;
Sec. 33, E½E½;
Sec. 34 (B);
Sec. 34 (C).
T. 17 S., R. 16 E.,
Sec. 21, SE¼;
Sec. 22, SW¼;
Sec. 25, S½S½;
Sec. 26, N½S½ and S½SE¼;
Sec. 27, N½, N½S½, S½SW¼, and SW¼SE¼;
Sec. 28, E½;
Sec. 34, N½N½;
Sec. 35, E½W½ and E½;
Sec. 36, E½.
T. 17 S., R. 17 E.,
Sec. 3, lot 5;
Sec. 4, lots 1, 2, 5, 6, 9, 10, and 11;
Sec. 9, lots 1, 2, 4, and 5, SW¼NE¼, NE¼SW¼, S½SW¼, and W½SE¼;
Sec. 16, lots 2 to 5, inclusive, 10, and 11, and NW¼NW¼;
Sec. 17, SE¼;
Sec. 19, lots 3 and 6, S½NE¼, and NW¼SE¼;
Sec. 20, lots 1, 2, 3, 6, 7, 8, 11, 12, NW¼NE¼, and NW¼;
Sec. 21, lot 3;
Sec. 29, lots 2 and 5;
Sec. 30, lots 1, 4, 6, and 7, SE¼NE¼, W½E½, and SE¼SW¼;
Sec. 31, lots 2 to 8, inclusive, W½NE¼, E½NW¼, E½SW¼, W½SE¼, and NE¼SE¼;
Sec. 32, lots 3, 4, 7, 8, and 9.
T. 18 S., R. 16 E.,
Sec. 1, lots 1, 2, and 3, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 12, lots 1, 2, and 3, W½NE¼, E½NW¼, NE¼SW¼, and NW¼SE¼.
Sec. 25, lots 1, 2, and 3, S½NE¼, E½SW¼, and W½SE¼;
Sec. 36, lots 1 to 4, inclusive, and 6, W½E½, E½W½, and SE¼SE¼;
T. 18 S., R. 17 E.,
Sec. 6, lots 3 to 6, inclusive, 9 and 10;
Sec. 7, lots 5, 6, and 7;
Sec. 18, lots 2, 3, 4, 6, 9, 12, and 13, NE¼NW¼, SW¼NE¼, NW¼SE¼, and SE¼SW¼;
Sec. 19, lots 1 to 10, inclusive, E½NW¼, E½SW¼, and W½SE¼;
Sec. 20, lots 1, 2, W½NW¼, excluding Uintah Reservation, SE¼NW¼, excluding Uintah Reservation, E½SW¼, and SW¼SE¼;
Sec. 29, lots 1 to 7, inclusive, E½, NE¼NW¼, and SE¼SW¼;
Sec. 30, Lots 1 to 12, inclusive, NW¼NE¼, S½NE¼, E½NW¼, and NE¼SE¼;
Sec. 31, lots 1 to 7, inclusive, S½NE¼, E½NW¼, NE¼SW¼, and SE¼;
Sec. 32, NW¼NW¼, S½NW¼, N½SW¼, and NW¼SE¼.
T 19 S., R.16 E.,
Sec. 1, lots 1 to 17, inclusive, SW¼NW¼, SE¼NE¼, and SE¼;
Sec. 2, lots 9 to 15, inclusive, N½S½, and SW¼SW¼;
Sec. 3, SE¼SE¼;
Sec. 10, lots 1 to 7, inclusive, W½NE¼, W½, and NW¼SE¼;
Sec. 11, lots 1 to 4, inclusive, N½NE¼, SW¼NE¼, SE¼NW¼, and W½SW¼;
Sec. 12, N½NW¼;
Sec. 14, lots 1 to 6, inclusive, E½W½, and N½SE¼;
Sec. 15, lots 1 to 5, inclusive, NE¼SE¼, W½E½, and S½SW¼;
Sec. 21, NE¼ and S½;
Sec. 22, lots 1 to 13, inclusive, S½NE¼, NW¼NW¼, SW¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 23, N½NW¼;
Sec. 26, lots 1 to 5, inclusive, NW¼NW¼, SE¼NW¼, and E½SW¼;
Sec. 27, lots 1 to 9, inclusive, NE¼NE¼, NW¼NW¼, S½NW¼, NE¼SW¼, S½SW¼, and NW¼SE¼;
Sec. 28, NE¼ and N½NW¼;
Sec. 34, lots 1 to 12, inclusive, S½NE¼, W½NW¼, and SE¼;
Sec. 35, NW¼ and S½.
T. 20 S., R. 16 E.,
Sec. 3, lots 1 to 5, inclusive, and 8, 9, 10, and 12, SE¼NE¼, E½SE¼, SW¼NW¼, and NW¼SW¼;
Sec. 4, SE¼SW¼ and S½SE¼;
Sec. 10, lots 1, 6, and 8, SW¼NE¼, E½NE¼, and E½SW¼;
Sec. 17, lots 1, 2, and 3.
T. 21 S., R. 16 E.,
Sec. 27, lots 5, 6, and 8, NE¼NW¼, S½NW¼, and SW¼SE¼;
Sec. 28, lot 2;
Sec. 33, lot 1, SE¼NE¼, and NE¼SE¼;
Sec. 34, lots 5 and 6, SW¼NW¼, N½SW¼, and SW¼SE¼;
Sec. 35, W½SW¼.
T. 22 S., R. 16 E.,
Sec. 3, lots 13, 18, 22, and 23;
Sec. 5, lots 9 to 13, inclusive, and 18, N½SW¼, and SE¼SW¼;
Sec. 9, SW¼SW¼;

Sec. 16, lots 1, 5, 8, 9, and 10;
Sec. 17, lots 1, 2, and 3, and S½NE¼;
Sec. 21, lots 1, 4, 5, 8, and 9, E½E½, NW¼, and W½SW¼;
Sec. 25, W½SW¼;
Sec. 26, S½;
Sec. 27, lots 1 to 13, inclusive, SW¼NW¼, and SW¼SE¼;
Sec. 28, lots 1, 2, 4, 5, 8, and 11, E½NE¼, NE¼SE¼, and W½W½;
Sec. 33, lots 1 and 2, N½NW¼;
Sec. 34, lots 1, 4, 5, 6, 7, 9, and 10, N½NW¼, NE¼SW¼, SW¼SW¼, and SE¼SE¼;
Sec. 35, W½NW¼.

T. 23 S., R. 16 E.,
Sec. 3, lots 2, 4, 5, 6, 8 to 12, inclusive, and 14, NE¼SE¼, SW¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 10, N½N½;
Sec. 11, lots 1, 3, 6, 9, 10, 11 and 14, NW¼NW¼;
Sec. 12, NW¼SW¼ and SE¼SW¼;
Sec. 13, lots 6, 7, and 10, NW¼NE¼, and E½SE¼;
Sec. 14, N½NE¼ and NE¼NW¼;
Sec. 23, lots 1, 2, and 3, NE¼NE¼, SW¼NE¼, SE¼NW¼, and E½SW¼;
Sec. 24, lots 1, 5, and 6, E½NE¼, NE¼SW¼, and NW¼SE¼;
Sec. 25, lot 8;
Sec. 26, SW¼NE¼.

T. 23 S., R. 17 E.,
Sec. 31, W½NE¼, SE¼NE¼, and E½SE¼.

T. 24 S., R. 16 E.,
Sec. 1, lots 5 to 8, inclusive, and SE¼NE¼;
Sec. 11, SE¼SE¼;
Sec. 12, lots 1 to 8, inclusive, SE¼NE¼, SW¼NW¼, and NW¼SE¼;
Sec. 13, lots 1 to 8, inclusive, NW¼SE¼, and SE¼SE¼;
Sec. 14, E½NE¼;
Sec. 23, lots 1 to 6, inclusive, NW¼NE¼, SE¼NW¼, E½SW¼, and SW¼SE¼;
Sec. 24, lots 1 to 10, inclusive, and NW¼SE¼;
Sec. 25, lots 1 to 7, inclusive.

T. 24 S., R. 17 E.,
Sec. 6, lots 1 to 14, inclusive, and S½SE¼;
Sec. 18, lot 4 and SE¼SW¼;
Sec. 19, lots 1 to 13, inclusive, E½NE¼, and NE¼SE¼;
Sec. 28, SE¼NE¼, SE¼SW¼, and SE¼;
Sec. 30, lots 1 to 5, inclusive, NW¼NE¼, SE¼NW¼, and E½SW¼;
Sec. 31, lots 1 to 13, inclusive;
Sec. 33, W½ and W½E½.

T. 25 S., R. 16 E.,
Sec. 1, lots 1 to 9, inclusive, SE¼NW¼, and NE¼SW¼.

T. 25 S., R. 17 E., unsurveyed, except as noted
Sec. 5;
Sec. 6, excluding S½SW¼;
Sec. 7, NE¼;
Secs. 8, 9, 16, and 17;
Sec. 19, E½;
Secs. 20 to 23, inclusive, and
Secs. 26 to 29 inclusive;
Sec. 30, NE¼, N½SE¼, and SE¼SE¼;
Sec. 31, E½NE¼, and SE¼;
Sec. 32, lots 1, 2, and 3, W½NE¼, E½NW¼, NW¼NW¼, E½SW¼, SW¼SW¼, and NW¼SE¼, surveyed;
Secs. 33 to 35.

T. 25 S., R. 17½ E., unsurveyed, except as noted
Sec. 3, excluding future lots 1 to 10, inclusive, S½NE¼, and SW¼;
Sec. 4, excluding future lots 1 to 3, and 6 to 8, inclusive;
Secs. 5 and 6;
Sec. 9 (A);
Sec. 9 (B);
Sec. 10, W½;
Sec. 12, NE¼NE¼, S½NE¼, and SE¼;
Sec. 13, N½NE¼, SW¼NE¼, E½NW¼, SW¼, and W½SE¼;
Sec. 14, S½;
Sec. 15, W½W½;
Secs. 16, 20, and 21;
Sec. 22, excluding NE¼;
Sec. 23 (A);
Sec. 23 (B);
Sec. 24, excluding E½NE¼;
Secs. 25 and 27;
Sec. 28 (A);
Sec. 28 (B);
Sec. 29, and secs. 33 to 35, inclusive;
Sec. 36, lots 1, 2, and 3, NE¼, SW¼, NW¼SE¼, surveyed.

T. 25 S., R. 18 E., unsurveyed, except as noted
Sec. 6, lots 1, 8, 9, and 10, S½NE¼, NE¼SW¼, S½SW¼, and W½SE¼;
Sec. 7, NW¼;
Sec. 31, SE¼SE¼;
Sec. 32, S½SW¼, surveyed.

T. 26 S., R. 16 E., unsurveyed,
Sec. 23, S½SE¼;
Sec. 24, S½;
Sec. 25, N½N½ and S½NW¼;
Sec. 26, NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 27, S½SE¼;
Sec. 33, SE¼;
Sec. 34.

T. 26 S R. 17 E., unsurveyed, except as noted secs. 2, 3, and 4;
Sec. 5, E½;
Sec. 10;
Sec. 11, excluding SW¼;
Sec. 12;
Sec. 13, excluding N½NW¼, SW¼NW¼, and W½SW¼;
Sec. 15, W½;
Sec. 16, N½, N½S½, SE¼SW¼, and S½SE¼, surveyed;
Sec. 17, S½S½;
Sec. 18, S½S½;
Secs. 19 and 20;
Sec. 21, N½;
Sec. 23, E½SE¼;
Sec. 24, excluding W½NW¼;
Sec. 25;
Sec. 26, excluding NW¼NE¼, and N½NW¼;
Sec. 27, excluding N½N½;
Secs. 34 and 35;

T. 26 S., R. 17½ E., unsurveyed,
Secs. 1, 2, 3, 4, 11, 12, 13, 23, and 24;
Sec. 25, NW¼;
Secs. 26, 27, 28, 34, and 35.

T. 26 S., R. 18 E., unsurveyed, except as noted
Sec. 5, excluding S½NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, and SE¼;
Sec. 6, excluding SE¼SE¼;
Sec. 7, NW¼NE¼, N½NW¼, SW¼NW¼, and NW¼SW¼;
Sec. 16, NW¼SW¼, surveyed;
Sec. 17, S½;
Sec. 18, S½S½;
Sec. 19, N½ and N½S½;
Sec. 20, N½ and N½SW¼;
Sec. 21, NW¼.

The area described contains 80,716 acres in Carbon, Grand, Emery, and San Juan Counties.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Moab Field Office Manager.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Notice is hereby given that two public meetings, in connection with the proposed withdrawal, will be held: on January 26, 2000 at 7 p.m. in the Carbon County Courthouse, Main Street, Price, Utah, and on January 27, 2000 at 7 p.m. in the BLM Moab Field Office conference room, 82 East Dogwood Avenue, Moab, Utah.

Dated: December 9, 1999.

Margaret Wyatt,

Moab Field Office Manager.

[FR Doc. 99–32532 Filed 12–15–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of information collection requests.

SUMMARY: To comply with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), we are notifying you that an information collection request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on the ICR describing the information collection, its expected costs and burdens, and how the data will be collected.

DATES: Written comments should be received on or before January 18, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and

Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (OMB Control Number 1010–0063), 725 17th Street, NW, Washington, D.C. 20503. You should also send copies of these comments to us. Our mailing address for written comments regarding this information collection is David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier or overnight delivery address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. Email address is *RMP.comments@mms.gov.*

Public Comment Procedure

Your comments and copies of your comments may be submitted to the addresses listed above. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Production Accounting and Auditing System Reports on Solid Minerals, OMB Control Number 1010–0063, Forms MMS–4050, MMS–4051–S, MMS–4059 and MMS–4060, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov.* You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: Production Accounting and Auditing System Reports on Solid Minerals.

OMB Control Number: 1010–0063.

Abstract: The Secretary of the Interior is responsible for collecting royalties from leases producing minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands and Federal onshore and offshore leases, to collect the royalties due, and to distribute the funds in accordance with those laws; we perform these royalty management functions for the Secretary.

Respondents/Affected Entities: Operators of solid mineral leases.

Frequency of Response: Monthly, quarterly, annually.

Estimated Number of Respondents: 170.

Estimated Total Annual Reporting and Recordkeeping Burden: 2,763 hours.

Comments

Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by January 18, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: December 9, 1999.

Lawrence E. Cobb,

Acting Associate Director for Royalty Management.

[FR Doc. 99–32558 Filed 12–15–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Assessment Preparation for Proposed Lease Sale 177 in the Western Gulf of Mexico (2000)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Preparation of an Environmental Assessment (EA).

SUMMARY: The MMS is beginning preparation of an EA for proposed Lease Sale 177 (scheduled for August 2000) in the Western Gulf of Mexico Planning Area. In January 1997, MMS issued a Call for Information and Nominations/Notice of Intent (Call/NOI) to Prepare an environmental impact statement (EIS) for the four proposed Western Gulf of Mexico sales in the current 5-year leasing program. In 1998, MMS prepared a single EIS for all four sales. The multisale Final EIS, filed in May 1998, included an analysis of a single, ''typical'' sale, and a cumulative analysis that included the effects of holding all four sales, as well as the cumulative effects of the long-term development of the planning area. The MMS stated in the EIS that an EA would be prepared for each lease sale after the first sale covered in the EIS (Sale 171).

The preparation of this EA is the first step in the prelease decision process for Sale 177. The proposal and alternatives for Sale 177 were identified by the Director of MMS in January 1997, following the Call/NOI and were analyzed in the Western Gulf multisale EIS, which is available from the Gulf of Mexico OCS Region's Public Information Office at 1–800–200–GULF. The proposed action analyzed in the multisale EIS was the offering of all available unleased acreage in the Western Gulf of Mexico Planning Area, with the following exceptions: Blocks A–375 (East Flower Garden Bank) and A–983 (West Flower Garden Bank) in the High Island Area, East Addition, South Extension, designated as a national marine sanctuary; and Blocks 793, 799, and 816 in the Mustang Island Area, identified by the Navy as needed for testing equipment and for training mine warfare personnel. The proposal to be addressed in this EA has been revised to the following extent: two

additional blocks or portions of these blocks (High Island Area, East Addition, South Extension, Block A–401 and High Island, South Addition, Block A–513), which lie partially within the Flower Gardens National Marine Sanctuary, are deferred from the proposed action in light of the President's June 1998, withdrawal of all Marine Sanctuaries from oil and gas leasing. The proposed action includes existing regulations and proposed lease stipulations designed to reduce environmental risks. The EA will also analyze alternatives to exclude blocks near biologically sensitive topographic features, as well as the no action alternative. The MMS may also consider deferring blocks beyond the U.S. Exclusive Economic Zone, in the area referred to as the northern portion of the Western Gap, as talks between the United States and Mexico are currently underway regarding the establishment of a continental shelf boundary in this area. The analysis in the EA will reexamine the potential environmental effects of the proposal and alternatives based on any new information regarding potential impacts and issues that were not available at the time the Final EIS was prepared.

The MMS requests interested parties to submit comments regarding any such new information or issues that should be addressed in the EA to MMS, Gulf of Mexico OCS Region, Office of Leasing and Environment, Attention: Regional Supervisor (MS 5400), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 by January 18, 2000. After completion of the EA, MMS will determine whether to prepare a Finding of No New Significant Impact (FONNSI) or a supplemental EIS. The MMS will then prepare and send consistency determinations to the affected States to determine whether the proposed sale is consistent with federally-approved State coastal zone management programs, and will send a proposed Notice of Sale to the Governors for their comments on the size, timing, and location of the proposed sale. The tentative schedule for the steps in the prelease decision process for Sale 177 are listed below:

Comments due to MMS, January 18, 2000; EA/FONNSI or Supplemental EIS, March 2000; Proposed Notice of Sale sent to Governors, March 2000; Consistency Determinations sent to States, March 2000; Final Notice of sale in **Federal Register**, July 2000; Sale, August 2000.

If you wish to comment, you may mail or hand-carry written comments to the Department of the Interior, Minerals Management Service, Regional Director (MS–5410), Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law.

There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. George Hampton, telephone (504) 736–2465.

Dated: December 13, 1999.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 99–32597 Filed 12–15–99; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Comprehensive Design Plan for the White House, Final Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Availability of final comprehensive design plan for the White House and final environmental impact statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Final Comprehensive Design Plan for the White House and President's Park and Final Environmental Impact Statement (CDP–FEIS).

DATES: A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the CDP–FEIS.

ADDRESSES: Single copies of the 516-page CDP–FEIS may be obtained by writing: Final Plan/FEIS, Office of White House Liaison, National Park Service, 1100 Ohio Drive, SW, Washington, DC, 20242.

SUPPLEMENTARY INFORMATION: The CDP–FEIS addresses the future management and use of the buildings, grounds and cultural resources of the White House and President's Park. The goal is to better serve the presidency and the people, while protecting the historic character of this national treasure. The CDP–FEIS proposes actions to meet needs in the areas of: support services for the home and office of the president, visitor use and services, cultural and natural resource protection, transportation, site character, official functions and special events. The CDP–FEIS contains the description and assessment of the proposed plan and four other alternatives considered, including the required no-change alternative.

Impacts are analyzed on the following topics: cultural resources, natural resources, home and office of the president, the visitor experience, special events, transportation, the socioeconomic environment, and site management and operations.

The NPS is the lead-planning agency and has responsibility for developing the plan in conjunction with other agencies. Congressionally chartered agencies with stewardship or oversight responsibilities at the site serve on an NPS-led Executive Committee. Serving on the committee are: Executive Office of the President, Executive Residence, White House Military Office, U.S. Department of the Treasury, U.S. Secret Service, General Services Administration, District of Columbia, Commission of Fine Arts, National Capital Planning Commission, Advisory Council on Historic Preservation and until 1995 the Pennsylvania Avenue Development Corporation.

The planning process to develop the Final Comprehensive Design Plan for the White House and President's Park began in 1992 with data collection. Issue identification took place in 1993 through 27 workshops involving some 70 agencies and organizations. Visitor opinions were obtained through surveys and through a 4-day public involvement exhibit held on the Ellipse in the spring of 1993. Desired futures were developed in workshops during the fall of 1993.

Interpretative themes were developed in March 1994. Working group meetings on the news media space occurred between March 1995 and January 1996. Alternatives were released for public review in the spring of 1995. A draft plan and draft environmental impact statement was reviewed by the public for 90 days between December 3, 1998 and March 11, 1999.

FOR FURTHER INFORMATION CONTACT: Contact the Director, White House Liaison, National Park Service, 1100 Ohio Drive, SW, Washington, DC 20242; Telephone: (202) 619–6344.

Dated: December 10, 1999.

Terry R. Carlstrom,

Regional Director, National Capital Region, National Park Service.

[FR Doc. 99–32661 Filed 12–15–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Sections 106 and 107 of CERCLA

Notice is hereby given that on November 23, 1999, the United States lodged a proposed Consent Decree with the United States District Court for the Eastern District of Arkansas, Civ. A. Nos. J–C–98–362 and J–C–98–363, in *United States and State of Arkansas* v. *Aircraft Services Int., Inc., et al.,* pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The proposed Consent Decree resolves civil claims of the United States and Arkansas against the ''generator'' defendants for two Superfund Sites in Crittendon County, Arkansas—the South 8th Street Site and the Gurley Pit Site (also known as the ''Edmondson'' Site). Under the proposed Consent Decree, defendants will complete EPA's remedy for the South 8th Street Site and pay an appropriate generator share of past and future costs at both sites, for a settlement package worth $6 million. In addition, the Federal Agency settling parties will pay $1.5 million. The current owner will agree to broad access and institutional control provisions.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States and the State of Arkansas* v. *Aircraft Services Int., Inc., et al.,* DOJ No. 90–11–2–196/2. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Arkansas, Jonesboro, Arkansas, and the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, 75202. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $86.00 for the Decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–32610 Filed 12–15–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Sections 104 and 107 of CERCLA

Notice is hereby given that on December 1, 1999, the United States lodged a proposed consent Decree with the United States District Court for the Southern District of Texas, No. G–99–731, in *United States of America* v. *GAF Corp., et al.,* pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. 9604 and 9607. The proposed Consent Decree resolves civil claims of the United States against thirty-five *de minimis* generator Defendants for the Tex Tin Superfund Site located in Texas City and La Marque, Texas. The Defendants will pay a total of approximately $1.5 million in reimbursement of response costs at the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, PO Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States of America* v. *GAF Corp., et al.,* DJ No. 90–11–3–1669/1. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Texas, Houston, Texas, and the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, 75202. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $14.75 for the Decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–32612 Filed 12–15–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'')

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Jane Doe, as Executrix of the Estate of Edmund Barbera, et al.,* 96 Civ. 8563 (BSJ), was lodged on November 18, 1999, with the United States District Court for the Southern District of New York. The Consent Decree addresses the hazardous waste contamination at the Port Refinery Superfund Site (the ''Site''), located in the Village of Rye Brook, Westchester County, New York. The Consent Decree requires eleven generators of hazardous substances transported to the Site to pay to the United States a total of $482,305.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Jane Doe, as Executrix of the Estate of Edmund Barbera, et al.,* DOJ Ref. #90–11–3–1142A.

The proposed consent decree may be examined at the office of the United States Attorney for the Southern District of New York, 100 Church Street, New York, New York, 10007 (contact Assistant United States Attorney Kathy S. Marks); and the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York, 10007–1866 (contact Assistant Regional Counsel Michael Mintzer). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, PO Box 7611, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.75 (25 cents per page reproduction costs) for the Consent

Decree, payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–32613 Filed 12–15–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Viacom International Inc./Pacific Communications, Inc., et al.*, C.A. No. 7:99CV00850 (W.D. Va.), was lodged on November 23, 1999, with the United States District Court for the Western District of Virginia. The consent decree resolves the United States claims against three defendants with respect to response costs incurred, pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, in connection with the clean-up of the Old Salem Tannery Site, located near Salem, Roanoke County, Virginia. Under the consent decree, defendants Viacom International Inc./Pacific Communications, Hercules Incorporated, and Yokohama Tire Corporation will pay the United States $150,000 in reimbursement of a portion of the response costs incurred in connection with the clean-up of the Site. Said amount will be paid within thirty days after entry of the consent decree by the Court.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Viacom International Inc./Pacific Communications, Inc., et al.*, DOJ Reference No. 90–11–3–06312.

The proposed consent decree may be examined at the Office of the United States Attorney, Thomas B. Mason Building, 105 Franklin Road, SW, Suite One, Roanoke, Virginia 24011; and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the proposed decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.75 (.25 cents per page production costs), payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–32611 Filed 12–15–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 187–99]

Privacy Act of 1974; New System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposed to establish a new system of records entitled, ''National Institute of Corrections Academy Record System, (JUSTICE/BOP–103).''

The National Institute of Corrections Academy Record System, which will become effective February 14, 2000, is an automated database containing details on training seminars conducted by the National Institute of Corrections (NIC) Academy Division. This database has been developed to better maintain and retrieve current information concerning applicants, and instructors at the seminars, as well as to track all expenditures related to each seminar.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system.

Therefore, please submit any comments by January 18, 2000. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice management Division, Department of Justice, Washington, D.C. 20530 (1400 National Place Building).

A description of the system of records is provided below. In addition, the Department of Justice has provided a report to OMB and the Congress in accordance with 5 U.S.C. 552a(r).

Dated: December 6, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/BOP–103

SYSTEM NAME:

National Institute of Corrections Academy Record System.

SYSTEM LOCATION:

Records may be retained at the national headquarters of the National Institute of Corrections (NIC) and/or at the NIC Academy campus currently located in Longmont, Colorado.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NIC staff; training instructors also known as Technical Research Providers (TRP) contracted by the NIC Academy; corrections staff student applicants from federal, state, local, tribal, foreign and international government agencies, including corrections and other law enforcement agencies; employees from private corrections companies who have contracted to provide corrections services to government agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: (1) Identification and logistical information for applicants, students, and TRPs at NIC Academy seminars, including name, gender, race, address, telephone number, Social Security number, position title, training history, professional history; (2) seminar applications; (3) seminar information including dates and location of each seminar and name of seminar coordinator; (4) financial/procurement data for each seminar, including budget information, printing orders and travel costs for TRPs and participants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority of 18 U.S.C. 4352.

PURPOSE(S):

The purpose of this system is to maintain a current database of student applicants, participants and instructors, or Technical Research Providers (TRPs) at NIC Academy training seminars; to track all expenditures related to each training seminar; and to maintain current biographical data on NIC staff and TRPs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system will be disclosed as follows:

(a) To contractors or employees of the Department of Justice and/or other

federal agencies and/or state, local, tribal, foreign and international government agencies or professional organizations who have a need for the information in the performance of their official duties, e.g., when the employees are participating in NIC seminars or when the agencies seek information for their own purposes, such as training, budgeting, staffing, etc.;

(b) To federal, state, local, tribal, foreign and international law enforcement agencies and officials for law enforcement purposes such as investigations, possible criminal prosecutions, civil court actions, and/or regulatory proceedings;

(c) To a court or adjudicative body before which the Department of Justice or the Bureau is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by NIC to be arguably relevant to the litigation: (1) NIC, the Bureau, or any subdivision thereof, or (2) any NIC, Bureau, or Department of Justice employee in his or her official capacity, or (3) any NIC, Bureau, or Department of Justice employee in his or her individual capacity where the Department of Justice has agreed to provide representation for the employee, or (4) the United States, where NIC or the Bureau determines that the litigation is likely to affect it or any of its subdivisions;

(d) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(e) To the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in electronic media in NIC Academy and/or headquarters offices via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, floppy diskettes, magnetic tapes and/or optical disks. Documentary records are maintained in manual file folders and/or index cards.

RETRIEVABILITY:

Records are retrievable by identification information, e.g., names, locations of TRP staff and/or student applicants; seminar information, e.g., subject, date and place of the seminar.

SAFEGUARDS:

Information is safeguarded in accordance with Bureau of Prisons rules and policy governing automated information systems security and access. These safeguards include the maintenance of records and technical equipment in restricted areas, and the required use of proper passwords and user identification codes to access the system. Only those NIC personnel who require access to perform their official duties may access the system equipment and the information in the system.

RETENTION AND DISPOSAL:

Biographical information about NIC staff and Technical Resource Providers (TRPs) is maintained for three (3) years and then either updated or destroyed by shredding and/or degaussing. Information about student applicants is maintained until such time as the records no longer serve the purpose described by this system. At such time, these records may be incorporated into an appropriate, published system of records with an approved retention schedule, or otherwise destroyed by shredding and/or degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Institute of Corrections, Room 5007, 320 First Street NW, Washington, DC. 20534.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made in writing to the Director, National Institute of Corrections, Room 5007, 320 First Street NW, Washington, DC 20534, and should be clearly marked ''Privacy Act Request.''

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Records are generated by NIC staff and by individuals desiring to attend NIC seminars.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–32617 Filed 12–15–99; 8:45 am]

BILLING CODE 4410–C5–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 188–99]

Privacy Act of 1974; Notice of New System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to establish a new system of records entitled, ''National Institute of Corrections Mailing List and Information Center Contacts Records System, (JUSTICE/BOP–104)'', which will become effective February 14, 2000.

The National Institute of Corrections (NIC) has developed new automated databases containing names and addresses of NIC constituents and individuals who contact the Information Center requesting corrections information. These databases have been developed to more efficiently track and respond to persons who contact the Information Center and to generate labels for mailings initiated by NIC to groups of NIC constituents.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given 40 days in which to review the system.

Therefore, please submit any comments by January 13, 2000. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

A description of the system of records is provided below. In addition, the Department of Justice has provided a report to OMB and the Congress in accordance with 5 U.S.C. 552a(r).

Dated: December 6, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/BOP–104

SYSTEM NAME:

National Institute of Corrections Mailing List and Information Center Contacts Record System.

SYSTEM LOCATION:

Records may be retained at the national headquarters of the National Institute of Corrections (NIC) and/or at the NIC Information Center currently located in Longmont, Colorado and/or at the offices of an information management company authorized by

contract with NIC to maintain and manage the system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request corrections information from the NIC Information Center and Individuals who receive NIC-generated mailings of corrections information, including (1) NIC constituents sorted by constituent group, e.g. directors or commissioners of state Departments of Corrections, administrators of large jails, NIC Advisory Board members; (2) employees of federal, state, local, tribal, foreign and international government agencies, including corrections and other law enforcement agencies; (3) employees from private corrections companies who have contracted to provide corrections services to government agencies; (4) inmates and inmate family members and friends; (5) elected officials including Members of Congress; (6) members of professional organizations including the American Corrections Association; (7) members of the news media; (8) members of the general public, including staff and students from educational institutions and charitable organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: (1) Identification and logistical information for persons who contact the Information Center, e.g. name, agency, address, telephone number; library subject codes of documents requested and sent, receipt and response dates, method of information delivery, postage costs; (2) Names and addresses of NIC constituents, sorted by constituent group, e.g. directors or commissioners of state Departments of Corrections, administrators of large jails, NIC Advisory Board members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority of 18 U.S.C. 4352.

PURPOSE(S):

The purpose of this system is to more efficiently track and respond to persons who request information from the NIC Information Center and to generate labels for NIC-initiated mailings to groups of NIC constituents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system will be disclosed as follows:

(a) To contractors or employees of the Department of Justice and/or other federal agencies, and/or state, local, tribal, foreign and international government agencies or professional organizations who have a need for the information in the performance of their official duties, e.g. when the employees will use the mailing list to initiate mailings approved by NIC.

(b) To the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in electronic media via a configuration of personal computer, client/server, and mainframe systems architecture located in the NIC Information Center and/or NIC headquarters offices and/or the offices of an information management company authorized by contract with NIC to maintain and manage the system. Computerized records are maintained on hard disk, floppy diskettes, magnetic tapes and/or optical disks. Documentary records are maintained in manual file folders and/or index cards.

RETRIEVABILITY:

Records concerning persons who request information from the NIC Information Center are retrievable by identification and logistical information, e.g., name, address. Records concerning groups of NIC constituents who receive NIC-generated mailings are retrievable by category of constituent group, e.g. sheriffs; by position in the constituent group, e.g. sheriff of Fairfax County; and/or by certain identification information (names, addresses) of the individuals in the constituent group, e.g. Sheriff John Smith.

SAFEGUARDS:

Information is safeguarded in accordance with Department of Justice and Bureau of Prisons rules and policy governing automated information systems security and access. These safeguards include the maintenance of records and technical equipment in restricted areas, and the required use of proper passwords and user identification codes to access the system. Only those NIC personnel or authorized contractor staff who require access to perform their official and/or contract duties may access the system equipment and the information in the system.

RETENTION AND DISPOSAL:

Information is maintained until such time as the records no longer serve the purpose described by this system. At such time, these records may be updated or incorporated into an appropriate, published system of records with an approved retention schedule, or otherwise destroyed by shredding and/or degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Institute of Corrections, Room 5007, 320 First Street NW, Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made in writing to the Director, National Institute of Corrections, Room 5007, 320 First Street NW, Washington, DC 20534, and should be clearly marked ''Privacy Act Request.''

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Records are generated by NIC staff and/or by persons requesting information from the Information Center and/or by NIC constituents seeking NIC-generated mailings.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–32618 Filed 12–15–99; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 184–99]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to establish and publish three new systems of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) have been published. These systems of records are:

The Immigration and Naturalization Service, Attorney/Representative Complaint/Petition Files, JUSTICE/INS–022

Worksite Enforcement Activity Record and Index (LYNX), JUSTICE/INS–025 and

Hiring Tracking Systems (HITS), JUSTICE/INS–026

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day

period in which to comment on the new routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by January 18, 2000. The public, OMB and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: December 6, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–022

SYSTEM NAME:

Attorney/Representatives Complaint/Petition Files.

SYSTEM LOCATION:

Offices of Regional Counsels of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS–999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys and authorized representatives for whom the INS has received complaints regarding their practice before INS and/or the Executive Office for Immigration Review (EOIR).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records of investigations; State Bar grievance/discipline proceedings records; criminal conviction records; copies of petitions (and related attachments) filed with INS and/or EOIR; communications with the individuals and/or outside agencies; communications within the agency, court transcripts, complaints filed by any person or organization and EOIR pleadings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 292 of the Immigration and Nationality Act, as amended by 8 U.S.C. 1362 and 8 CFR part 292.

PURPOSE(S):

The records are used by the Office of Appellate Counsel and Regional and District Counsel offices of INS when appropriate disciplinary action is necessary against non-agency attorneys and/or representatives who engage in unethical activities or exhibit unprofessional behavior. The records document the processing of these disciplinary actions and are used in their prosecution.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To State Bar Grievance Committees and local Attorney General offices for disbarment or disciplinary proceedings.

B. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the scientific information in the context of a particular case would constitute an unwarranted invasion of a personal privacy.

C. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

D. To the General Services Administration and the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Paper files are stored in filing cabinets. Computer files are stored in a data base on magnetic disks.

RETRIEVABILITY:

These records are retrieved by the name of the individual who is the subject of the disciplinary proceeding.

SAFEGUARDS:

Most INS offices are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces which are locked during non-duty office hours. Many records are stored in cabinets or machines which are also locked during non-duty office hours. Access to automated records is controlled by passwords and name identification.

RETENTION AND DISPOSAL:

The following INS proposal for retention and disposal is pending approval by the NARA. Cases that result in a conviction are maintained at the Regional Counsel's office having jurisdiction. These records are destroyed when 25 years old. Cases that result in acquittal are maintained at the Regional Office for three years and then destroyed. Relevant records produced via electronic mail and word processing systems will be generated and placed in the file folder. Once the copy is made, the system copy can be deleted within 180 days.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the Regional Counsel at the regional office having jurisdiction over the litigation. (See the caption ''System Locations.'')

NOTIFICATION PROCEDURES:

Address inquiries to the Freedom of Information Act/Privacy Act Officer (FOIA/PA) at the INS office where the record is maintained or (if unknown) to the FOIA/PA Officer, INS, 425 I Street, NW, Washington, DC 20536.

RECORD ACCESS PROCEDURES:

In all cases, requests for access to a record shall be in writing. Written requests may be submitted by mail or in person at any INS system location (See ''System Location''). If a request for access is made by mail, the envelope and letter should be clearly marked ''Privacy Access Request.'' To enable INS to identify an individual's record, he or she must provide his or her full name and a return address for transmitting the information.

CONTESTING RECORDS PROCEDURES:

Any individual desiring to contest or amend information must direct his or her request to the system manager noted above. State clearly what information is being contested; the reason for contesting it; and the proposed amendment to the information.

RECORDS SOURCE CATEGORIES:

Law enforcement agencies, Federal and State courts, State bar licensing agencies; State bar grievance agencies, inquiries and/or complaints from witnesses or members of the general public.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4); (d); (e) (1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the Attorney General has exempted this system from subsections (c)(3), (d), and (e)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552(j)(2) and (k)(2). Rules have been promulgated in accordance with requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the **Federal Register** as of this date and proposed as additions to Title 28, Code of Federal Regulations (28 CFR 16.99).

JUSTICE/INS–025

SYSTEM NAME:

Worksite Enforcement Activity Record and Index (LYNX)

SYSTEM LOCATION:

Immigration and Naturalization Service (INS) Headquarters, regional, district and sub-offices as detained in Justice/INS–999. Currently, only the district and sub-offices maintain the hard copy case files for this system. The automated index is maintained at Headquarters and at regional offices. The following field offices have access to the automated index: New York City, New York; San Diego, California; and Kansas City, Missouri.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains records on the following:

(a) Individuals that are, or have been, the subject of inquiries or investigations conducted by the INS related to the enforcement of the employment control provisions of the Immigration and Nationality Act and related criminal statutes. (The records primarily involve those individuals who are being investigated or have been investigated to determine whether their employment-related activity (*e.g.*, hiring, recruiting and/or referring for a fee) are in violation of the employment control provisions of the INS and/or related criminal statutes.) These records also include individuals who employ others in their individual capacity whether related to a business activity or not; and

(b) Individuals who are witnesses, complainants and parties who have been identified by the INS or by other government agencies or parties to an investigation related to worksite enforcement activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigative actions including: letters; memoranda; reports of investigations with related exhibits; statements, affidavits or records obtained during investigations; prior criminal or non-criminal records of individuals as they relate to the investigations; reports to or from other law enforcement bodies; information obtained from informants; nature of allegations made against suspects and identifying data concerning such subjects; and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Secs. 103, 274, 274a, 287 and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1324, 1324a, 1357 and 1360), and regulations pursuant thereto.

PURPOSES:

The purpose of this system is to enable the INS to meet its obligations and responsibilities in administering and enforcing the employment control provisions of the INA and related criminal statutes. Records in this system are used in the course of INS investigating individuals (*i.e.,* employers and/or employees) suspected of having committed illegal acts and/or in the course of conducting related civil proceedings, criminal prosecutions or administrative actions. Further, the system is used to monitor case assignment, disposition, status and the final outcome of the investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USE:

A. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

B. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

C. To the General Services Administration and National Archives and Records Administration in record management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

E. In the event that records indicate a violation or potential violation of law, whether arising by general statute, or particular program statute, or by rule, regulation, or order pursuant thereto, or if records indicate a violation or potential violation of the terms of a contract or grant, the relevant records may be disclosed to the appropriate requesting agency, whether Federal, State, local, foreign, international, or tribal charged with the responsibility of investigating or prosecuting such contract or grant.

F. To either a Federal, State, local, foreign, international, or tribal agency, and individual, or an organization, when necessary to elicit information which may assist an INS investigation, inspection or audit.

G. To an administrative forum or other adjudicatory or regulatory requesting agencies, when necessary for such a body to adjudicate decisions affecting individuals that are subject to investigations covered by this system.

H. In a proceeding before a court or adjudicative body before which INS or the Department of Justice (DOJ) is authorized to appear when any of the following is a party to the litigation or has an interest in the litigation and such records are determined by INS or DOJ to be relevant to the litigation: (1) The DOJ, or any DOJ component, or any subdivision thereof; (2) and DOJ employee in his or her official capacity; (3) any DOJ employee in his or her individual capacity where the DOJ has agreed to represent the employee; (4) the United States, where INS or the DOJ determines that the litigation is likely to affect it or any of its subdivisions.

I. To an attorney or representative (as defined in CFR 1.1(j)) who is acting on behalf of an individual covered by this system of records in connection with any proceeding before the INS or the Executive Office for Immigration Review.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETRAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in lockable file cabinets. Those records which can be accessed electronically are stored on magnetic disk and tape.

RETRIEVABILITY:

Records may be retrieved by name and/or case number.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces which are looked outside of normal office hours. Many records are stored in cabinets which are locked outside of normal office hours. Access to the automated system is controlled by restricted password for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

Records concerning fines and/or prosecutions are retained for up to 25 years after the case is closed and then destroyed. Administrative cases involving compliance and warning notices are retained for up to seven years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the Executive Associate Commissioner for Policy and

Planning, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536.

NOTIFICATION PROCEDURES:

Portions of this system are exempted from this requirement under 5 U.S.C. 552a(k)(2). Inquires should be addressed to the system manager listed above or to the FOIA/PA Officer at the INS office where the record is located.

RECORD ACCESS PROCEDURES:

Requests for access to a record from this system shall be in writing. If a request for access is made by mail the envelope and letter shall be clearly marked ''Privacy Access Request.'' The requester shall include a description of the general subject matter and if known, the related file number. To identify a record relating to an individual, the requester should provide his or her full name, date and place of birth, verification of identity (in accordance with 8 CFR 103.2(b)), and any other identifying information that may be of assistance in locating the record. The requester shall also provide a return address for transmitting the records to be released.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in this record should direct his or her request to the INS office where the record is maintained or if unknown to the INS FOIA/PA Officer at 425 I Street NW, Washington, DC 20536. The request should clearly and concisely state the information being contested, the reason(s) for contesting it, and the proposed amendment thereof. Clearly, mark the envelope ''Privacy Act Amendment Request.''

RECORD SOURCE CATEGORIES:

Official reports of investigations; subjects of the investigations; individuals with whom the subject are associated; witnesses; officials of Federal, State, local and foreign law enforcement agencies; private citizens; and informants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted portions of this system from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the Attorney General has exempted portions of this system from subsections (c)(3), (d), and (e)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published as of this date in the **Federal Register** and proposed as additions to Title 28, Code of Federal Regulations (28 CFR 16.99).

JUSTICE/INS–026

SYSTEM NAME:

Hiring Tracking System (HITS).

SYSTEM LOCATION:

Headquarters, Regional and field offices, and other INS offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS–999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals seeking employment and/or movement to a different, vacant position within the INS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains vacant and filled position data from the Position Tracking System (POSTS) such as the position number, Administrative Center location, budget location, region, program code, project code, position category code, position title, occupational series, officer/support indicator, target grade, and pay plan. It also contains selectee specific data such as the selectee's name, social security number, and dates for the achievement of pre-employment processing milestones (e.g. date request to recruit received in Human Resources Office, dates announcement opens and closes, date of selection, and date scheduled for entrance on duty, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. 1302, 3301, 3302, 3304, 3305, 3306, 3307, 3309, 3313, 3317, 3318, 3319, 3326, 4103, 4723, 5532, 5533, and Executive Order 9397.

PURPOSE(S):

The purpose of the system is to provide a tool for monitoring INS' efforts to fill vacant positions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

B. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff request the information on behalf of and at the request of the individual who is the subject of the record.

C. To General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Those records, which can be accessed electronically, are stored in a database on magnetic disk and tape. Paper records are stored in file folders and safes.

RETRIEVABILITY:

Records are indexed and retrievable by name, social security number, position number, and SF–52 number. (Data is also retrieved by employee, position, and recruitment specific information.)

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces which are located outside of normal office hours. Access to the automated system is controlled by restricted password for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Schedule (GRS) 1: 1/a, 4/a, 16, 36/b/e, and 43.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Automation and Progress Evaluation, Human Resources Development, Immigration and Naturalization Service, 800 K Street NW, Suite 5000, Washington, DC 20536.

NOTIFICATION PROCEDURE:

Inquires should be addressed to the system manager.

RECORD ACCESS PROCEDURES:

Requests by the public for access to a record from this system shall be in writing. If a request for access is made by mail the envelope and letter shall be clearly marked ''Privacy Act Request.'' The requester shall include a description of the general subject matter and, if known, the related file number. To identify a record relating to an individual, the requester should provide his or her full name, date, and place of birth, verification of identity (in accordance with 8 CFR 103.2(b)), and

any other identifying information which may be of assistance in locating the record. The requester shall also provide a return address for transmitting the records to be released.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in this record should direct his or her request to the INS Personnel office where the record is maintained or, if unknown, to the INS FOIA/PA Office at 425 I Street NW, Washington DC 20536. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Basic information contained in this system is supplied from the POSTS and basic recruitment information from Form SF–52. Other information comes from sworn statements, and official reports.

RECORDS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–32616 Filed 12–15–99; 8:45 am]

BILLING CODE 4410–CJ–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Media Arts section (Access, Education and Heritage & Preservation categories), to the National Council on the Arts will be held from January 11–12, 2000 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 12:45 p.m. to 2:45 p.m. on January 12th, will be open to the public for policy discussion.

The remaining portions of this meeting, from 9 a.m. to 6 p.m. on January 11th, and from 9 a.m. to 12:45 p.m. and 2:45 p.m. to 4:30 p.m. on January 12th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: December 9, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–32596 Filed 12–15–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that the open session of the Combined Arts Advisory Panel, Arts Education Section, previously announced for 1:00–2:30 p.m. on Friday, December 17, 1999, has been changed to 10:30 a.m. to 12:00 p.m. on the same day.

Dated: December 14, 1999.

Kathy Plowitz-Worden,

Panel Coordinator.

[FR Doc. 99–32726 Filed 12–15–99; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

Jersey Central Power & Light Co d/b/a

GPU Energy GPU Nuclear, Inc. Oyster Creek Nuclear Generating Station; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. DRP–16 for the Oyster Creek Nuclear Generating Station (Oyster Creek), currently held by Jersey Central Power & Light Company (JCP&L) as owner of Oyster Creek and GPU Nuclear, Inc. (GPUN), as the licensed operator of Oyster Creek. The transfer of the license for Oyster Creek would be to AmerGen Energy Company, (LLC) (AmerGen). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer. Oyster Creek is located in Ocean County, New Jersey.

Under the proposed transfer, AmerGen would be authorized to possess, use, and operate Oyster Creek under essentially the same conditions and authorizations included in the existing license. No physical changes would be made to the Oyster Creek facility as a result of the proposed transfer, and there would be no significant changes in the day-to-day operations of the unit. The proposed amendment to the license would delete references to ''Jersey Central Power & Light'' and ''GPU Nuclear, Inc.'' (including variations of these names) and substitute ''AmerGen Energy Company, LLC'' (or its new position of ''licensee'' or ''applicant'') as appropriate to reflect the transfer, and make other changes to reflect the approval of the transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the application for the license transfer, are discussed below.

By January 5, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, ''Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: (1) David R. Lewis, Esq., counsel for GPUN, at Shaw Pittman Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037–1128 (tel: 202–663–8474; fax: 202–663–8007; e-mail: ''david-lewis''@shawpittman.com), (2) Kevin P. Gallen, Esq., counsel for AmerGen, at Morgan, Lewis & Bockius LLP, 1800 M Street, NW, Washington, DC 20036–5869 (tel: 202–467–7462; fax: 202–467–7176; e-mail: Kpgallen@mlb.com), (3) The General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for license transfer cases only: ogclt@nrc.gov) and (4) The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by January 18, 2000, persons may submit written comments regarding the application for the license transfer, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated November 5, 1999, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 10th day of December 1999.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–32640 Filed 12–15–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 40–6622]

Pathfinder Mines Corp.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Receipt of Application from Pathfinder Mines Corporation to change three site-reclamation milestones in Condition 50 of Source Material License SUA–442 for the Shirley Basin, Wyoming Uranium Mill site; Notice of Opportunity for a Hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated October 29, 1999, an application from Pathfinder Mines Corporation (PMC) to amend License Condition (LC) 50 of its Source Material License No. SUA–442 for the Shirley Basin, Wyoming uranium mill site. The license amendment application proposes to modify LC 50 to change the completion date for three site-reclamation milestones. The new dates proposed by PMC would extend completion of placement of the interim cover over tailings pile, completion of placement of the final radon barrier, and completion of placement of the erosion protection cover by two years.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

SUPPLEMENTARY INFORMATION: The portion of LC 50 with the proposed changes would read as follows:

A. (2) Placement of the interim cover to decrease the potential for tailings dispersal and erosion—December 31, 2001.

A. (3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m^2/s above background—December 31, 2004.

B. (1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of Appendix A of 10 CFR part 40—December 31, 2005.

PMC's application to amend LC 50 of Source Material License SUA–442, which describes the proposed changes to the license condition and the reasons for the request is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR part 2, subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a

request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Pathfinder Mines Corporation, 935 Pendell Boulevard, P.O. Box 730, Mills, Wyoming 82644, Attention: Tom Hardgrove; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 45 days of the publication of this notice in the **Federal Register**. The comments may be provided to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear regulatory Commission, Washington, D.C. 20555.

Dated at Rockville, Maryland, this 9th day of December 1999.

Dan Gillen,

Acting Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–32639 Filed 12–15–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08838]

Notice of Consideration of Amendment Request for U.S. Army Jefferson Proving Ground Site in Madison, Indiana, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Materials License No. SUB–1435 issued to the U.S. Army (licensee), to authorize decommissioning of its Jefferson Proving Ground (JPG) site in Madison, Indiana.

From 1941 to 1994, the licensee conducted ordnance testing on the JPG site, and fired more than 24 million rounds of conventional explosive. From 1984 to 1994, the licensee conducted accuracy testing of depleted uranium (DU) tank penetrator rounds at the site. An NRC license was issued to authorize the U.S. Army to use, store, and perform testing of DU munitions at JPG. The DU penetrator rounds vary in size but can be generally described as rods comprised of a DU titanium alloy with a diameter of approximately 2.5 centimeters (cm) (1 inch) and a length as much as 61 cm (2 feet). The DU munitions testing contaminated approximately 5.1×10^6 square meters (m^2) (1260 acres) of the site with an estimated 7×10^4 kilograms (1.5×10^5 pounds) of DU. In accordance with the Defense Authorization Amendments and Base Realignment and Closure Act of 1988 (Public Law 100–526), the licensee was required to close the JPG base on September 30, 1995. Currently, the licensed material is kept onsite in the restricted area known as the ''Depleted Uranium Impact Area.'' This area under Materials License No. SUB–1435 is located north of the firing line, and consists of approximately 12×10^6 m^2 (3,000 acres).

An NRC administrative review, documented in a letter to the licensee dated November 16, 1999, found the site decommissioning plan (SDP) acceptable to begin a technical review. The SDP requested restricted release of the JPG site in accordance to § 20.1403. If the NRC approves the SDP, the approval will be documented in an amendment to NRC License No. SUB–1435. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm, Federal workdays; or

2. By mail or facsimile addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR § 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, U.S. Army Test and Evaluation Command, 314 Longs Corner Road, Aberdeen Proving Ground, MD 21005–5055, Attention: Mr. Dal M. Nett; and

2. The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm, Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester

should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

FOR FURTHER INFORMATION CONTACT: The SDP and supporting documentation are available for inspection at NRC's Public Document Room, 2120 L Street, NW, Washington, DC 20555–0001, and at NRC's Public Electronic Reading Room on the NRC web site at http://www.nrc.gov/NRC/ADAMS/index.html. Questions with respect to this action should be referred to Ms. Sherry W. Lewis, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6619. Fax: (301) 415–5398.

Dated at Rockville, Maryland, this 9th day of December 1999.

For the Nuclear Regulatory Commission,

Larry B. Bell,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–32641 Filed 12–15–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Application for a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70(c) ''Public notice of receipt of an application'', please take notice that the Nuclear Regulatory Commission has received the following application for an import license. Copies of the application are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link <*http://www.nrc.gov/NRC/ADAMS/index.html*> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

The information concerning the application follows.

NRC IMPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application No.	Description of material			Country of origin
	Material type	Total qty	End use	
Siemens Power Corporation, September 23, 1999, September 29, 1999, IW009.	Class A waste. Combustible material contaminated with low enriched uranium (5% max. U–235).	1200 kgs U, 36 kgs U^{235}	Material will be incinerated and uranium will be recovered.	Germany.

Dated this 9th day of December 1999 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Deputy Director, Office of International Programs.

[FR Doc. 99–32637 Filed 12–15–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Application for a License To Export Radioactive Waste

Pursuant to 10 CFR 110.70(c) ''Public notice of receipt of an application'', please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link <*http://www.nrc.gov/NRC/ADAMS/index.html*> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application No.	Description of material			Country of destination
	Material type	Total qty	End use	
Westinghouse Electric Company, November 24, 1999, November 30, 1999, XW003.	Radioactive waste—zirconium scrap contaminated with low enriched uranium (5% max. U–235).	20.0 kgs U, 1.0 kgs U^{235}	Uranium will be removed from zirconium scrap and disposed of as waste at AECL Chalk River, Ontario, disposal site.	Canada.

Dated this 10th day of December 1999 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Deputy Director, Office of International Programs.

[FR Doc. 99–32638 Filed 12–15–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 13, 20, 27, 1999 and January 3, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 13

Wednesday, December 15

9:25 a.m.
Affirmation Session (Public Meeting)
a: Final rule—AP600 Design Certification (Tentative) (Contact: Ken Hart, 301–415–1659)

9:30 a.m.
Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: Dr. John Larkins, 301–415–7360)

Thursday, December 16

9:00 a.m.
Meeting on NRC Response to Stakeholders' Concerns Location: (NRC Auditorium, Two White Flint North)

Friday, December 17

9:30 a.m.
Briefing on Status of RES Programs, Performance, and Plans (Including Status of Thermo-Hydraulics) (Public Meeting) (Contact: Jocelyn Mitchell, 301–415–5289)

Week of December 20—Tentative

Wednesday, December 22

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of December 27—Tentative

There are no meetings scheduled for the Week of December 27.

Week of January 3 - Tentative

Wednesday, January 5

9:55 a.m.
Affirmation Session (Public Meeting) (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smi/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 10, 1999.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 99–32739 Filed 12–14–99; 3:15 pm]

BILLING CODE 7590–01–M

PANAMA CANAL COMMISSION

Vital Statistics Records Transferred to the Commission From the Panama Canal Zone Government; Change of Location

AGENCY: Panama Canal Commission.

ACTION: Notice.

SUMMARY: This action notifies the general public the Panama Canal Commission records of birth, death, or marriage received from the Panama Canal Zone Government in 1979 have been transferred to either the Department of State or the National Archives and Records Administration.

DATES: Effective 1 December 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francisco Loaiza, Chief Information Officer, Telephone 011–507–272–3460.

SUPPLEMENTARY INFORMATION: In compliance with the Panama Canal Treaty of 1977 and Public Law 96–70, as amended, (22 U.S.C. 3601 *et seq.*) the United States Government will turn over the operation, maintenance, and management of the Panama Canal to the Government of Panama at 11:59 am, December 31, 1999. As a result of this transfer, and the subsequent closure of the Commission, the Commission has transferred all the records on births, deaths, and marriages to other U.S. Government agencies.

Authority: 22 U.S.C. 3602.

Therefore, under the authority of 22 U.S.C. 3602, the Commission hereby gives notice after December 1, 1999, all persons or organizations seeking copies or information regarding the birth and death records originally issued by the Canal Zone Government for the period 1904 to September 31, 1979, and maintained by the Commission until 29 October 1999, shall direct their requests, in writing, to the address shown below: Correspondence Branch, Passport Services 1111—19th Street NW, Suite 510, Washington, DC 20522–1705, United States of America, Telephone: 001–202–955–0307.

The following information must be included in the request:

1. Date of request
2. Purpose of request
3. Name at birth/death
4. Date of birth/death
5. City and country of birth/death
6. Signature of requestor, if subject of request, or guardian or parent (as appropriate)

In addition, for birth records, include:

1. Father's name
2. Father's date and place of birth, including country
3. Mother's name
4. Mother's date and place of birth, including country
5. Any U.S. passport information available

The fee for documents is $20.00 for the first copy, $10.00 for each additional copy requested at the same time. The check or money order must be signed, dated and made payable to the Department of State. Remittance must be payable in U.S. dollars through a U.S. bank. Do not send cash. Further, the Commission hereby gives notice all records of marriages originally maintained by the former Canal Zone Government have been transferred to the National Archives and Records Administration in College Park, Maryland. All persons or organizations seeking copies or information regarding the marriage records originally issued by the Canal Zone Government for the period 1904 to September 31, 1979, and maintained by the Commission until June, 1998, shall direct their requests, in writing, to the address shown below: National Archives at College Park, Civilian Reference Branch (NWCTC), Textual Archives Services Division, 8601 Adelphi Road, College Park, MD 20740–6001, United States of America, Accession Number NN3–185–98–009.

The fee for documents is $20.00 per copy. The check or money order must be signed, dated, and made payable to the National Archives Trust Fund. Remittance must be payable in U.S. dollars through a U.S. bank. Do not send cash.

Dated: November 22, 1999.

John L. Haines, Jr.,

General Counsel.

[FR Doc. 99–32619 Filed 12–15–99; 8:45 am]

BILLING CODE 3640–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42212; File No. 4–208]

RIN 3235–AH49

Adoption of Amendments to the Intermarket Trading System Plan To Expand the ITS/Computer Assisted Execution System Linkage to All Listed Securities

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of amendments to national market system plan.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to the plan governing the operation of the Intermarket Trading System (''ITS Plan'' or ''Plan''). The amendments expand the ITS/Computer Assisted Execution System (''CAES'') linkage to all listed securities, including non-Rule 19c–3 securities.

EFFECTIVE DATE: February 14, 2000.

FOR FURTHER INFORMATION CONTACT: Katherine A. England, Assistant Director, at (202) 942–0154; or Christine Richardson, Attorney, at (202) 942–0748, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background and Description

The Commission is adopting amendments to the ITS Plan to expand the National Association of Securities Dealers, Inc.'s (''NASD'') ITS/CAES linkage to all listed securities. The Commission believes that these amendments, adopted by the Commission on its own initiative pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] are necessary to encourage the statutory goals of efficient execution of securities transactions and opportunities for best execution of customer orders. The Commission is adopting these amendments only after the ITS Participants[2] have been unable to reach agreement.

A. History of ITS

Section 11A(a)(2) of the Exchange Act[3] directs the Commission, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under the Act to facilitate the establishment of a National Market System (''NMS'') for securities in accordance with the Congressional findings and objectives set forth in Section 11A(a)(1) of the Act. Among those findings and objectives is the ''linking of all markets for qualified securities through communication and data processing facilities.''[4]

On January 26, 1978, the Commission issued a statement on the national market system calling for, among other things, the prompt development of comprehensive market linkage and order routing systems to permit the efficient transmission of orders among the various markets for qualified securities, whether on an exchange or over-the-counter.[5] In particular, the Commission stated that an intermarket order routing system was necessary to ''permit orders for the purchase and sale of multiply-traded securities to be sent directly from any qualified market to another such market promptly and efficiently.''[6] The Commission further stated that ''[t]he need to develop and implement a new intermarket order routing system to link all qualified markets could be obviated if participation in the ITS market linkage currently under development were made available on a reasonable basis to all qualified markets and if all qualified markets joined that linkage.''[7]

As requested by the Commission, in March 1978, various exchanges[8] filed jointly with the Commission a ''Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage,'' now known as the ITS Plan. On April 14, 1978, the Commission, noting that ITS might provide the basis for an appropriate market linkage facility, issued a provisional order, pursuant to Section 11A(a)(3)(B) of the Act,[9] authorizing the filing exchanges (and any other self-regulatory organization (''SRO'') which agreed to become a participant in the ITS Plan) to act jointly in planning, developing, operating and regulating the ITS in accordance with the terms of the ITS Plan for a period of 120 days.[10]

Subsequently, during the Commission's hearings regarding proposed Rule 19c–3 under the Act,[11] the NASD announced plans to enhance its Nasdaq System to include, among other things, a computer assisted execution system that would enable participating firms to route their orders for listed securities through the system to obtain automatic executions against quotations of third market makers.[12] This system later came to be known as CAES. The NASD also contemplated an automated interface between the ITS and CAES (''ITS/CAES'') to permit automated execution of commitments sent from participating exchanges and to permit market makers participating in the enhanced Nasdaq to route commitments efficiently to exchange markets for execution.[13]

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[1] Rule 11Aa3–2 (17 CFR 240.11Aa3–2) establishes procedures for initiating or approving amendments to national market system plans such as the ITS Plan. Paragraph (b)(2) of Rule 11Aa3–2 states that the Commission may propose amendments to an effective national market system plan by publishing the text thereof together with a statement of purpose of the amendments. Paragraph (c)(1) requires the Commission to publish notice of any amendments initiated by the Commission and provide interested parties an opportunity to submit written comments. Paragraph (c)(2) of Rule 11Aa3–2 requires that promulgation of an amendment to an effective national market system plan initiated by the Commission be by rule.

[2] Current signatories to the ITS Plan include American Stock Exchange LLC (''Amex''), Boston Stock Exchange, Inc. (''BSE''), Chicago Board Options Exchange, Inc. (''CBOE''), Chicago Stock Exchange (''CHX''), Cincinnati Stock Exchange (''CSE''), NASD, New York Stock Exchange, Inc. (''NYSE''), Pacific Exchange, Inc. (''PCX''), and Philadelphia Stock Exchange, Inc. (''Phlx''), collectively, the ''Participants.''

[3] Section 11A(a)(2) was adopted by the Securities Acts Amendments of 1975 (''1975 Amendments''). Pub. L. No. 94–29 (June 4, 1975).

[4] Section 11A(a)(1)(D) of the Act, 15 U.S.C. 78k–1(a)(1)(D).

[5] Exchange Act Release No. 14416 (January 26, 1978) (''1978 Statement''), at 26, 43 FR 4354, 4358. Previously, on June 23, 1977, the Commission had indicated that a national market system would include those ''regulatory and technological steps [necessary] to achieve a nationwide interactive market system.'' *See* Exchange Act Release No. 13662 (June 23, 1977), at 20, 42 FR 33510, 33512.

[6] 1978 Statement, *supra* note 5, at 4358.

[7] In this connection, the Commission specifically indicated that ''qualified markets'' would include not only exchanges but OTC market makers as well. *Id.*

[8] The exchanges involved were the Amex, BSE, NYSE, PCX (then called the ''PSE''), and PHlx.

[9] 15 U.S.C. 78k–1(a)(3)(B).

[10] *See* Exchange Act Release No. 14661 (April 14, 1978), 43 FR 17419. In authorizing the implementation of ITS, the Commission urged those SROs not yet ITS participants to participate in ITS. *Id.* at 7 n.15, 43 FR 17421. On August 11, 1978, the Commission extended ITS authority for an additional period of one year. *See* Exchange Act Release No. 15058 (August 11, 1978), 43 FR 36732. In the interim the ITS Plan had been amended to include the Midwest Stock Exchange (''MSE'') as a participant. The MSE is now the CHX.

[11] Exchange Act Release No. 15769 (April 26, 1979), 44 FR 26688. Rule 19c–3 precludes exchange off-board trading restrictions from applying to securities listed after April 26, 1979.

[12] The term third market makers refers to OTC market makers in listed securities.

[13] In its discussions with the ITS Participants, the NASD indicated that the enhanced Nasdaq would

Continued

The Commission later extended its authorization for the joint operation of ITS [14] but indicated several concerns with respect to ITS that would require the attention of the ITS Participants during the extension period. In particular, the Commission indicated that, in order for ITS to serve as a means to achieve price protection on an intermarket basis, the ITS Participants should implement ''a linkage between the ITS and over-the-counter market makers regulated by the NASD. * * *'' [15] The Commission further indicated its expectation that the NASD would become an ITS participant before October 1980, and stated that if the contemplated ITS/CAES interface was not implemented promptly, the Commission was prepared to take appropriate steps to require the inclusion of third market makers in ITS.[16]

On June 11, 1980, the Commission adopted Rule 19c–3 under the Act, which eliminated off-board trading restrictions with respect to most newly-listed securities, thereby permitting member firms of the NYSE and Amex to make markets over-the-counter in what was then a small number of NYSE and Amex-listed securities.[17] The Commission stated that the presence of additional market makers might: (1) Place competitive pressure on primary market specialists, potentially narrowing spreads in Rule 19c–3 securities; and (2) create incentives for markets to disseminate quotations of greater size, adding to the depth, liquidity, and continuity of the markets for those securities.[18]

The Commission also indicated that achieving efficient linkages between traditional exchange trading floors and over-the-counter markets was essential to obtaining maximum order interaction between the various types of markets. The Commission therefore stated that it expected the NASD and the ITS Participants to establish an automated linkage between ITS and the Nasdaq system and to provide the Commission with formal status reports on the ITS-Nasdaq linkage.[19]

One year later, after the ITS Participants failed to come to an agreement, the Commission published a release proposing to issue an order requiring an automated interface between ITS and the enhanced Nasdaq system.[20] In proposing the order, the Commission determined that ITS, because of its ability to permit market participants to send orders from one market to another, was consistent with national market system goals and, if efficiently linked with all markets, could become a permanent feature of a national market system.[21] The Commission reiterated its belief that the absence of any established linkage between the exchanges and OTC market makers preserved an environment in which there were reduced opportunities to ameliorate market fragmentation,[22] to eliminate pricing inefficiencies, to obtain best execution, and to promote the type of competitive market structure that a national market system was designed to achieve.[23]

Finally, on April 28, 1981, the Commission issued an order [24] requiring the ITS Participants to implement an automated interface between CAES and ITS by March 1, 1982, limited to Rule 19c–3 securities, and to submit proposed amendments to the ITS Plan reflecting the inclusion of the NASD as an ITS Participant.[25] When the ITS Participants failed to submit an amendment, the Commission adopted its own amendments to the ITS Plan on May 12, 1982.[26] The Commission's

encompass trading of listed securities and that it intended to pursue an automated interface. *See In re* Off-Board Trading Restrictions, File No. 4–220, at 9–10, 23–34.

[14] The authorization for the joint operation was extended until January 31, 1983. *See* Exchange Act Release No. 16214 (September 21, 1979), 44 FR 56069.

[15] *Id.* at 12, 44 FR 56072. The Commission also called for a linkage between the ITS and the CSE's National Securities Trading System (''NSTS'').

[16] *Id.* at 14–15, 44 FR 56072. The Commission substantially reiterated these views in a letter to Congress shortly thereafter. *See* letter from Harold M. Williams, Chairman, SEC, to the Honorable Bob Eckhardt, Chairman, Subcommittee on Oversight and Investigations and the Honorable James Scheuer, Chairman, Subcommittee on Oversight and Investigations and the Subcommittee on Consumer Protection and Finance, House Committee on Interstate and Foreign Commerce, dated November 9, 1979, included in Progress Toward the Development of a National Market System, Joint Hearings before the Subcommittee on Consumer Protection and Finance of the Committee on Interstate and Foreign Commerce, House of Representatives, 90th Cong., 1st Sess., Serial 96–89.

[17] *See* Exchange Act Release No. 16888 (June 11, 1980), 45 FR 41125 (''Rule 19c–3 Adopting Release''). The rule, as adopted, essentially precludes exchange off-board trading restrictions from applying to securities listed after April 26, 1979 (''Rule 19c–3 securities''). Although the Commission recognized many potential concerns regarding the rule, such as internalization, the Commission determined that they were outweighed by the benefits of the rule, including an opportunity for competition between the OTC and exchange markets, with concomitant benefits to investors. Internalization refers to ''the withholding of retail orders from other market centers for the purpose of executing them 'in-house,' as principal without exposing those orders to buying and selling interest in those other market centers.'' *Id.* at 18, n.31, 45 FR 41128, n.31.

[18] The Commission believed that off-board trading restrictions had anti-competitive effects because they effectively confined trading in listed securities to exchange markets by precluding exchange members from trading as principal in the OTC market. Adopting Rule 19c–3 limited the expansion of the anti-competitive effects. The Commission also announced the development of a monitoring program to study the issues raised by commentators and determined to publish monitoring reports on a periodic basis. In connection with the adoption of Rule 19c–3, the Commission noted the importance of the NASD's completion of the Nasdaq enhancements in order to provide ''a more efficient mechanism for over-the-counter market making in listed securities.'' *Id.* at 14–15, 45 FR 41127. *See* Rule 19c–3 Adopting Release, *supra* note 17, at 49–53, 45 FR 41134.

[19] *Id.* at 15–16, 45 FR 41127. In September 1980, several Participants (the Amex, BSE, NYSE, Phlx, and PCX) submitted identical letters that indicated that they were not at that time willing to commit to the development of an automated interface. The NASD responded by reaffirming its commitment to the automated interface and providing the Commission and the ITS Participants with a functional description of the automated interface. *See* Description of NASD Market Services, Inc., Computer Assisted Execution System, contained in File 4–208. In its functional description, the NASD also committed to developing a capability to provide the ITS Participants with the best bid and offer among all market makers participating in the enhanced Nasdaq. On January 7, 1981, the NYSE Board of Directors approved participation in a two-step ''test'' linkage between ITS and the enhanced Nasdaq system.

With respect to the actual operation of the automated interface, the NYSE plan contemplated an initial pilot phase in which trading through the automated interface would be limited to the 30 most active Rule 19c—3 securities. The other ITS Participants were in general agreement with the NYSE's position with respect to the automated interface. During the pilot phase, the NYSE anticipated that the ITS Participants and the Commission would evaluate trading under the preliminary rule and other policy concerns which may have been raised by trading Rule 19c–3 securities through the automated interface. The NYSE plan further anticipated that in the subsequent phase the automated interface would be expanded to include the trading of all Rule 19c–3 securities, but only after the completion of the pilot phase evaluation and agreement among the ITS Participants and the NASD on any additional measures to address policy concerns identified by that evaluation.

[20] *See* Exchange Act Release No. 17516 (February 5, 1981), 46 FR 12379 (February 13, 1981).

[21] Indeed, in mandating that the Commission facilitate the establishment of a national market system, Congress found that the linking of all markets for qualified securities through communication and data processing facilities would foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders and contribute to best execution of such orders. Section 11A(a)(1)(D) of the Act, 15 U.S.C. 78k–1(a)(1)(D).

[22] Fragmentation occurs when investor order flow is directed to several markets that are not connected. Among other things, fragmentation reduces the probability of matching customer buy and sell orders because of the smaller number of orders in each market.

[23] *See* Exchange Act Release No. 17516 (February 5, 1981), 46 FR 12379 (February 13, 1981).

[24] *See* Exchange Act Release No. 17744 (April 21, 1981), 46 FR 23856 (April 28, 1981).

[25] On March 11, 1982, the Commission delayed the implementation date of the interface until May 1, 1982, and published its own proposed amendments to the ITS Plan. *See* Exchange Act Release No. 18536 (March 11, 1982), 47 FR 10658.

[26] A majority of the amendments were non-controversial and had been agreed upon by the parties or reflected the parties' decision to defer resolution of certain issues until after a pilot phase

amendments applied to Rule 19c–3 securities initially because the Commission believed that the adoption of Rule 19c–3 would likely result in an increase in volume for these securities, thereby heightening the need for an efficient linkage between the exchanges and the OTC market.[27] The Commission fully intended the ITS/CAES linkage eventually to be expanded to all listed securities.[28] As the Commission stated, ''in order to achieve fully the Congressional goal that all markets for qualified securities be linked * * * it will be necessary in the future for the ITS/CAES interface to be expanded to include all stocks traded in the third market.'' [29]

The Commission permanently approved the ITS Plan on January 27, 1983.[30] The Plan contains a number of market integrity provisions to provide for continuity of transaction prices among the various market centers, including a trade through rule.[31] It also contains a block trade policy that provides special rights to any market displaying the best national bid or offer when block-size transactions are occurring in another market.[32]

B. Recent Developments

On November 12, 1991, the NASD submitted an application to the Commission, pursuant to Rule 11Aa3–2(e), to review the ITS Operating Committee's (''ITSOC'') failure to approve two NASD recommendations that would have amended the ITS Plan to expand the ITS/CAES linkage to include non-Rule 19c–3 securities.[33] Following that submission, the Division of Market Regulation (''Division'') issued its Market 2000 Study,[34] which included the Division's findings that it was necessary to expand the ITS/CAES linkage,[35] and identified several regulatory issues that the Commission believed the NASD needed to address prior to any expansion.[36]

In addition, in 1995, in the proposing release for the Order Handling Rules, the Commission solicited comment on whether the ITS/CAES linkage should be expanded to cover non-Rule 19c–3 securities.[37] In the adopting release for those rules, the Commission deferred action on the expansion of the ITS/CAES linkage, and instead encouraged the ITS Participants to work jointly to expand the linkage.[38]

Subsequently, on May 27, 1997, the Commission sent a letter to the ITS Participants outlining four aspects of the ITS Plan that it considered anti-competitive and requesting that they develop reasonable recommendations to the Commission in the form of proposed ITS Plan amendments and proposed SRO rule changes.[39] The responses that the Commission received indicated that not all the Participants would agree to expand the ITS/CAES linkage.[40] Because the ITS Plan currently requires a unanimous vote on proposed amendments, these changes could not be approved by the Participants. Accordingly, in July, 1998, the Commission proposed, on its own initiative, to expand the ITS/CAES linkage.[41] The Commission received numerous comment letters in response to its proposal. After careful review of those comments, the Commission is now amending the ITS Plan to expand the ITS/CAES linkage to all listed securities.

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of the interface. The areas where the parties could not reach agreement were resolved by the Commission. *See* Exchange Act Release No. 18713 (May 12, 1982), 47 FR 20413. The amendments included language requiring the NASD to apply trade through safeguards to provide for a sufficient assurance of consistency with the exchanges' trade through rules. A ''trade through'' occurs when a transaction is effected at a price below the best bid, or above the best prevailing offer. The NASD submitted a proposed trade through rule on May 4, 1982, which the Commission approved on an accelerated basis for six months. The Commission believed that the NASD rule was adequate even though it was not identical to the exchanges' trade through rules. *See* Exchange Act Release No. 18714 (May 6, 1982), 47 FR 20429 (May 12, 1982). The Commission had approved the exchanges' trade through rules on April 9, 1981. *See* Exchange Act Release No. 17704 (April 9, 1981), 46 FR 22520.

On September 15, 1983, the pilot phase ended and all Rule 19c–3 securities became eligible for trading through the ITS/CAES interface. *See* Exchange Act Release Nos. 19825 (May 31, 1983), 48 FR 25043 (June 3, 1983); and 19970 (July 20, 1983), 48 FR 33103.

[27] *See* Division of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments* (January 1994) (''Market 2000 Study''), at A.II.12.

[28] *See* Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983) (''Final Approval Order'').

[29] *Id.*

[30] *See id.*

[31] The ITS Plan promotes price continuity among the various markets by ensuring that all markets have the opportunity to interact with the best national bids and offers.

[32] *See* ITS Plan, Section 8(d)(iii).

[33] The NASD has since withdrawn its application. *See* letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated July 23, 1998.

[34] *See* Market 2000 Study, *supra* note 27.

[35] Specifically, the Market 2000 Study noted that the possibility of execution in the OTC market of a significant percentage of the total volume in multiple traded securities increased the need to enhance interaction of orders in all market centers to eliminate trade throughs and to provide market makers in those securities the ability to compete for order flow through their displayed quotations. Market 2000 Study, *supra* note 27.

[36] The Division, in its Market 2000 Study, identified several areas where the NASD should amend its rules prior to an expansion of the ITS/CAES linkage. Specifically, the Division recommended that the NASD amend its rules to provide for: the display of customer limit orders that improve the existing ITS best bid or offer (''BBO''); customer limit order protection; fixed standards for queuing and executing customer orders; crossing of customers' orders, if possible, without dealer intervention; and compliance with ITS trade through and block trade policies. The Division also stated that the NASD should develop a program specifically designed to enhance oversight examination of the third market. *Id.*

In February 1995, the NASD submitted a rule filing addressing those recommendations but subsequently withdrew that filing in light of the Commission's publication of its Order Handling Rules (Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996)), which addressed many of the topics covered by the NASD's proposed rules. On June 22, 1998, the NASD submitted a Petition for Rulemaking (''NASD Petition'') to adopt rules necessary to remove the limitation on access to ITS with respect to non-Rule 19c–3 securities.

[37] *See* Exchange Act Release No. 36310 (September 29, 1995), 60 FR 52792 (October 10, 1995).

[38] *See* Order Handling Rules, *supa* note 36.

[39] Preliminarily, the Commission found four elements of the current operation of ITS and the ITS Plan to be an unreasonable impediment to competition among the various markets: (1) Minimum increments for ITS commitments; (2) the lack of access to ITS for OTC market makers; (3) the unanimous vote requirement for ITS Plan amendments; and (4) the ITS Participants' special right of review of CSE proposed rule changes. *See* letter from Jonathan G. Katz, Secretary, Commission, to ITS Participants, dated May 27, 1997 (''May 27 Letter''). The Participants have voted to eliminate the limitation on access to increments through ITS, and the review of CSE rule changes. The Commission recently approved amendments to the ITS Plan to eliminate the special right of review of CSE rule changes. *See* Exchange Act Release No. 40553 (October 14, 1998), 63 FR 56278 (October 21, 1998).

[40] Eight of the nine Participants supported eliminating the ITS/CAES linkage restrictions as long as certain significant changes are made to the NASD's rules prior to the expansion. *See* letter from Thomas F. Ryan, Jr., President and Chief Operating Officer, Amex, to Jonathan G. Katz, Secretary, Commission, dated June 26, 1997 (''Amex Letter''); letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Jonathan G. Katz, Secretary, Commission, dated June 26, 1997 (''CBOE Letter''); letter from Robert H. Forney, President and Chief Executive Officer, CHX, to Jonathan G. Katz, Secretary, Commission, dated November 3, 1997 (''CHX Letter''); letter from David Colker, Executive Vice President and Chief Operating Officer, CSE, to Jonathan G. Katz, Secretary, Commission, dated July 3, 1997 (''CSE Letter''); letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission (''NASD 1997 Letter''); letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated June 25, 1997 (''NYSE Letter''); and letter from William G. Morton, BSE, Robert H. Forney, CHX, Robert M. Greber, PCX, and Nicholas Giordano, Phlx, to Jonathan G. Katz, Secretary, Commission, dated June 23, 1997 (''Joint Letter'').

[41] *See* Exchange Act Release No. 40260 (July 21, 1998), 63 FR 40748 (July 30, 1998) (''Proposing Release''). In the Proposing Release, the Commission also proposed to eliminate the requirement that amendments to the ITS Plan be approved unanimously. The Commission is deferring consideration of that proposal at this time. The Commission plans to deal with several larger issues relating to market structure in an upcoming concept release.

II. Summary of Comments

The Commission received 15 comment letters relating to the expansion of the ITS/CAES linkage to all listed securities.[42] All 15 commenters generally support the expansion, both with and without certain conditions. In general, most of the commenters state that expanding the linkage will greatly benefit the market place and public investors.[43] Specifically, the commenters believe that expanding the linkage will: increase market efficiency and transparency, reduce trade throughs, and level the playing field between third market firms and exchanges;[44] decrease market fragmentation and produce long-term benefits to the NMS;[45] increase the liquidity and competitiveness of the securities markets;[46] and increase the opportunity for investors to obtain the best price available in all markets for orders in exchange-listed securities.[47] One commenter states that there is no longer any good economic reason to trade Rule 19c–3 securities differently from non-Rule 19c–3 securities,[48] while another states that from a marketplace and economic standpoint the distinction is meaningless.[49] The NYSE, on the other hand, believes that it is more appropriate for the ITS Participants themselves to draft the necessary Plan amendments, rather than for the Commission to adopt the amendments.[50]

A. Conditional Expansion

The Commission specifically requested comment on what, if any, regulatory steps needed to be taken prior to expansion of the ITS/CAES linkage. Some commenters support the expansion outright,[51] while several commenters support the linkage if the Commission removes certain regulatory disparities between the third market and the exchange community.[52] For example, the NASD states that the expansion of the linkage is fully warranted at this time given that there have been significant changes to the third market since the link was originally established in 1982.[53] On the other hand, the NYSE believes that three issues need to be resolved prior to any expansion of the linkage: (1) Enhanced NASD oversight of the third market; (2) the adoption of fixed standards for queuing and executing customer orders; and (3) the application of the ITS trade through rule and block policy to cover NASD members that are not registered with the NASD as ''ITS/CAES Market Makers'' in a security.[54]

1. Trade Through Rule

The Commission specifically requested comment on which, if any, third market participants should be subject to a trade through rule, and what the substance of that rule should be. In response, the NYSE stated that the trade through rule should apply to all ''third market making,'' as opposed to ''third market makers.'' The NYSE notes that the current NASD trade through rule already applies to all third market makers in ITS/CAES eligible securities, and would continue to do so even if the linkage were expanded. The NYSE believes that the trade through rule should apply not only to trades reported by ITS/CAES market makers, but also to all trades reported by NASD members that trade exchange-listed securities.[55] Similarly, the Specialist Association, CSE, Amex, and CHX believe that a trade through rule should apply to all member firms that effect trades in ITS/CAES eligible securities, even those that are not registered as ITS/CAES market makers in those securities, and including block positioning firms and order entry firms.[56]

CHX states that third market makers that fall under the 1%[57] threshold

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[42] *See* letters from James Angel, Associate Professor of Finance, Georgetown University School of Business, to Jonathan G. Katz, Secretary, Commission, dated August 3, 1998 (''Angel ITS/CAES Letter''); Adam W. Gurwitz, CSE, to Jonathan G. Katz, Secretary, Commission, dated August 27, 1998 (''CSE ITS/CAES Letter''); James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated August 31, 1998 (''NYSE ITS/CAES Letter''); Robert H. Forney, President and Chief Executive Officer, CHX, to Jonathan G. Katz, Secretary, Commission, dated August 28, 1998 (''CHX ITS/CAES Letter''); Robert Lazarowitz, Chief Operating Officer, Trimark Securities, to Jonathan G. Katz, dated August 28, 1998 (''Trimark Letter''); Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE, to Jonathan G. Katz, Secretary, Commission, dated September 1, 1998 (''CBOE ITS/CAES Letter''); Craig S. Tyle, General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated September 2, 1998 (''ICI Letter''); Kevin M. Foley, Bloomberg, to Jonathan G. Katz, Secretary, Commission, dated September 4, 1998 (''Bloomberg Letter''); Richard Ketchum, President and Chief Operating Officer, NASD, to Jonathan G. Katz, Secretary, Commission, dated September 8, 1998 (''NASD ITS/CAES Letter I''); Robert W. Seijas, Co-President, and Joel M. Surnamer, Co-President, The Specialist Association, to Jonathan G. Katz, Secretary, Commission, dated September 1, 1998 (''SA Letter''); Lon Gorman, President, Schwab Capital Markets and Trading Group, Charles Schwab & Co., to Jonathan G. Katz, Secretary, Commission, dated September 14, 1998 (''Schwab Letter''); John C. Katovich, Senior Vice President and General Counsel, OptiMark Technologies, Inc., to Jonathan G. Katz, Secretary, Commission, dated September 22, 1998 (''OptiMark ITS/CAES Letter''); Andrew M. Brooks, Vice President and Head of Equity Trading, T. Rowe Price Associates, Inc., to Jonathan G. Katz, Secretary, Commission, dated September 29, 1998 (''T. Rowe Letter''); James F. Duffy, Executive Vice President and General Counsel, Amex, to Jonathan G. Katz, Secretary, Commission, dated October 17, 1998 (''Amex ITS/CAES Letter''); Richard Ketchum, President and Chief Operating Officer, NASD, to Jonathan G. Katz, Secretary, Commission, dated December 17, 1998 (''NASD ITS/CAES Letter II''); and Richard Ketchum, President and Chief Operating Officer, NASD, to Jonathan G. Katz, Secretary, Commission, dated June 3, 1999 (''NASD ITS/CAES Letter III'').

[43] *See* CSE ITS/CAES Letter; Trimark Letter; CBOE ITS/CAES Letter; Bloomberg Letter; NASD ITS/CAES Letter I; and OptiMark ITS/CAES Letter.

[44] *See* Trimark Letter.

[45] See CBOE ITS/CAES Letter; T. Rowe Letter (reduce market fragmentation).

[46] *See* Bloomberg Letter; OptiMark ITS/CAES Letter.

[47] *See* NASD ITS/CAES Letter I; Schwab Letter.

[48] *See* Angel ITS/CAES Letter.

[49] *See* Trimark Letter. OptiMark states that there is no fundamental regulatory or functional basis for discriminating between Rule 19c–3 securities and non-Rule 19c–3 securities. *See* OptiMark ITS/CAES Letter.

[50] *See* NYSE ITS/CAES Letter.

[51] *See* Angel Letter; Trimark Letter; Bloomberg Letter; NASD ITS/CAES Letter I.

[52] *See* CSE ITS/CAES Letter; CHX ITS/CAES Letter; CBOE ITS/CAES Letter; Schwab Letter; SA Letter; NYSE ITS/CAES Letter; Amex ITS/CAES Letter.

[53] These include the requirement that: OTC market makers provide continuous two-sided quotations for any listed security in which the firm is responsible for more than 1% of the consolidated trading volume; all third market makers register as CQS market makers and participate in ITS/CAES, thereby subjecting them to the obligations and protections afforded Participants in the ITS Plan; the price and size of customer limit orders that improve the public quote be displayed; members be prohibited from ''trading ahead'' of customer orders. *See* NASD ITS/CAES Letter I.

[54] *See* NYSE ITS/CAES Letter. Similarly, the Specialist Association (''SA'') believes that certain changes to the third market must be implemented and proven, not just adopted, before expansion of the linkage (such as rules establishing fixed standards for queuing and executing customer orders, and assuring that customers' orders will be crossed, if possible, without dealer intervention). The SA realizes that the Commission's Order Handling Rules, which require all specialists and market makers to display, directly or through ECNs, customer limit orders that improve such specialists' or market makers' quotations, mean that those orders are available to be crossed with customer market orders on the other side of the market. The SA also notes that NASD Rule 6440(f) precludes NASD members from effecting a transaction for their own account ahead of customers' market and limit orders. The SA, however, argues that the NASD still lacks a rule requiring NASD members to cross customer market orders against each other, rather than executing them as principal for the member's own account, whenever it is possible to do so. The SA also states that the NASD must expand the application of its trade through and block trade policy rules to cover all third market trading in ITS securities. *See* SA Letter.

[55] *See* NYSE ITS/CAES Letter. The NYSE also believes that the approach taken by the NASD in a previous filing (SR–NASD–95–09), which was withdrawn, is an appropriate and acceptable means of addressing this issue, *Id. See also* NASD ITS/CAES Letter I.

[56] *See* SA Letter; Amex ITS/CAES Letter; CSE ITS/CAES Letter; CHX ITS/CAES Letter. Amex notes that this is what the NASD originally proposed in SR–NASD–95–09, which was later withdrawn.

[57] Under Exchange Act Rule 11Aac1–1, third market makers who account for less than 1% of trading volume in a security, block positioners who do not hold themselves out as being willing to buy

should be bound by the trade through rules, as should block positioners and automated trading systems (''ATSs'').[58] Specifically, CHX believes that block positioners that are not quoting two-sided continuous markets should have limited ITS/CAES access for the purpose of sending commitments when they would otherwise trade through a market, while third market makers who do hold themselves out as willing to buy and sell on a continuous basis should have complete ITS access. CHX also believes that ATSs that have elected to be subject to the display alternative should have a passive form of access to ITS (and should be subject to the trade through rule) but that non-display alternative ATSs should not have any access to ITS (but should still be subject to the trade through rule).[59]

Finally, the ICI supports the adoption of a trade through rule for third market makers, but believes that the scope of the protection should be limited to displayed orders and not ''reserved'' or other ''hidden'' orders.[60] Schwab suggests that the NASD affix a trade report modifier identifying prints by NASD members that are not ITS/CAES market makers.[61]

The NASD notes that all voluntary CQS market makers[62] and any other OTC market maker accounting for more than 1% of the consolidated volume in a security are already subject to the NASD's trade through rule, Rule 5262, and that expanding the universe of ITS/CAES eligible securities will automatically extend the existing trade through rule to these participants with respect to the new securities. In response to many of the concerns discussed above, the NASD initially stated that it was willing to consider a trade through rule applicable to all members who would not otherwise be subject to the rule (either because they account for less than 1% of the volume and choose not to become CQS market makers or because they fit into the block positioner exception to the Commission's 1% Rule).[63] More recently, however, the NASD stated that it does not believe that the application of a trade through rule to non-market makers would be fair because non-market makers do not have access to ITS.[64] The NASD further believes that it can alleviate concerns about the trade through issue by surveilling ITS/CAES market makers for compliance with ITS/CAES rules, including the trade through rule. The NASD also notes that Nasdaq, through its ITS Desk in its Market Operations Department, is able to determine on a real time basis the identity of each NASD member that reports a trade, and if another market center inquires regarding a perceived trade through of its market by an NASD member, the ITS Desk is able to immediately inform the inquiring market center whether the print was reported by a market maker subject to the rule or an NASD member not subject to the rule.[65] Finally, the NASD has indicated its commitment to, at some point after Year 2000, develop a special trade report modifier that the NASD or non-CAES market maker member reporting a trade could append to each trade report to distinguish such trade report from those of CAES market makers.[66]

2. Trade Reporting Rule

Two commenters believe that, prior to expanding the linkage, the NASD must amend its trade reporting rules for listed securities to align them with exchange reporting rules.[67] In response, the NASD proposed to amend its trade reporting rule for listed securities.[68] Specifically, the NASD proposed to eliminate a provision of its rules applicable to the reporting of transactions in exchange-listed securities, which requires members to report transactions in a manner ''reasonably related to the prevailing market taking into consideration all relevant circumstances.'' For years, the ITS Participants have asserted that this language provides inappropriate flexibility in the manner in which NASD members may report third market transactions. The NYSE states that the NASD's proposal addresses its concerns with the trade reporting issue.[69] CHX, however, does not believe that the NASD's proposal solves the perceived problem with the NASD's trade reporting rule because it would not eliminate the discretion that the trade reporting rule gives to third market makers to determine the price at which to report a trade. CHX asserts that the proposal would merely eliminate the standard articulating how to calculate the markup or markdown on the sale.[70] CHX further argues that the rule change increases the likelihood that a third market maker will be able to avoid a violation of the trade through rule.[71] The NASD responds to this criticism by noting that concerns over the trade reporting rule will be effectively addressed through surveillance and enforcement of best execution obligations and confirmation disclosure requirements.[72]

3. Surveillance of Third Market

With regard to surveillance concerns, CHX believes that the NASD must implement a more thorough program for surveillance of the third market so that the NASD can ensure that the third market trading firms that provide automated routing and execution services are operating within their stated execution parameters.[73] The NYSE states that it assumes that the Commission would not propose to expand the linkage unless it was satisfied that the NASD had installed an adequate oversight examination program for the third market.[74]

4. Other Conditions

In the CSE's view, ITS should only be opened to all listed securities at the same time that the securities of large, well-capitalized companies that trade in the OTC market are included in ITS.[75] CSE also believes that the Commission

and sell securities on a continuous basis, and ATSs that do not elect the display alternative do not have to display quotations (''1% Rule'').

[58] *See* CHX ITS/CAES Letter.

[59] *See* CHX ITS/CAES Letter.

[60] *See* ICI Letter.

[61] Schwab states that currently the NASD's trade through and block trade rules apply only to ITS/CAES market makers, which can put specialists in the position of having to provide price protection against prints from NASD members that are not registered CAES market makers, such as block positioners who do not post quotes and are inaccessible through ITS/CAES. Schwab believes this situation could be remedied if the NASD were to affix a trade report modifier identifying prints by NASD members that are not ITS/CAES market makers (and therefore not subject to the trade through rule). *See* Schwab Letter.

[62] All third market makers registered as CQS market makers in securities eligible for inclusion in the ITS/CAES linkage are required to register as ITS/CAES market makers. *See* NASD rule 5210(e).

[63] *See* NASD ITS/CAES Letter I. The NASD initially stated it would consider a trade through rule like the one it filed with the Commission in 1995, consideration of which was deferred pending the Order Handling Rules. *See* NASD–95–09.

[64] *See* NASD ITS/CAES Letter III.

[65] *See* NASD ITS/CAES Letter III. The NASD further notes that today, if another market center sees a print from the OTC market in a rule 19c–3 security, the same procedure described above is conducted.

[66] The NASD does not believe that a system change is possible at this time given the resources being expended on Y2K preparation by the NASD, SIAC and the other exchanges.

[67] *See* CHX ITS/CAES Letter; NYSE ITS/CAES Letter.

[68] *See* Exchange Act Release No. 40360 (August 25, 1998), 63 FR 46267 (August 31, 1998) (SR–NASD–98–61). The Commission notes that this proposal was approved in July 1999. *See* Exchange Act Release No. 41647 (July 23, 1999), 64 FR 41478 (July 30, 1999).

[69] *See* NYSE ITS/CAES Letter.

[70] *See* CHX ITS/CAES Letter.

[71] *See* CHX ITS/CAES Letter.

[72] *See* NASD ITS/CAES Letter II.

[73] *See* CHX ITS/CAES Letter.

[74] *See* NYSE ITS/CAES Letter. *See also* Amex ITS/CAES Letter.

[75] *See* CSE ITS/CAES Letter. CHX also believes that Nasdaq stocks should be eligible for ITS. *See* CHX ITS/CAES Letter.

should address the prohibition on regional markets from trading initial public offering securities during the first day of trading because the third market is not subject to such a restriction.[76] CHX asserts that ATS-type regulations should be applied to third market makers that provide automated routing and execution facilities to other broker-dealers in a fashion directly in competition with exchanges. CBOE argues that Nasdaq market makers should be required to reflect limit orders from options market makers or other broker-dealers in their displayed quotes and provide price protection to such limit orders.[77]

B. ECN Participation

The Commission also requested comment on whether electronic communications networks (''ECNs,'' also known as ATSs) [78] should be allowed to participate in ITS.[79] Most commenters who discuss the issue support ECN participation in some form. The ICI believes that a truly national market requires a linkage between exchanges, market makers and ECNs, and therefore supports the inclusion of ECNs in ITS.[80] Bloomberg agrees that ECNs should be allowed to participate in the ITS/CAES linkage. The NASD believes that the Commission should allow bilateral access between ECNs and ITS Participants, without restriction as to any spread parameter for a two-sided quote by the ECNs. The NASD also believes it would be appropriate to implement a formula to guard against the linkage being used as an order routing facility to gain access to ITS Participants.[81] Schwab encourages the Commission to work with the NASD and the other ITS Participants to eliminate regulatory and structural impediments to ECN participation in ITS and the ITS/CAES linkage.[82]

The NYSE states that it remains flexible in considering Plan amendments to accommodate ECNs, and points out that the NASD has raised for consideration a number of potential ways in which ECNs could access ITS through the linkage.[83] CHX believes that ATSs that have elected to be subject to the display alternative should have a passive form of access to ITS but that non-display alternative ATSs should not have any access to ITS.[84]

C. Miscellaneous

Several commenters raise additional issues regarding the expansion of the linkage. In the Proposing Release, the Commission noted that the NASD's autoquote policy would conflict with the ITS Plan, which limits computer-generated quotations to 100 shares, if the ITS/CAES linkage were expanded. The Commission requested comment on the autoquote issue. The NASD responds that it intends to discuss the issue with the ITSOC, with a view toward implementing a computer-generated quotation policy that could apply to all ITS/CAES eligible securities.

The Commission also requested the NASD to consider developing standards for queuing and executing customer orders. The NASD does not believe there are any significant problems in this area. It states that it believes that any potential problems might manifest themselves as a failure to promptly display customer orders at the opening or as a failure to provide best execution while holding multiple orders, for which enhanced regulatory standards have been implemented. The NASD notes that it is unaware of any problems or customer complaints in either context. It also notes that NASD market makers generally guarantee customer orders the opening price of the primary market, thereby eliminating the potential for queuing at the open.[85]

OptiMark believes that Participants should be required to substantially improve the system performance and capacity of ITS, noting that the technology in use is an inefficient combination of manual and automated sub-systems within ITS. OptiMark is concerned that this creates capacity limitations that lead to poor or untimely executions of ITS commitments and delays in obtaining access to ITS.[86] CSE urges the Commission to fix inefficiencies that exist within ITS and other national market systems, including CTA and CQS, to enable faster trade reporting and quote updating.[87]

CHX believes problems exist relating to the expiration of ITS commitments that are not executed by the receiving market. Generally, CHX regards the expiration of ITS commitments as a violation of the firm quote rule and believes that ITS Participants should have liability under the ITS Plan when a market fails to act on an ITS commitment before it expires.[88]

D. Replacing or Rewriting the ITS Plan

The Commission specifically requested comment on whether the ITS facility itself should be replaced or the ITS Plan rewritten. CHX sees no reason to take such measures at this time, believing that ITS, although twenty years old, has served the industry well and has evolved over time to meet changing market conditions. CBOE also states that the Plan has served the NMS well in the last two decades, and believes that with increased automation and other improvements, it will continue to serve the industry into the next century.

In contrast, the NYSE and Amex both assert that they are receptive to discussing alternatives to ITS.[89] ICI believes that further enhancements may be necessary to realize the goals of a true NMS where a customer order entered anywhere can interact with the best

[76] *See also* CHX ITS/CAES Letter.

[77] *See* CBOE ITS/CAES Letter. CBOE sees this as injurious to the options market and investors in that market and believes it prevents investors in Nasdaq stocks from achieving best execution because they cannot see or trade with a significant source of orders in those stocks.

[78] The term ECN is defined, with certain exceptions, as any electronic system that widely disseminates to third parties orders entered into the ECN by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part. *See* Exchange Act Rule 11Ac1–1(a)(8). The term ATS is defined more broadly as any organization, association, person, group of persons, or system: (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of Exchange Act Rule 3b–16; and (2) that does not: (i) set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system; or (ii) discipline subscribers other than by exclusion from trading. *See* Regulation ATS, Sec. 242.300(a). Essentially, an ECN is a type of ATS.

[79] Under the ECN Display Alternative, an order entered by a market maker into an ECN that widely disseminates the order is deemed to be a bid or offer to be communicated to the market maker's association for at least the minimum quotation size required by the Association's rules if the priced order is for the account of the market maker, or the actual size of the order up to the minimum quotation size required if the priced order is for the account of a customer. The ECN Display Alternative deems the market maker to be in compliance with this requirement if the ECN displays the market maker's order in Nasdaq. If the only option is for ECNs to link to the NMS through the NASD, specialists and market makers would only have the ECN alternative for trading rule 19c–3 securities through ITS. Specialists or market makers, therefore, could not use ECNs for non-rule 19c–3 securities because their quotes would not be accessible to the other ITS Participants.

[80] *See* ICI Letter.

[81] *See* NASD ITS/CAES Letter I. The NASD is also willing to proceed with a proposal to have ECN quotes be subject to trade through protection by exchange markets and accessible through the ITS/CAES linkage if the Commission is unwilling to support a formula.

[82] *See* Schwab Letter.

[83] *See* NYSE ITS/CAES Letter.

[84] *See* CHX ITS/CAES Letter.

[85] *See* NASD ITS/CAES Letter I. The NASD does not believe that the issue of queuing is directly relevant to the ITS/CAES expansion.

[86] *See* OptiMark ITS/CAES Letter.

[87] *See* CSE ITS/CAES Letter.

[88] *See* CHX ITS/CAES Letter.

[89] *See* NYSE ITS/CAES Letter; Amex ITS/CAES Letter.

price available.[90] Schwab believes that the Commission should ''scrap'' ITS, and that access to prices in other markets could be achieved more efficiently and competitively by requiring each SRO to grant access to its automated order routing system—either through private vendors or through sponsored access by members of that SRO.[91]

The NYSE is open to discussing the possible replacement of the current ITS computer system with either existing order routing systems or a third-party system, but suggests that the Commission consider whether any linkage is necessary at all.[92] The NYSE also has concerns about the legal structure that would govern any new system. Moreover, the NYSE believes that any new linkage should provide non-members with access only to superior-priced quotations.[93] Finally, the NYSE believes that if the Commission did amend the Plan, it would need to retain the descriptions of the ITS interfaces contained in the current Plan, and adopt language clarifying that these descriptions are the only means by which the Participants can access ITS.

III. Discussion and Basis for Adoption

A. Expansion of Linkage Generally

As it originally stated in its permanent approval order for ITS, the Commission continues to believe that it is necessary to expand the ITS/CAES linkage to all listed securities in order to fully implement the 1975 Congressional mandate to create a national market system linking the exchanges and the OTC market.[94] When the Commission approved the limited linkage for Rule 19c–3 securities in May 1982,[95] it intended it to be the first step toward a more expansive linkage.[96] The Commission's amendments applied to Rule 19c–3 securities initially because the Commission believed that the adoption of Rule 19c–3 would likely result in an increase in volume for these securities, thereby heightening the need for an efficient linkage between the exchanges and the OTC market.[97] Since that time, there has been a marked increase in the level of trading in the third market. In 1987, third market trading of NYSE listed stocks accounted for 1.9% of the volume and 2.05% of the trades reported to the consolidated tape. By 1997, third market trading of NYSE listed stocks accounted for 7.7% of the volume and 10.49% of the trades reported to the consolidated tape.[98]

There have been other significant improvements in the third market. Specifically, any NASD member that acts in the capacity of an OTC market maker must provide continuous two-sided quotations for any exchange-listed security in which that member, during the most recent calendar quarter, comprised more than 1% of the aggregate trading volume for the security as reported in the consolidated system (''1% Rule'').[99] The NASD also now requires all third market makers registered as CQS market makers in ITS-eligible securities to register and participate in ITS/CAES.[100] In addition, the NASD prohibits third market makers from trading ahead of their own customer limit orders.[101] Finally, the Limit Order Display Rule requires third market makers to display customer limit orders in their quote if those orders improve the quote.[102] The Commission's adoption of the Limit Order Display Rule eliminates the need for the NASD to implement a rule to require the display of customer limit orders that improve the existing ITS/BBO, as recommended in the Market 2000 Study.[103] The Limit Order Display Rule also provides an enhanced opportunity for public orders to interact with other public orders without the intermediation of a specialist or market maker by requiring certain customer limit orders to be displayed in the quote.

In light of these changes, as discussed below, the Commission believes that there is no longer any need for the historical distinction between Rule 19c–3 and non-Rule 19c–3 securities in the ITS/CAES linkage. The Commission believes that expansion will increase a broker-dealer's ability to obtain the best price available for the customer, promote competition in listed securities, help ensure more equivalent access to the markets, and provide for additional liquidity and more efficient executions.

Failure to achieve a linkage between exchange and OTC markets in all listed securities inhibits a broker's ability to ensure best execution of customer orders because orders in non-Rule 19c–3 securities routed to exchange floors cannot be easily redirected to the OTC market when more favorable prices are offered by OTC market makers. Conversely, OTC market makers are precluded from using an efficient means to deliver their orders to exchange floors when the exchange has a more favorable price in non-Rule 19c–3 securities.[104] The Commission believes that expanding the ITS/CAES linkage to non-Rule 19c–3 securities will enable the OTC market maker and the exchange specialist to access more directly those superior priced quotes through ITS, rather than potentially executing an order at an inferior price.

The Commission also believes that the failure to expand the ITS/CAES linkage would impede competition among brokers and dealers and between exchange markets and other markets, and that competitive OTC markets cannot develop fully in the absence of

[90] ICI suggests allowing any vendor to establish an intermarket linkage system, or that all ITS Participants should be required to be open to such linkages, including linkages that provide for the automated routing of orders. *See* ICI Letter.

[91] Schwab believes that ITS is an archaic system and that any number of private communications systems are faster, cheaper, more reliable, and more efficient. *See* Schwab Letter.

[92] With respect to the operation of the current ITS, the NYSE does not believe that any amendments are necessary to the ITS Plan. *See* NYSE ITS/CAES Letter. Amex also believes that the existing order routing and execution systems of the exchanges and the NASD could be used in place of ITS, and would support any Commission action to assess whether ITS could be readily replaced by other available access mechanisms. Amex, however, does not believe amendments to the current ITS Plan are necessary or appropriate at this time.

[93] The NYSE believes it would still be necessary to adopt special rules governing pre-opening procedures, trade throughs, block trades, and locked and crossed markets. In addition, the NYSE believes it would be necessary to specify that non-member trading interest are not ''orders'' that have the same standing in an exchange Participant's market as member orders. *See* NYSE ITS/CAES Letter.

[94] *See* Final Approval Order, *supra* note 28. Specifically, the Commission noted that ''in order to achieve fully the Congressional goal that all markets for qualified securities be linked (Section 11A(a)(1)(D) of the Act), it will be necessary in the future for the ITS/CAES interface to be expanded to include all stocks traded in the third market.'' *Id.* at 4940.

[95] *See* Exchange Act Release No. 18713 (May 12, 1982), 47 FR 20413.

[96] *See also* Market 2000 Study, *supra* note 27, at AII–12; and Order Handling Rules, *supra* note 36.

[97] *See* Market 2000 Study, *supra* note 27, at A.II.12.

[98] *See* NYSE 1997 Fact Book at 26–27.

[99] The 1% Rule applied only to Rule 19c–3 securities prior to being expanded in the Order Execution Rules. *See* Exchange Act Release No. 39367 (November 26, 1997), 62 FR 64242 (December 4, 1997) (''Autoquote Order'').

[100] *See* Exchange Act Release No. 34280 (June 29, 1994), 59 FR 34880 (July 7, 1994).

[101] NASD Rule 6440(f)(1)(2), which applies to listed securities, states that no member shall buy (or sell) (or initiate the purchase or sale of) any security at or above (or below) the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to buy (or sell) such security in the unit of trading for a customer.

[102] *See* Order Handling Rules, *supra* note 36.

[103] The Limit Order Display Rule requires all specialists and market makers to display customer limit orders that improve their quotes. *See* Order Handling Rules, *supra* note 36.

[104] Non-exchange member OTC market makers presently are able to access exchange floors only through correspondent relationships with member firms.

a linkage for all listed securities.[105] Without an expanded ITS/CAES linkage, OTC market makers in non-Rule 19c–3 securities have little ability to interact with the vast majority of retail orders, which presently are routed to the primary exchange markets, or to attract additional order flow through their displayed quotations. The expansion of the ITS/CAES linkage should promote increased competition in non-Rule 19c–3 securities. The Commission also believes the expansion should help equalize access to all the markets because OTC market makers and exchange specialists will have more direct access to each other's markets for non-Rule 19c–3 securities. Finally, the Commission believes that expanding the ITS/CAES linkage will reduce the occurrence of trade throughs because the NASD's trade through rule will apply to all listed securities traded in the third market, not just Rule 19c–3 securities.[106]

B. Conditional Expansion

As mentioned above, several of the commenters asserted their belief that certain regulatory steps were necessary prior to expanding the ITS/CAES linkage. Many commenters argued that the NASD should expand its trade through rule to apply to all NASD members. The Commission believes that the NASD should continue to consider modifying its existing trade through rule, but that it is not an essential precondition to approval of an expanded linkage. Currently, all third market makers registered as CQS market makers who trade ITS/CAES eligible securities must register as ITS/CAES market makers, which subjects them to the trade through rule. If the linkage is expanded, non-Rule 19c–3 securities will become ITS/CAES eligible securities. Therefore, any CQS market makers in those securities will be required to register as ITS/CAES market makers and will become subject to the NASD's trade through rule.

Several commenters argued that the NASD's trade through rule should apply not only to ITS/CAES market makers, but to all third market participants. The Commission, however, recognizes the NASD's concern that it is not fair to apply the trade through rule to other third market participants that trade in listed securities, such as block positioners that fit within the block positioner exception to the Commission's 1% Rule, and market makers that account for less than one percent of trading volume in a security and choose not to register as CQS market makers because they do not have access to ITS/CAES. The Commission notes that the NASD has indicated its commitment to modifying the trade reporting process so that exchange Participants can distinguish a trade originating from an ITS/CAES market maker from one originating from another third market participant.[107] This result should permit exchange participants to recognize when an NASD member subject to the trade through rule has executed a trade through. Until such time as the NASD makes the requisite systems changes to attach trade modifiers to trade reports, the Commission believes that the NASD can adequately surveil for compliance with the trade through rule.

Commenters also expressed concerns regarding the NASD's trade reporting rule. The Commission believes that the issue of timely and accurate trade reporting of listed securities by the third market has already been adequately addressed. In July 1999, the Commission approved an NASD proposed rule change to amend NASD Rule 6420(d)(3)(A), the trade reporting rule for principal transactions in listed securities.[108] Prior to the rule change, the NASD's rule required members to report transactions in a manner ''reasonably related to the prevailing market taking into consideration all relevant circumstances.'' Commenters asserted that that this language provided too much flexibility in the manner in which NASD members may report third market transactions. The NASD rule change eliminated the ''reasonably related to the prevailing market'' language. The Commission recognizes that there are differences in the trade reporting rules of the third market and the exchange markets, but believes that the rule change adequately addresses some of the ambiguity in the rule for the purpose of expanding the ITS/CAES linkage.[109] The Commission also notes that third market transactions during regular market hours must be reported to the consolidated tape within 90 seconds of execution; this is the same as the reporting of transactions on all the exchanges. Moreover, the Commission's confirmation rule requires participants in the third market to report transactions to the consolidated tape at the same price as they report the transactions to the customer.[110] The Commission notes that the NASD must continue to ensure that it is actively and adequately surveilling trade reporting in the third market.[111]

C. ECN/ATS Participation

In the proposing release, the Commission requested comment on whether ECNs (or ATSs) should be required or allowed to participate in ITS, and if so, what form that participation should take. Most of the commenters who discuss the issue supported ECN and ATS access to ITS in some form. For example, CHX believes that ECNs that have elected to be subject to the display alternative should have a passive form of access to ITS but that non-display alternative ATSs should not have any access to ITS.[112] The Commission believes that, in order to further the goals of the national market system, ECNs trading in listed securities should be linked to ITS. ITS should not prevent efficient electronic routing between markets. The

[105] The Commission indicated in the Rule 19c–3 Adopting Release that intermarket exposure of orders in a national market system should maximize competition between and among markets and market participants, and further the efficiency and fairness of the securities markets. *See* Rule 19c–3 Adopting Release, *supra* note 17, at 10, 45 FR at 41126.

[106] Currently, third market makers may trade non-Rule 19c–3 listed securities without complying with the ITS trade through rule.

[107] *See* NASD ITS/CAES Letter III. The NASD has stated that it will develop a special trade report modifier that an NASD or non-CAES market maker member reporting a trade may append to each trade report to distinguish such trade report from those of CAES market makers. The NASD, however, does not expect to accomplish this goal in the near future because of resources aimed at Y2K issues.

[108] *See* Exchange Act Release No. 41647 (July 23, 1999), 64 FR 41478 (July 30, 1999).

[109] The Commission notes that NASD Rule 6420(d)(3)(A) applies to all listed securities, including those that already are ITS/CAES eligible securities.

[110] *See* Exchange Act Rule 10b–10, 17 CFR 240.10b–10. This rule requires that when a NASD member is acting as an agent for a customer, the member must confirm to the customer the gross trade price, which is the price that was reported to the Consolidated Tape, the commission equivalent, as well as the net price to the customer. When an NASD member is acting as principal for its own account, the member must include in the confirmation the price reported to the Consolidated Tape, the net price to the customer, and the difference, if any.

[111] In its Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and the Nasdaq Market, the Commission noted that the NASD failed to monitor and enforce rigorously trade reporting compliance by NASD members trading exchange-listed securities in the OTC market, and that there were many transactions that constituted trade throughs. *See* U.S. Securities and Exchange Commission, Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and the Nasdaq Market (August 8, 1996) (''Section 21(a) Report'') at A–44. Since that time, the NASD has taken various measures designed to comply with the undertakings contained in its settlement, one of which required the NASD to improve substantially the reliability of trade reporting through enhancement of surveillance, examination, and enforcement. *See* In the Matter of National Association of Securities Dealers, Inc., Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3–9056 (''SEC Order''), at 8 (Undertaking No. 9).

[112] *See* CHX ITS/CAES Letter.

Commission notes that the Participants have begun a dialogue about the parameters of ECN access to ITS. The Commission strongly urges the Participants to continue to discuss the issue and reach a resolution.

D. NASD Autoquote Policy

The Commission recognizes that the NASD's current autoquote policy may conflict with the ITS Plan if the linkage is expanded to cover all listed securities.[113] However, the Commission notes that the Participants have been discussing this issue, and expects the Participants to continue to discuss how to amend the Plan to permit computer-generated quotations.[114]

IV. Costs and Benefits of the Proposed Amendment

To assist the Commission in its evaluation of the costs and benefits that may result from the ITS amendments, commenters were requested to provide analysis and data, if possible, relating to costs and benefits associated with the proposal. No comments were received regarding this request.

The Commission believes that any possible increase in costs to market participants are justified by the overall benefits of the proposed amendment. The proposed amendments will further the goals of a national market system under Section 11A by increasing a broker-dealer's ability to achieve best execution of customer orders, promoting competition in listed securities, equalizing access to markets, and providing for additional liquidity and more efficient executions. Specifically, the Commission believes that expanding the ITS/CAES linkage to non-Rule 19c–3 securities will enable an OTC market maker and an exchange specialist to directly access superior priced quotes in each other's markets through ITS, rather than potentially executing an order at an inferior price. In addition, the expansion of the ITS/CAES linkage should promote competition in non-Rule 19c–3 securities by encouraging market makers or specialists to improve their quotes to match or better the bid or offer in another ITS market in order to attract order flow from those other markets. Finally, the Commission believes that the proposed amendment should provide additional liquidity to the market in non-Rule 19c–3 securities because direct access (*i.e.*, the increased ability to access a better price in a security) and increased competition should enable investors to execute transactions more efficiently.

Any monetary costs to the Participants, including implementation costs and costs of expanding the linkage to include all non-Rule 19c–3 securities, would most likely be minimal, if they exist at all, compared to the overall costs of ITS. The Commission consulted with the Securities Industry Automation Corporation (''SIAC'') as to any possible costs of implementing the expanded linkage.[115] SIAC informed the Commission that there would not be any systems costs from expanding the linkage, although there may be internal administrative costs for the NASD.[116] The Commission notes that the NASD fully supports the adoption of the Commission's amendment to expand the ITS/CAES linkage. The Commission also notes that most commenters supported the expanded linkage. The Commission further notes that the proposal may affect ITS order flow between the Participants, by increasing it for some Participants, decreasing it for others, or increasing it for all Participants. The Commission believes that any costs to Participants in the form of possible reduced order flow or decreased tape fees (from decreased executions) are justified by the benefits of the proposal, including increased liquidity, increased competition, and a better chance for best execution of customer orders.

V. Effects on Competition, Efficiency and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether such action will promote efficiency, competition, and capital formation.[117] In the Proposing Release, the Commission solicited comment on the effect on competition, efficiency, and capital formation. Many commenters believe that the expanded linkage will ultimately increase market efficiency, competition and transparency.[118]

In the Commission's view, the amendment to the ITS Plan is not likely to impose any significant burden on competition, efficiency or capital formation not necessary or appropriate in furtherance of the Act. Indeed, the Commission believes that expansion of the ITS/CAES linkage to all listed securities should promote competition among market centers and improve efficiency in the execution of customer orders.

Section 23(a)(2) of the Exchange Act requires the Commission, when promulgating rules under the Exchange Act, to consider the competitive effects of such rules and to not adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the Act.[119] The Commission has considered the proposed amendment to the ITS Plan to expand the ITS/CAES linkage in light of the standards cited in Section 23(a)(2) of the Act and believes that it would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. Indeed, the Commission believes that the proposed amendment to expand the ITS/CAES linkage should promote competition in non-Rule 19c–3 securities because OTC market makers should now be able to attract orders typically routed to exchange specialists by disseminating a superior quote in all listed securities, not just Rule 19c–3 securities. In addition, the expansion of the ITS/CAES linkage should allow exchange specialists to attract orders held by OTC market makers in non-Rule 19c–3 securities. The Commission believes that the proposed amendment

[113] *See* Autoquote Order, *supra* note 97. Currently, NASD Rule 6330 permits computer-generated quotations in exchange-listed securities that generate proprietary quotes for 100 shares or more if such quote systems equal or improve either or both sides of the NBBO, add size to the NBBO, or are used to expose a customer's market or marketable limit order for price improvement opportunities. This rule applies only to non-Rule 19c–3 securities, because of the concern that it conflicts with the ITS Plan provision that currently restricts automated quotation tracking systems to 100 shares or less. *See* Section 8(d)(ii) of the Plan.

[114] The Commission notes that on December 3, 1999, the NASD filed a petition for rulemaking to address this issue. The Commission is currently considering that petition. On a miscellaneous issue, one commenter argued that the unlisted trading privilege rule for IPOs (Rule 12f–2(a) under the Exchange Act), which restricts regional exchanges from trading securities subject to an IPO for the first day, should be amended prior to expanding the ITS/CAES linkage. The Commission notes that it received a study on this issue and is publishing a proposing release addressing this issue. Although two commenters argue that Nasdaq stocks should trade over ITS, the Commission believes that this issue is separate from, and not relevant to, whether or not to expand the ITS/CAES linkage to all listed securities. The Commission notes that it recently approved the expansion of Nasdaq UTP-eligible securities from 500 to 1,000 securities. *See* Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999). Finally, the Commission believes that the additional issues raised by the commenters are not directly relevant to the expansion of the ITS/CAES linkage.

[115] SIAC serves as the facilities manager for ITS and is responsible for the operation and maintenance of ITS.

[116] Phone conversation between Tom Demchak, SIAC, Katherine A. England, Assistant Director, Market Regulation, Commission, and Christine Richardson, Attorney, Commission, on November 23, 1998.

[117] *See* 15 U.S.C. 78c(f).

[118] *See, e.g.,* NASD ITS/CAES Letter I; Trimark Letter; Bloomberg Letter; Schwab Letter; and ICI Letter.

[119] *See* 15 U.S.C. 78w(a)(2).

should help to increase efficiency and improve execution quality because investors will be able to access directly the exchange and OTC markets for all listed stocks.

VI. Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with the provisions of the Regulatory Flexibility Act (''Reg. Flex. Act''), to provide a description and estimate of the number of small entities that would be affected by the ITS Plan amendment to expand the ITS/CAES linkage to all listed securities.[120]

Paragraph (c)(1) of Rule 0–10 [121] states that the term ''small business'' or ''small organization,'' when referring to a broker-dealer, means a broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 in its prior fiscal year's audited financial statements or, if not required to file such statements, on the last business day of the preceding fiscal year; and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization. None of the exchanges are included within the definition of ''small entity.'' The Commission estimates that there are 8,300 registered broker-dealers, including approximately 5,000 ''small entities.'' The Commission requested comment on the number of small entities that could be affected by the proposed amendment, but did not receive any comment on the subject.

As discussed more fully in the FRFA, the proposal would directly affect the nine ITS Participants, none of which is a small entity as defined by paragraph (c)(1) of Exchange Act Rule 0–10.[122] However, specialists on the exchange floors who trade ITS-eligible securities, broker-dealers that have access to ITS through terminals located on exchange floors, and registered ITS/CAES market makers who trade in ITS-eligible securities in the third market could be indirectly affected.

To the extent that a specialist or market maker does fall under the definition of ''small entity,'' the Commission believes that the effect is likely to be indirect and positive. Under the current system, an OTC market maker may be trading a security at a better price than an exchange specialist (or vice versa) and the exchange specialist (or OTC market maker) is not able to access directly the better quote for non-Rule 19c–3 securities. Expanding the ITS/CAES linkage to non-Rule 19c–3 securities should enable the OTC market maker and the exchange specialist to access directly those superior priced quotes through ITS, rather than potentially executing an order at an inferior price. Furthermore, the expansion of the ITS/CAES linkage to non-Rule 19c–3 securities also would have an indirect, beneficial effect upon the ability of a broker with ITS access on an exchange floor to achieve best execution of customer orders. Finally, the ITS Plan amendment does not establish any new reporting, recordkeeping or compliance requirements for small entities.

The Commission received no comments on the Initial Regulatory Flexibility Analysis prepared in connection with the Proposing Release. A copy of the FRFA may be obtained by contacting Christine Richardson, Attorney, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

VII. Commission Authority

The Commission is adopting changes to the ITS Plan as set forth below under Section 11A(a)(3)(B) of the Exchange Act, which authorizes the Commission to authorize or require SROs to act jointly with respect to matters as to which they share authority under the Exchange Act in planning, developing, operating, or regulating a national market system.[123]

VIII. Conclusion

The Commission continues to believe that it is desirable for the industry to take the lead in the development, implementation, and enhancement of national market system facilities and in the formulation of solutions to national market system issues. Affected industry participants should have every reasonable opportunity to advance national market system goals without direct Commission intervention. In this instance, however, the Commission believes that change will not occur without Commission intervention. Therefore, the Commission has determined to adopt final amendments to the ITS Plan to provide for the expansion of the ITS/CAES linkage to all listed securities. The Commission finds that the final amendments are consistent with the Act, particularly Section 11A of the Act.

IX. Text of Amendments to the ITS Plan

The Commission hereby adopts amendments to the ITS Plan to provide for the expansion of the ITS/CAES interface to non-Rule 19c–3 securities, pursuant to Rule 11Aa3–2(b)(2) and (c)(1) and the Commission's authority under Sections 2, 3, 6, 11, 11A(a)(3)(B), 15A, 17 and 23 [124] of the Act. Below is the text of the amended ITS Plan.[125] Deleted text is [bracketed] and new language is italicized.

* * * * *

Section 1. Definitions.

(1)—(16) No Change.

(17) ''ITS/CAES Security (stock)'' means a security (stock) (a) that is a System security[, (b) that is a 19c–3 security and (c)] *and (b)* as to which one or more ITS/CAES Market Makers are registered as such with the NASD for the purposes of Applications. When used with reference to a particular ITS/CAES Market Maker, ''ITS/CAES security'' means any such security

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[120] 5 U.S.C. 603(a).

[121] This amendment was proposed under an older, more expansive definition of ''small entity'' and as such is being adopted under the older definition. The Commission however, recently adopted a revised definition of ''small entity.'' *See* Definitions of ''Small Business'' or ''Small Organization'' Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Exchange Act, and the Securities Act of 1933, Exchange Act Release No. 40122(June 24, 1998), 63 FR 35508 (June 30, 1998). The revision, among other things, expanded the affiliation standard applicable to broker-dealers, to exclude from the definition of a small entity many introducing broker-dealers that clear customer transactions through large firms. *See* revised Rule 0–10(i). The Commission notes that, under the revised definition of ''small entity,'' approximately 1,100 of all registered broker-dealers are characterized as ''small.''

[122] 17 CFR 240.0–10(c)(1).

[123] 15 U.S.C. 78k–1(a)(3)(B). This is in addition to the authority granted to the Commission under Section 11(A)(b)(3) to approve national market system facilities in response to an application by SROs. The possible need for commission regulatory compulsion in connection with the development of a national market system where necessary to supplement competitive forces was specifically recognized by the Congress in enacting the 1975 Amendments. For example, the Committee of Conference of both Houses of Congress, in discussing the implementation of a national market system, stated:

It is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed. The conferees expect, however, in those situations where competition may not be sufficient, such as the creation of a composite quotation system or a consolidated transaction reporting system, the Commission will use the power granted to it in [the 1975 Amendments] to act promptly and efficiently to ensure that the essential mechanisms of an integrated secondary training system are put into place as rapidly as possible.

Committee of Conference, Report To Accompany S. 249, H.R. Rep. No. 94–249, 94th Cong., 1st Sess., at 92, reprinted in [1975] U.S. Code Cong. & Ad News 321, 323. *See also* Exchange Act Release No. 16410 (December 7, 1979), at 13–14, 44 FR 72607, 72608–09.

[124] 15 U.S.C. 78b, 78c, 78f, 78k, 78k–1(a)(3)(B), 78o–1, 78q, and 78w(a).

[125] The text reflects the latest unofficial completion of the ITS Plan supplied by the ITSOC, including all previously incorporated amendments up to May 30, 1997.

(stock) as to which the particular ITS/CAES Market Maker is so registered.

(18)–(25) No Change.

[(26) ''19c–3'' security'' means an Eligible Security that is not a ''covered security'' as that term is defined in SEC Rule 19c–3 as in effect on May 1, 1982.]

[(27)]*(26)*

[(27A)]*(26A)*

[(27B)]*(26B)*

[(27C)]*(26C)*

[(27D)]*(26D)*

[(27E)]*(26E)*

[(28)]*(27)*

[(29)]*(28)*

[(30)]*(29)*

[(31)]*(30)*

[(32)]*(31)*

[(33)]*(32)*

[(34)]*(33)*

[(34A)]*(33A)*

[(34B)]*(33B)*

[(35)]*(34)*

[(36)]*(35)*

[(37)]*(36)*

Section 2. No Change.

Section 3. No Change.

Section 4. No Change.

Section 5. The System.

(a) No Change.

(b) General Operation. (i) No Change.

(ii) Selection of System Securities. The System is designed to accommodate trading in any Eligible Security in the case of any ITS/CAES Market Maker, trading in one or more ITS/CAES securities in which he is registered as such with the NASD for the purposes of the Applications. The particular securities that may be traded through the System at any time (''System securities'') shall be selected by the Operating Committee. The Operating Committee may add or delete System securities as it deems appropriate and may delay the commencement of trading in any Eligible Security if capacity or other operational considerations shall require such delay. [ITS/CAES securities may be traded by Exchange Participants and ITS/CAES Market Makers as provided in the ITS Plan and other System securities may be traded by Exchange Participants as provided in the ITS Plan.]

(c)–(d) No Change.

Section 6. No Change.

Section 7. No Change.

Section 8. No Change.

Section 9. No Change.

Section 10. No Change.

Section 11. No Change.

* * * * *

Dated: December 9, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–32555 Filed 12–15–99; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 20, 1999.

A closed meeting will be held on Tuesday, December 21, 1999, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matters of the closed meeting scheduled for Tuesday, December 21, 1999, will be: Institution and settlement of injunctive actions; and Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in the Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: December 13, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–32684 Filed 12–13–99; 4:34 pm]

BILLING CODE 5010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42213; File No. SR–NASD–99–71]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. To Delay Date of Commencement for Providing Nasdaq-Generated Best Bid/Offer Inside Quotation From 4:00 p.m. to 6:30 p.m. Eastern Time

December 9, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 1999, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On December 6, 1999, Nasdaq filed an amendment to the proposed rule change.[3] Nasdaq has designated this proposal as one which does not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition under section 19(b)(3)(A) of the Act[4] and rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to defer, until February 7, 2000, the date by which Nasdaq will commence providing an Inside Quote. Nasdaq had originally proposed, and received Commission approval, to provide an Inside Quote commencing on December 6, 1999.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* December 6, 1999 letter from Thomas Moran, Esquire, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC (''Amendment No. 1''). In Amendment No. 1, Nasdaq states that it received a letter from the Investment Company Institute (''ICI'') in which the ICI indicated its support of a delay in the implementation of a Nasdaq-generated best bid/offer inside quotation (''Inside Quote'') until February 7, 2000.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

Nasdaq's commitment to provide an Inside Quote after the regular close of the Nasdaq market between the hours of 4:00 p.m. and 6:30 p.m. Eastern Time is part of a currently-operating pilot program extending the availability of several Nasdaq services and facilities until 6:30 p.m. Eastern Time. That pilot was approved by the Commission,[6] and commenced on October 25, 1999. Nasdaq has designated this proposal as non-controversial, and thus eligible for immediate effectiveness pursuant to section 19(b)(3)(A) of the Act[7] and rule 19b–4(f)(6) thereunder.[8] Nasdaq requests that the Commission waive both the 30-day pre-operative waiting period and the five-day pre-filing notice requirement contained in rule 19b–4(f)(6)(iii).[9]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 13, 1999, the Commission approved a pilot program expanding the operating hours of certain Nasdaq services and facilities until 6:30 p.m. Eastern Time.[10] The pilot commenced on October 25, 1999, and expanded, until 6:30 p.m. Eastern Time, the operation times of the following services: (1) SelectNet Service (''SelectNet''); (2) Automated Confirmation Transaction Service (''ACT''), (3) Nasdaq Quotation Dissemination Service (''NQDS''); and (4) Nasdaq Trade Dissemination Service (''NTDS'').

Nasdaq and the Commission received expressions of concern from the mutual fund industry regarding its ability to modify its internal automated computer systems to calculate in a timely fashion the value of securities held in specific mutual funds if Nasdaq continued to update an Inside Quote after 4:00 p.m. Eastern Time. In response to these concerns, the NASD has decided to defer the implementation of an Inside Quote from its currently-scheduled start date of December 6, 1999, to February 7, 2000.

Nasdaq believes that such deferral will allow mutual fund firms a reasonable opportunity to enhance their internal systems prior to that date. Nasdaq also believes that such deferral strikes a balance between the investor's need for enhanced quote and trade collection and dissemination after the regular close of the Nasdaq market, and technological constraints faced by the mutual fund industry concerning its ability to price accurately the securities held in those funds.

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act,[11] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited. Nasdaq received one written comment on its proposal from the ICI, in which the ICI indicated its support of a delay in the implementation of an Inside Quote until February 7, 2000.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder[13] because the proposal (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that Nasdaq has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, or such shorter time as designated by the Commission.[14]

Nasdaq has requested that the Commission waive the five-day pre-filing notice requirement contained in Rule 19b–4(f)(6)(iii),[15] and accelerate the operative date.

The Commission finds that it is appropriate to waive the five-day pre-filing notice requirement, and to designate the proposal, as amended, to become operative today, because such designation is consistent with the protection of investors and the public interest. Specifically, the Commission believe that the proposal furthers the goals of the national market system as reflected in Sections 11A(a)(1)(C) (iii) and (iv) of the Act.[16] Congress found in those provisions that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing investors' orders in the best market. The proposal will help to assure the availability of information with respect to quotations and transactions because it will allow the mutual fund industry a reasonable amount of time to adjust its internal systems, thereby helping to ensure that the systems operate accurately, efficiently, and without disruption.

The Commission also finds that the proposed rule change is consistent with Section 15A of the Act[17] in general, and Section 15A(b)(6) of the Act[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

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[6] *See* Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999) (NASD–SR–99–57).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] *See* Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999) (NASD–SR–99–57).

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 15 U.S.C. 78k–1(a)(1)(C) (iii) and (iv).

[17] 15 U.S.C. 78o–3.

[18] 15 U.S.C. 78o–3(b)(6).

and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal accomplishes these objectives by allowing the mutual fund industry an opportunity to reconfigure its internal systems, thereby helping to ensure a seamless transition to a time when Nasdaq provides an Inside Quote from 4:00 p.m. until 6:30 p.m. Eastern Time.

For these reasons, the Commission finds that designation of the proposal to become operative today is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate this rule change if it appears to the Commission that such action is necessary or appropriate in the public interest or for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–99–71, and should be submitted by January 6, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–32256 Filed 12–15–99; 8:45 am]

BILLING CODE 8010–01–M

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42214; File No. SR–NASD–99–61]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Amending Its Rules for the Listing of Additional Shares

December 9, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 19, 1999, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to modify the notification requirements under the Nasdaq's Listing of Additional Shares (''LAS'') Program and to make conforming changes to procedures for calculating the related LAS fee. Below is the text of the proposed rule change. Proposed new language appears in italic; proposed deletions are bracketed.

* * * * *

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a) No change.

(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(16) No change.

(17) The issuer shall be required to [file on a form designated by Nasdaq notification of the creation of a stock option, employee stock purchase or other stock remuneration plan or the issuance of additional shares of any class of securities included in Nasdaq, except for the issuance of additional shares under a stock option, employee stock purchase or other stock remuneration plan, no later than 15 calendar days prior to the creation of the plan or the issuance of additional shares.] *notify Nasdaq on the appropriate form no later than 15 calender days prior to:*

(A) establishing a stock option plan, purchase plan or other arrangement pursuant to which stock may be acquired by officers or directors without shareholder approval; or

(B) issuing securities that may potentially result in a change of control of the issuer; or

(C) issuing any common stock or security convertible into common stock in connection with the acquisition of the stock or assets of another company, if any officer or director or substantial shareholder of the issuer has a 5% or greater interest (or if such persons collectively have a 10% or greater interest) in the company to be acquired or in the consideration to be paid; or

(D) entering into a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10% of either the total shares outstanding or the voting power outstanding on a pre-transaction basis.

(18)–(28) No change.

(d) No change.

4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change.

(e) In addition to the requirements contained in paragraph (a), (b) or (c), and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(14) No change.

(15) The issuer shall be required to [file on a form designated by Nasdaq notification of creation of a stock option, employee stock purchase or other stock remuneration plan or the issuance of additional shares of any class of securities included in Nasdaq, except for the issuance of additional shares under a stock option, employee stock purchase or other stock remuneration plan, no later than 15 calendar days prior to the creation of the plan or the issuance of additional shares.] *notify Nasdaq on the appropriate form no later than 15 calendar days prior to:*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(A) establishing a stock option plan, purchase plan or other arrangement pursuant to which stock may be acquired by officers or directors without shareholder approval; or

(B) issuing securities that may potentially result in a change of control of the issuer; or

(C) issuing any common stock or security convertible into common stock in connection with the acquisition of the stock or assets of another company, if any officer or director or substantial shareholder of the issuer has a 5% or greater interest (or if such persons collectively have a 10% or greater interest) in the company to be acquired or in the consideration to be paid; or

(D) entering into a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10% of either the total shares outstanding or the voting power outstanding on a pre-transaction basis.

(16)–(24) No change.

(f) No change.

4510. The Nasdaq National Market [3]

(a) Entry fee

No change.

(b) Additional Shares

(1) The issuer of each class of security that is a domestic issue which is listed in the Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security.

(2) The fee in connection with additional shares shall be $2,000 or $.01 per additional share, whichever is higher, up to a maximum of $17,500 per [notification] *quarter* and an annual maximum of $35,000 per issuer.

(3) [Calculation of the fee will be] *The fee will be calculated and assessed quarterly* based on the [issuer notification to Nasdaq of the issuance of additional shares of securities as required under provisions of Rule 4310(c)(17)] *issuer's total shares outstanding as reported on its periodic reports filed with the SEC.*

(c)–(d) No change.

4520. The Nasdaq SmallCap Market

(a) Entry Fee

No change.

(b) Additional Shares

(1) The issuer of each class of security that is a domestic issue which is listed in The Nasdaq SmallCap Market shall pay to The Nasdaq Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security.

(2) The fee in connection with additional shares shall be $2,000 or $.01 per additional share, whichever is higher, up to a maximum of $17,500 per [notification] *quarter* and an annual maximum of $35,000 per issuer.

(3) [Calculation of the fee will be] *The fee will be calculated and assessed quarterly* based on [issuer notification to the Association of the issuance of additional shares of securities as required under provisions of Rule 4310(c)(17).] *the issuer's total shares outstanding as reported on its periodic reports filed with the SEC.*

(c)–(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The LAS Program has been employed by Nasdaq staff to monitor compliance by issuers with Nasdaq listing rules governing shareholder approval, public interest concerns, reverse mergers, and voting rights. Since 1992, all Nasdaq issuers have been required to file a notification upon the creation of a stock option, employee stock purchase, or other stock remuneration plan, or upon the issuance of additional shares of any class of securities included in Nasdaq.[4] The NASD has reviewed the current LAS Program and is filing this proposed rule change to improve efficiency and to eliminate certain administrative burdens for Nasdaq staff and issuers arising from the requirements of the current LAS program.

The NASD believes that the current LAS Program is difficult and unduly time-consuming to administer. Specifically, the timing of the notification required by the current LAS Program varies depending on the nature of the specific action undertaken by an issuer and, as a result, has proved confusing to issuers and their counsel. This in turn has led to delays in filing or failures to comply with LAS Program notification and fee requirements. Furthermore, the NASD believes that, under the current LAS Program, it is difficult for an issuer to calculate the number of shares to be reported for LAS purposes because in order to do so an issuer must track the number of shares approved by Nasdaq according to current LAS criteria (a number not otherwise monitored by issuers and which has often proved difficult for Nasdaq staff and issuers to reconcile) instead of the total number of shares outstanding reported in periodic reports required to be filed with the Commission.

The NASD proposes to make the following changes to the current LAS Program:

1. The billing aspect of the LAS Program would be separated from required compliance reviews. Under the proposal, issuers will be billed each quarter for any increase in their total shares outstanding (''TSO'') as reported in publicly available periodic reports required to be filed with the Commission.[5] This modification would ensure that the LAS Program is administered based on a publicly disclosed TSO number rather than on the number of approved shares currently calculated by Nasdaq according to existing LAS criteria. This modification would thereby eliminate the current procedure of establishing a baseline number of shares upon an issuer's initial listing as well as the

[3] The NASD has filed a proposed rule change with the Commission to revise the fees it charges issuers listing additional shares on the Nasdaq National Market or Nasdaq SmallCap Market. Under the proposed rule change, the NASD seeks to modify its Rules 4510 and 4520 as they relate to the calculation of LAS fees. The language of Rules 4510 and 4520 as it appears here has been marked to show changes to the language published for comment in SR–NASD–99–40. *See* Commission File No. SR–NASD–99–40 and Securities Exchange Act Release No. 42108 (Nov. 4, 1999), 64 FR 61678 (Nov. 12, 1999).

[4] *See* NASD Rules 4310(c)(17) and 4320(e)(15). The Commission issued an order granting permanent approval to the LAS Program in 1993. *See* Securities Exchange Act Release No. 31859 (February 16, 1993), 58 FR 9584 (Feb. 22, 1993), (SR–NASD–92–27).

[5] Billing for all issuers would be conducted on a calendar year basis and LAS fees would then be assessed on any increase in the TSO number set forth in an issuer's most recent periodic report filed with the Commission pursuant to Section 13 or 15(d) of the Act. Telephone conversation between Arnold Golub, Senior Attorney, Office of the General Counsel, Nasdaq, and Matthew Boesch, Paralegal, Division of Market Regulation Commission, on December 6, 1999.

resultant confusion surrounding when transactions resulting in new shares being issued must be reported to Nasdaq. This modification would also permit Nasdaq staff to rely on the publicly reported TSO when performing reconciliations.

2. The process of reporting to Nasdaq would be streamlined by confining issuers' notification requirements to those transactions implicated by the Nasdaq's corporate governance compliance requirements.[6] Consequently, notification would not be required, unless:

(a) a stock option plan, purchase plan or other arrangement is established without shareholder approval; or

(b) the issuer enters into a transaction that may result in a change of control; or

(c) the issuer issues common stock or a security convertible into common stock in connection with the acquisition of the stock or assets of another company, if any officer or director or substantial shareholder of the issuer has an interest of 5% or more (or if a group of such persons collectively holds an interest of 10% or more) in the company to be acquired or in the consideration to be paid; or

(d) the issuer enters into a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) representing more than 10% of either the total shares outstanding or voting power outstanding on a pre-transaction basis.

Under the proposed rule change, all LAS notifications would be required to be filed 15 calendar days prior to issuance (except for stock splits and dividends which are required to be filed 10 calendar days prior to the record date pursuant to SEC Rule 10b–17[7]). This requirement would eliminate the numerous timing requirements under the current LAS Program and enable Nasdaq staff to consider the most current information when evaluating such transactions.

The NASD believes that these proposed changes to the LAS Program, if approved, will improve Nasdaq's administration of the LAS Program by focusing on the TSO reported publicly in periodic reports required to be filed with the Commission instead of relying on a calculated number of approved shares. In addition, the NASD believes that the proposed changes will streamline the filing requirements imposed on issuers by reducing the filing burden to the extent that no filings will be required for issuances that do not raise corporate governance concerns, while simultaneously streamlining the notification filing time frame. Finally, the NASD believes that the proposed changes will allow Nasdaq staff to focus on larger and more complex transactions in its review of issuers' compliance with corporate governance rules and other continued listing standards by eliminating the current requirement that issuers file information about even those issuances that do not generally raise these concerns in these respects.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5) and (6)[8] of the Act. The proposed rule change is consistent with Section 15A(b)(5) as it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers using the Nasdaq system. The proposed rule change will alter the frequency with which Nasdaq collects LAS fees from issuers by billing these quarterly rather than per transaction; the change will also simplify the computation of fees owed by issuers by basing such fees on changes in the TSO rather than the number of shares approved for issuance according to existing Nasdaq procedures. The proposed rule change is consistent with Section 15A(b)(6) as it is designed to promote just and equitable principles of trade and does not permit unfair discrimination between customers, issuers, brokers or dealers. As noted above, the proposed rule change is designed to reduce the number of LAS filings required of issuers and to thereby allow Nasdaq staff more time to review those share issuances that may be in contravention of Nasdaq corporate governance rules or listing standards.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Pubic Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–99–61 and should be submitted by January 6, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–32557 Filed 12–15–99; 8:45 am]

BILLING CODE 8010–01–M

[6] *See* NASD Rules 4310(c)(25) and 4320(e)(21).

[7] 17 CFR 240.10b–17.

[8] 15 U.S.C. 78o–3(b)(5) and (6).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3176]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Dead Sea Scrolls''

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''The Dead Sea Scrolls,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Field Museum, Chicago, Illinois, from on or about March 10, 2000 to on or about June 11, 2000, is in the national interest.

The action of the United States in this matter and the immunity based on the application of the provisions of law involved does not imply any view of the United States concerning the ownership of the exhibit objects. Further, it is not based upon and does not represent any change in the position of the United States regarding the status of Jerusalem or the territories occupied by Israel since 1967. See Letter of September 22, 1978, of President Jimmy Carter, attached to the Camp David Accords, reprinted in 78 Dept. of State Bulletin 11 (October 1978); Statement of September 1, 1982, of President Ronald Reagan, reprinted in 82 Dept. of State Bulletin 23 (September 1982).

Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Jacqueline H. Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5078). The address is U.S. Department of State, SA–44; 301–4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: December 8, 1999.

William B. Bader,

Assistant Secretary of State, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 99–32662 Filed 12–15–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3177]

Public Diplomacy and Public Affairs; Book Donation/Information Technology Services Program

NOTICE: Request for proposals.

SUMMARY: The *Office of Geographic Liaison (IIP/G)* announces an open competition for *a book donation/ information technology services program.* Private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3) may submit proposals to: implement a book donation program in Eastern Europe and the NIS; build upon programs outside the former Communist bloc in transition around the world, particularly in Africa; provide educational materials for the victims of civil strife as requested by the Department; and make available Internet and Information Technology training in conjunction with the provision of books.

Program Information: Overview: The grant requires the successful applicant to match federal with support from non-governmental sources such as: Foundations; professional, ethnic, and fraternal organizations and individuals; provide primarily new books, CD–ROMS, educational videocassettes and other educational materials (with no medical titles to be sent under the grant and no more than 15% of the total volumes shipped having been used); have in place ongoing, sustainable relationships with NGO partners in the countries covered under the grant to ensure effective distribution and tracking of donated materials; send booklists in advance to the overseas partners for selection to ensure that only requested materials are shipped under the grant; employ electronic mail and the Internet in the provision of booklists and the dissemination of information about the program; and (if necessary) train partners in the use of same; respond to the differing and changing needs of partners by making available materials in wide ranges of subjects and educational levels; plan and host Partner meetings in the U.S. and abroad as requested. The grantee must have demonstrable experience assessing book donation and information technology training programs abroad.

Guidelines: The grant is expected to commence January 1, 2000 and end December 31, 2000.

Budget Guidelines: Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $200,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the IIP/G3434 concerning this RFP should reference the above title and number *IIP/G–1.*

FOR FURTHER INFORMATION CONTACT: The Office of Geographical Liaison, *IIP/G, 4th Floor* U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547.The solicitation package may be obtained by calling: 202 619 5876, requesting by fax at 202 619 4879 *or by contacting the program officer Ron Ungaro at rungaro@usia.gov.* The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Program Officer Ron Ungaro on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Department staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the following website at http://e.usia.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at IIP/G Office of Geographic Liaison by 5 p.m. Washington, DC time on January 9, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and *10* copies of the application should be sent to: U.S. Department of State, Office of Geographic Liaison, Attention: Patricia Tyson, Ref.: *IIP/G–1*, 4th Floor South, 301 4th Street, SW, Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with IIP/G. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

IIP/G therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

IIP/G will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be forwarded to panels Department officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Coordinator for International Information Programs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Department's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Office's mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Department's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past grants as determined by Department Grant Staff. The Department will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Department support) ensuring that Department supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions. Proposals must include documented sources of matching funds prescribed in the announcement.

12. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Department representative. Explanatory information provided by the Department that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Department reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal department procedures.

Dated: December 7, 1999.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 99–32663 Filed 12–15–99; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 2000 Apportionments, Allocations and Program Information; Notice of Changes and Corrections

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice; Changes and Corrections.

SUPPLEMENTARY INFORMATION: This notice announces changes to program allocations previously published in the Department of Transportation, Federal Transit Administration Notice entitled ''FTA Fiscal Year 2000 Apportionments, Allocations and Program Information; Notice,'' dated October 28, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia Levine, Director, Office of Resource Management and State Programs, at (202) 366–2053.

I. Changes to FTA FY 2000 New Starts and Bus Allocations

On November 29, 1999, President Clinton signed into law the Fiscal Year (FY) 2000 Consolidated Appropriations Act (Pub. L. 106–113). One provision of the Act provides for an across the board, Government-wide reduction in spending of the discretionary budget authority for FY 2000. A second provision, makes available $6 million from the Mass Transit Account of the Highway Trust Fund for new transit projects.

The FY 2000 Consolidated Appropriations Act requires a government-wide reduction of 0.38 percent. The actual amount of reductions may vary among programs. The Federal transit share of this reduction totals $17.6 million. Since the formula programs provide the primary sources of Federal transit assistance, are distributed to all states and urbanized areas, and have already been used by grantees to develop plans for FY 2000, no reductions will be assessed against these programs. No reduction is being assessed against the Job Access and Reverse Commute program so as not to hinder progress in welfare reform, a national priority. Thus, the congressionally mandated $17.6 million reduction is being taken from the New Starts and Bus programs under the Capital Investment Grants account and the National Research program under the Transit Planning and Research account resulting in a net reduction of 1.15 percent in each of these accounts. FTA published a **Federal Register** Notice dated October 28, 1999 (64 FR 58211–58263) which included the allocations for projects under these programs as contained in the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2000 (Pub. L. 106–69). The revised allocations for the New Starts Program (Table 8) and the Bus Program (Table 9) are contained in amendments to Tables 8 and 9 which may be found on the FTA website at: [http://www.fta.dot.gov/office/program/aa.htm]. An additional table displays the project specific adjustments made under the National Research program.

The new projects specified under the FY 2000 Consolidated Appropriations Act are listed below and in the Table 9 amendment. These projects were not subject to the 1.15 percent reduction, but three-fourths percent for oversight has been deducted, in accordance with Section 5327 of 49 U.S.C.

State and project	Allocation
AK: Anchorage, Alaska 2001 Special Olympics Winter Games buses and bus facilities	$2,481,250
CA: Santa, Clarita, California bus maintenance facility	744,675
MN: Twin Cities, Minnesota metropolitan buses and bus facilities	1,736,875
NE: Lincoln, Nebraska bus maintenance facility	992,500
Total Allocation	5,955,000

II. Corrections

FTA Correction

A. In TABLE 10, Federal Transit Administration, FY 2000 JOB ACCESS AND REVERSE COMMUTE PROGRAM ALLOCATIONS, on page 58258, the State designation for the ''Central Kenai peninsula public transportation task force,'' project was incorrectly identified as ''GA'' (Georgia). The correct State designation is ''AK'' (Alaska).

B. In Table 9 on page 58247–58248:

1. The figure for ''Cedar Rapids intermodal facility'' project amended to read $3,340,000—a reduction of $160,000;

2. Added new project: ''Iowa—Mason City, bus facility'' for $160,000;

3. Changed project description for ''Colorado Association of Transit Agencies'' project to ''Colorado buses and bus facilities'';

4. Changed project description for ''Kansas Public Transit Association buses and bus facilities'' project to ''Kansas buses and bus facilities''.

Issued on: December 9, 1999.

Nuria I. Fernandez,

Acting Administrator.

[FR Doc. 99–32463 Filed 12–15–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4957; Notice 12]

Notice of Extension of Existing Information Collection

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Request for OMB approval and public comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Research and Special Programs Administration (RSPA) published a notice seeking public comments on a proposed renewal of an information collection for the Alcohol Misuse Prevention Program for Pipeline Operators (64 FR 54065, October 5, 1999). No comments were received. This information collection requires gas pipelines, hazardous liquid pipelines, and liquefied natural gas (LNG) operators to document their alcohol misuse prevention programs. The public has an additional 30 days to comment on the extension of this information collection requirement.

DATES: Comments on this notice must be received January 18, 2000.

ADDRESSES: Comments should identify the docket number of this notice, RSPA–98–4957, and be mailed directly to the Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, Attn: RSPA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–6205 or by electronic mail at marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Alcohol Misuse Prevention Program.

OMB Number: 2137–0587.

Type of Request: Extension of an existing information collection.

Abstract: Alcohol misuse has been identified by the Federal Government as a significant danger to safety in the United States, and it is reasonable to assume that the problem exists in the gas pipeline, hazardous liquid pipeline, and liquefied natural gas (LNG) industries. The potential harmful effects of alcohol misuse on safe pipeline and LNG facility operations warrant the comprehensive alcohol misuse testing regulation imposed on the pipeline industry. The regulations at 49 CFR part 199 require information collection for an alcohol misuse prevention plan and associated testing records.

Respondents: Gas pipelines, hazardous liquid pipelines, and liquefied natural gas (LNG) facility operators.

Estimate of Burden: 6 hours per operator.

Estimated Number of Responses per Respondent: 1.

Estimated Total Burden: 10,278 hours.

Estimated Number of Respondents: 1,713.

Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590 from 9 a.m. to 5 p.m., Monday through Friday except Federal holidays. They also can be viewed over the Internet at *http://dms.dot.gov.*

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on December 13, 1999.

Richard Huriaux,

Manager, Program Development.

[FR Doc. 99–32594 Filed 12–15–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 13–20]

Delegation of Authority for Administering the District of Columbia Retirement Programs

Dated: December 3, 1999.

1. Purpose

The National Capital Revitalization and Self-Government Improvement Act of 1997, Title XI of Pub. L. 105–33 (111 Stat. 251, 712), as amended, (the ''Act''), transferred to the Secretary of the Treasury certain responsibilities with respect to the retirement programs for District of Columbia police officers, firefighters, teachers, and judges (the ''Retirement Programs''). The purposes of this Directive are to: (a) establish the Office of DC Pensions; and (b) delegate authority to the Director, Office of DC Pensions, to carry out Treasury's responsibilities with respect to the Retirement Programs.

2. Delegation

a. The Office of DC Pensions is hereby established within the Departmental Offices. The Office of DC Pensions shall be headed by the Director. The Director reports to the Assistant Secretary for Management and Chief Financial Officer. The Director is responsible for establishing operating policies and guidelines and carrying out Treasury's responsibilities with respect to the Retirement Programs.

b. Pursuant to Treasury Order (TO) 102–23, this Directive delegates to the Director, Office of DC Pensions, all duties, powers, rights, and obligations vested by TO 102–23 in the Assistant Secretary for Management and Chief Financial Officer with respect to the Retirement Programs, subject to the following conditions.

(1) If, in the judgment of the Director, a matter has the potential for significant public interest, involves unusual or extraordinary spending commitments, or otherwise requires consideration by policy level Treasury officials, the Director shall consult with the Assistant Secretary for Management and Chief Financial Officer before taking action with respect to that matter.

(2) The Director, in issuing regulations and in taking administrative actions (such as personnel, procurement and financial management functions), shall act in conformity with Treasury Orders and Directives, and Departmental Offices Directives, otherwise applicable to these functions.

a. The Director, Office of DC Pensions, shall be a designee of the Secretary for purposes of Section 11003(15) of the Act, and for any similar statutory provision with respect to the administration of the Retirement Programs. Any person or entity receiving authority under paragraph 3. below also may be a designee of the Secretary for these purposes.

3. Redelegation

The authority granted to the Director, Office of DC Pensions, by this Directive, may be redelegated, and, to the extent authorized by the Act, may be conferred upon a person or entity outside the Department, except that the authority to issue regulations with respect to the Retirement Programs as authorized by the Act may not be redelegated or conferred upon another person or entity.

4. Authorities

a. TO 102–23, ''Delegation of Authority With Respect to Retirement Programs for District of Columbia Employees,'' dated June 23, 1999.

b. The National Capital Revitalization and Self-Government Improvement Act of 1997, Title XI of Pub. L. 105–33 (111 Stat. 251, 712), as amended.

5. Cancellation

a. Treasury Directive 13–20, ''Delegation of Responsibilities Relating to the Transfer of the District of Columbia Pension Systems,'' dated May 7, 1998, is superseded.

b. Memorandum from the Assistant Secretary for Management and Chief Financial Officer to the Treasury Manager, DC Pensions Project, ''Delegation of Authority for the DC Pensions Project,'' dated June 25, 1999, is canceled.

6. Office of Primary Interest

Office of DC Pensions, Office of the Assistant Secretary for Management and Chief Financial Officer.

Nancy Killefer,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 99–32552 Filed 12–15–99; 8:45 am]

BILLING CODE 4810–25–P

Corrections

Federal Register

Vol. 64, No. 241

Thursday, December 16, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Regulatory Commission

[Docket No. RP00–124–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

Correction

In notice document 99–32125, appearing on page 69520, in the issue of Monday, December 13, 1999, the docket line should appear as set forth above.

[FR Doc. C9–32125 Filed 12–15–99; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 144

[FRL-6482-2]

RIN 2040-AB83

Revisions to the Underground Injection Control Regulations for Class V Injection Wells

Correction

In rule document 99–31048, beginning on page 68546, in the issue of Tuesday, December 7, 1999, make the following correction:

§ 144.88 [Corrected]

On page 68571, in § 144.88(a)(1), in the table, in the third column, in the first line, ''April 5, 2000'' should read ''April 5, 2005''.

[FR Doc. C9–31048 Filed 12–15–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1309

[DEA NUMBER 185-P]

RIN 1117-AA50

Chemical Registration and Reregistration Fees

Correction

In proposed rule document 99–30960 beginning on page 67216 in the issue of Wednesday, December 1, 1999, make the following corrections:

1. On page 67217, in the first column, in the first paragraph, in the second to last line ''the'' should read ''ten''.

2. On page 67218, in the table, the second and third entries ''.043'' and ''.064'' should read ''0.43'' and ''0.64'' respectively.

3. On page 67220, in the first column, under *Regulatory Flexibility Act*, nine lines from the bottom, ''$447'' should read ''$477''.

[FR Doc. C9–30960 Filed 12–15–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Thursday
December 16, 1999

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; One-Hour Ozone Attainment Demonstration for Various State's Ozone Nonattainment Areas; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6501–7]

Notice of Proposed Actions on Attainment Demonstrations for the One-Hour National Ambient Air Quality Standards for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed actions.

SUMMARY: This document announces that, elsewhere in today's **Federal Register**, EPA is proposing individually to approve or conditionally approve, and, in the alternative, to disapprove attainment demonstration State implementation plans (SIPs or plans) for ten areas in the eastern United States that are not in attainment of the 1-hour health and welfare-based national ambient air quality standards (NAAQS or standard) for ground-level ozone. These areas are designated as nonattainment for the ozone standard. The SIP demonstrations were prepared and forwarded to EPA from States and the District of Columbia (D.C.) where the nonattainment areas are located. They were submitted to meet the requirements of Title I of the Clean Air Act (CAA). The nonattainment areas on which EPA is proposing action are listed in the **SUPPLEMENTARY INFORMATION** section according to the EPA Regional Office in which they are located.

FOR FURTHER INFORMATION CONTACT: General questions concerning this document should be directed to Sharon Reinders, (919) 541–5284. Your comments or questions about a specific area should be directed to the EPA Regional Office representative identified in the **SUPPLEMENTARY** section. Information on how to contact the Regional Office appears in the document for each individual area.

SUPPLEMENTARY INFORMATION: The nonattainment areas on which EPA is proposing action are listed in the following according to the EPA Regional Office in which they are located:

Region I—Greater Connecticut (CT)

The Connecticut portion of the New York-Northern New Jersey-Long Island area Springfield (Western Massachusetts) (MA).

Region II—New York-Northern New Jersey-Long Island (NY–NJ–CT)

The New Jersey portion of the Philadelphia-Wilmington-Trenton area.

Region III—Baltimore (MD)

Philadelphia-Wilmington-Trenton (PA–NJ–DE–MD) Metropolitan Washington (DC–MD–VA).

Region IV—Atlanta (GA)

Region V—Milwaukee-Racine (WI)

Chicago-Gary-Lake County (IL–IN).

Region VI—Houston-Galveston-Brazoria (TX)

Your comments or questions about a specific area should be directed to the EPA Regional Office representative identified as follows:

Regional Offices

Region I—Richard Burkhart (617) 918–1664,
Region II—Paul Truchan (212) 637–4249 or Kirk Wieber (212) 637–3381,
Region III—Dave Arnold (215) 814–2172,
Region IV—Scott Martin (404) 562–9036,
Region V—Edward Doty (312) 886–6057 or Michael Leslie (312) 353–6680,
Region VI—Guy Donaldson (214) 665–7242.

The CAA and several guidance memoranda issued earlier by EPA provide relevant background information for the specific rulemaking proposals appearing in today's **Federal Register**. The important CAA sections and EPA guidance are described below and in the documents on individual areas elsewhere in today's **Federal Register**.

In 1990, Congress amended the CAA to address, among other things, continued nonattainment of the ground-level ozone NAAQS. Public Law 101–549, 104 Stat. 2399 codified at 42 U.S.C., 7401–7671q (1991). The CAA, as amended, divides 1-hour ozone nonattainment areas into, in general, five classifications based on ozone air quality concentrations (marginal, moderate, serious, severe, and extreme nonattainment); and establishes specific requirements, including SIP submittal and attainment dates, for each classification. CAA sections 107(d)(1)(C) and (4), and 181.

The CAA also requires States to submit a SIP to provide for attainment of the 1-hour ozone standard which includes a demonstration of attainment (including air quality modeling) for the nonattainment area, as well as emission control measures needed to attain by the attainment date. CAA section 182(c)(2)(A) and (d). In addition, the CAA requires States to submit a SIP for serious and severe nonattainment areas which provide for emissions reductions of 9 percent from their baseline emissions for each 3-year period from 1997 until the area's attainment date (9 percent rate-of-progress SIPs). The CAA section 182(c)(2)(B) and (d) establishes November 15, 1994, as the required date for these SIP submittals.

Notwithstanding significant efforts by the States, EPA determined that the States were not able to meet the November 15, 1994 deadline for the required SIP submissions because of the complexity of the ozone problem and the recognition that intrastate emissions reductions alone would not be sufficient to reach attainment. On March 2, 1995, EPA Assistant Administrator Mary D. Nichols sent a memorandum to EPA Regional Administrators indicating that many States had been unable to adopt and submit attainment and 9 percent rate of progress SIPs within the deadlines prescribed by the CAA due to interstate ozone transport beyond their control. 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).[1] After a comprehensive study of air pollution transport in the eastern United States, OTAG concluded that transport of ozone and its precursors is significant and should be reduced regionally to enable States in the eastern half of the country to attain the ozone NAAQS. To allow time for the OTAG study to be addressed in the individual nonattainment area SIPs, EPA provided until April 1998 to submit certain portions of the attainment demonstration and 9 percent rate-of-progress SIPs. The States generally submitted the SIPs between April and October 1998; some States are still submitting additional revisions as described in the individual proposed rulemaking actions.

Six environmental organizations have filed a complaint in U.S. District Court regarding EPA's failure to promulgate a Federal implementation plan (FIP) for each of these areas in the absence of fully approved attainment demonstrations for the areas. In response to that lawsuit, EPA has entered into a consent decree to settle these claims. The consent decree provides a framework for further action regarding the ozone attainment demonstrations for these areas and establishes dates for future EPA

[1] Letter from Mary A. Gade, Director, State of Illinois Environmental Protection Agency to Environmental Commissioners of States (ECOS) Member, dated April 13, 1995.

rulemaking action. In particular, the consent decree establishes dates by which EPA is to determine the adequacy of the motor vehicle emission budgets associated with the attainment demonstrations for the areas and deadlines by which EPA is to promulgate FIPs for areas for which it has not approved attainment demonstration and 9 percent rate-of-progress SIPs. (A copy of the consent decree is being placed in the dockets for the proposals regarding the attainment demonstrations.) The consent decree, which is being lodged with the United States District Court for the District of Columbia, is still subject to the public notice and comment provisions of section 113(g) of the CAA. (A document regarding the section 113(g) process for the consent decree will be published separately in the **Federal Register**.)

Consistent with the dates in the consent decree, EPA is moving forward in a coordinated fashion to take action on the attainment plans for each of the 10 areas identified above. The EPA's proposals on the attainment plans are a critical next step in ensuring that each of these areas has in place a complete plan for achieving air quality meeting the 1-hour ozone standard. The EPA intends to take final action on elements of each of these plans during the next year.

The EPA's actions today reflect consistent application of EPA policies on motor vehicle emission budgets, credits for interstate nitrogen oxide reductions, and the need for additional emissions reductions, as well as other issues. These policies are discussed in detail in the documents for each area which appear elsewhere in today's **Federal Register**. The application of these policies to the plans for individual areas is discussed in the individual documents for each area.

Dated: December 1, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–31708 Filed 12–15–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA069–7205:FRL–6501–8]

Approval and Promulgation of Implementation Plans; Massachusetts; One-Hour Ozone Attainment Demonstration for the Springfield (Western Massachusetts) Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the ground-level one-hour ozone attainment demonstration State Implementation Plan (SIP) for the Springfield (Western Massachusetts) ozone nonattainment area submitted by the then Commissioner of the Massachusetts Department of Environmental Protection (MA DEP) on July 27, 1998. We are also proposing to approve an attainment date extension for this area to December 31, 2003, which was requested by the current MA DEP Commissioner on August 13, 1999. We are also proposing, in the alternative, to disapprove this demonstration if Massachusetts does not submit: Revisions to the Massachusetts stage II vapor recovery rule that were committed to in the July 27, 1998 attainment demonstration; and the demonstration described in EPA's supplementary proposed approval of the Massachusetts 15% rate-of-progress plan published in the **Federal Register** on November 30, 1999, requiring Massachusetts to demonstrate that the emission reduction credit it is claiming for its I/M program in the Western Massachusetts attainment demonstration is warranted for the combination of test type and equipment that Massachusetts is implementing.

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

ADDRESSES: Written comments (in duplicate if possible) should be sent to: David B. Conroy at the EPA Region I (New England) Office, One Congress Street, Suite 1100–CAQ, Boston, Massachusetts 02114–2023.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours (9 a.m. to 4 p.m.) at the following addresses: U.S. Environmental Protection Agency, Region 1 (New England), One Congress St., 11th Floor, Boston, Massachusetts, telephone (617) 918–1664, and at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, Massachusetts 02108. Please telephone in advance before visiting.

FOR FURTHER INFORMATION CONTACT: Richard Burkhart, (617) 918–1664.

SUPPLEMENTARY INFORMATION: This document provides background information on attainment demonstration SIPs for the one-hour ozone national ambient air quality standard (NAAQS) and an analysis of the one-hour ozone attainment demonstration SIP submitted by the MA DEP for the Western Massachusetts ozone nonattainment area. This document addresses the following questions:

What is the Basis for the Attainment Demonstration SIP?

What are the Components of a Modeled Attainment Demonstration?

What is the Frame Work for Proposing Action on the Attainment Demonstration SIPs?

What Does EPA Expect to Happen with Respect to the Attainment Demonstration for the Springfield (Western Massachusetts) One-hour Ozone Nonattainment Area?

What are the Relevant Policy and Guidance Documents?

How Does the Massachusetts Submittal Satisfy the Frame Work?

I. Background Information

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

1. CAA Requirements

The Clean Air Act (CAA) requires EPA to establish national ambient air quality standards (NAAQS or standards) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. CAA sections 108 and 109. In 1979, EPA promulgated the one-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 one-hour ozone standard each time an ambient air quality monitor records a one-hour average ozone concentration above 0.124 ppm. An area is violating the standard if, over a consecutive three-year period, more than three exceedances are expected to occur at any one monitor. The CAA, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one-hour ozone standard,

generally based on air quality monitoring data from the three-year period from 1987–1989. CAA section 107(d)(4); 56 FR 56694 (Nov. 6, 1991). The CAA further classified these areas, based on the area's design value, as marginal, moderate, serious, severe or extreme. CAA section 181(a). Marginal areas were suffering the least significant air pollution problems while the areas classified as severe and extreme had the most significant air pollution problems.

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas are required to attain the one-hour standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The Western Massachusetts area is classified as serious and its attainment date is November 15, 1999.

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 one-hour standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year (rate-of-progress or ROP). (In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions.) Today, in this proposed rule, EPA is proposing action on the attainment demonstration SIP submitted by the MA DEP for the Western Massachusetts nonattainment area. EPA has already proposed approval of the State's 9% ROP for the Western Massachusetts area (64 FR 51943; September 27, 1999 and 64 FR 66829, November 30, 1999). In addition, elsewhere in this **Federal Register**, EPA is today proposing to take action on nine other serious or severe one-hour ozone attainment demonstrations and, in some cases, ROP SIPs. The additional nine areas are, Greater Connecticut, 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), Chicago-Gary-Lake County (IL–IN), and Houston-Galveston-Brazoria (TX).

In general, an attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the control measures necessary to achieve those reductions. Another component of the attainment demonstration SIP is a motor vehicle emissions budget for transportation conformity purposes. Transportation conformity is a process for ensuring that States consider the effects of emissions associated with new or improved federally-funded roadways on attainment of the standard. As described in section 176(c)(2)(A) of the CAA, 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; (4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the State submittal.[3] This submission is sometimes referred to as the Phase 2 submission. Motor vehicle emissions budgets can be established based on a commitment to adopt the measures needed for attainment and identification of the measures needed. Thus, State submissions due in April 1998 under the Wilson policy should have included a motor vehicle emissions budget.

Building upon the OTAG recommendations and technical analyses, in November 1997, EPA proposed action addressing the ozone transport problem. In its proposal, the EPA found that current SIPs in 22 States and the District of Columbia (23 jurisdictions) were insufficient to provide for attainment and maintenance of the one-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,

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

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

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

1998). This final rule is commonly referred to as the NO_X SIP Call.

3. Attainment Date Delays Due to Transport

On July 16, 1998, EPA's then Acting Assistant Administrator, Richard Wilson, issued a guidance memorandum intended to provide further relief to areas affected by ozone transport.[4] The memorandum recognized that many moderate and serious areas are affected by transported pollution from either an upwind area in the same State with a higher classification and later attainment date, and/or from an upwind area in another State that is significantly contributing to the downwind area's nonattainment problem. The policy recognized that some downwind areas may be unable to meet their own attainment dates, despite doing all that was required in their local area, because an upwind area may not have adopted and implemented all of the controls that would benefit the downwind area through control of transported ozone before the downwind area's attainment date. Thus, the policy provided that upon a successful demonstration that an upwind area has interfered with attainment and that the downwind area is adopting all measures required for its local area[5] for attainment but for this interference, EPA may grant an extension of the downwind area's attainment date.[6] Once an area receives an extension of its attainment date based on transport, the area would no longer be subject to reclassification to a higher classification and subject to additional requirements for failure to attain by its original attainment date provided it was doing all that was necessary locally.

A request from the MA DEP for such an extension of the attainment date for the Western Massachusetts nonattainment area and EPA's proposed response is discussed in this action.

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

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

5. 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.

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. 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.

[4] Memorandum, ''Extension of Attainment Dates for Downwind Transport Areas,'' issued July 16, 1998. This memorandum is applicable to both moderate and serious ozone nonattainment areas. A copy of this policy may be found on EPA's web site at http://www.epa.gov/ttn/oarpg/t1pgm.html.

[5] Local area measures would include all of the measures within the local modeling domain that were relied on for purposes of the modeled attainment demonstration.

[6] The policy provides that the area must meet four criteria to receive an attainment date extension. In summary, the area must: (1) Be identified as a downwind area affected by transport from either an upwind area in the same State with a later attainment date or an upwind area in another State that significantly contributes to downwind nonattainment; (2) submit an approvable attainment demonstration with any necessary, adopted local measures and with an attainment date that reflects when the upwind reductions will occur; (3) adopt all local measures required under the area's current classification and any additional measures necessary to demonstrate attainment; and (4) provide that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

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.[7] The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values and to predict air quality changes in the attainment year due to the emission changes which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted concentrations inside the modeling domain are at or below the NAAQS or at an acceptable upper limit above the NAAQS permitted under certain conditions by EPA's guidance. When the predicted concentrations are above the NAAQS, an optional Weight Of Evidence (WOE) 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 one-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 one-hour ozone NAAQS: a deterministic test or a statistical test.

The deterministic test requires the State to compare predicted one-hour daily maximum ozone concentrations for each modeled day[8] 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 one-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 one-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 one-hour NAAQS. For example, a monitoring site for which the four highest one-hour average concentrations over a three-year period are 0.136 ppm, 0.130 ppm, 0.128 ppm and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration observed at a location on a single day and it would be the only reading above the standard that would be expected to occur no more than an average of once a year over a three-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

2. Additional Analyses Where Modeling Fails To Show Attainment

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

Under a WOE determination, the State can rely on and EPA will consider factors such as: other modeled attainment tests, e.g., a rollback analysis; other modeled outputs, e.g., changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value;

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

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

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 generally must be present in order for EPA to approve or conditionally approve the one-hour attainment demonstration SIPs. These elements are listed below and then described in detail.

—CAA measures and measures relied on in the modeled attainment demonstration SIP. This includes adopted and submitted rules for all previously required CAA mandated measures for the specific area classification. This also includes measures that may not be required for the area classification but that the State relied on in the SIP submission for attainment and ROP plans on which EPA is proposing to take action on today.
—NO_X reductions affecting boundary conditions.
—Motor vehicle emissions budget. A motor vehicle emissions budget which can be determined by EPA to be adequate for conformity purposes.
—Tier 2/Sulfur program benefits where needed to demonstrate attainment. Inclusion of reductions expected from EPA's Tier 2 tailpipe and low sulfur-in-fuel standards in the attainment demonstration and the motor vehicle emissions budget, if needed for attainment.
—In certain areas, additional measures to further reduce emissions to support the attainment test. Additional measures may be measures adopted regionally such as in the Ozone Transport Region (OTR), or locally (intrastate) in individual States.
—Mid-Course Review (MCR). 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 one-hour ozone NAAQS.

In addition, a state 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 information in Table 1 is a summary of the CAA requirements that need to be met for each serious area for the one-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 table. 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).

TABLE 1.—CAA REQUIREMENTS FOR SERIOUS AREAS

—NSR for VOC and NO_X [1], 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 [1].
—Enhanced Inspection and Maintenance (I/M) program.
—15% volatile organic compound (VOC) plans.
—Emissions inventory.
—Emission statements.
—Periodic inventories.
—Attainment demonstration.
—9 percent ROP plan through 1999.
—Clean fuels program or substitute.
—Enhanced monitoring Photochemical Assessment Monitoring Stations (PAMS).
—Stage II vapor recovery

[1] Unless the area has in effect a NO_X waiver under section 182(f). Western Massachusetts is not such an area.

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

Emission reductions that will be achieved through EPA's NO_X SIP call will reduce the levels of ozone and ozone precursors entering nonattainment areas at their boundaries.

For purposes of developing attainment demonstrations, States define local modeling domains that include both the nonattainment area and nearby surrounding areas. The ozone levels at the boundary of the local modeling domain are reflected in modeled attainment demonstrations and are referred to as boundary conditions. With the exception of Houston, the one-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 one-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 [9] for purposes of the modeled attainment demonstration must be adopted and submitted as part of the State's one-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 Springfield (Western Massachusetts) 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 areas if the States do not submit motor vehicle emissions budgets that EPA can find adequate by May 31, 2000. A 2003 motor vehicle emission budget was submitted for the Western Massachusetts nonattainment area on October 1, 1998 and determined to be adequate by EPA on February 19, 1999.

4. Tier 2/Sulfur Program Benefits

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

These notices provide one-hour ozone modeling and monitoring information that support EPA's belief that the Tier 2/Sulfur program is necessary to help areas attain the one-hour NAAQS. Under the proposed rule, NO_X and VOC emission reductions (as well as other reductions not directly relevant for attainment of the one-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 one-hour standard applies need the Tier 2/Sulfur program reductions to help attain the one-hour ozone standard. The Springfield (Western Massachusetts) area was included on that list. On August 13, 1999, the MA DEP submitted a letter requesting an attainment date extension until December 2003, which is before the Tier 2/Sulfur reductions occur. Massachusetts believes that violations of the ozone standard will be eliminated by that time frame. Therefore, the Tier 2/Sulfur reductions are not being relied upon for attainment of the one-hour standard by Massachusetts.

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 2/Sulfur program reductions and the WOE, will not achieve attainment without the application of additional emission control measures to achieve additional emission reductions. Thus, for each of these areas, EPA has identified specific tons per day emissions of NO_X and/or VOC that must be reduced through additional control measures in order to demonstrate attainment and to enable EPA to approve the demonstration. The need for additional emission reductions is generally based on a lack of sufficient compelling evidence that the demonstration shows attainment at the current level of adopted or planned emission controls.

As discussed below the Springfield (Western Massachusetts) area does contain compelling evidence that attainment will be attained by its proposed attainment date of December 31, 2003, and additional reductions are

[9] 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 x 5 km or finer. The domain is large enough to ensure that emissions occurring at 8 am in the domain's center are still within the domain at 8 pm the same day. If recirculation of the nonattainment area's previous day's emissions is believed to contribute to an observed problem, the domain is large enough to characterize this.

not needed to demonstrate attainment. The details for the Western Massachusetts area are discussed below.

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. For serious areas such as Springfield (Western Massachusetts) requesting an attainment date extension to a year prior to 2005, a review that occurs at a midpoint prior to the attainment date would be impractical in terms of timing. Therefore, for these areas, EPA is looking for a commitment to perform an early attainment assessment to be submitted by the end of the attainment year (i.e., 2003). In addition, EPA believes the state should commit to work with EPA in a public consultative process to develop a methodology for performing the early attainment assessment and developing the criteria by which adequate progress would be judged.

Massachusetts submitted a commitment with its July 28, 1998 attainment demonstration committing to assess the progress and implementation of the state and federal measures necessary for attainment. Massachusetts committed to perform this assessment by November, 2001. EPA encourages Massachusetts to perform this assessment at the end of 2003, the date requested by Massachusetts for attainment.

D. What Does EPA Expect to Happen With Respect to the Attainment Demonstration for the Springfield (Western Massachusetts) One-hour Ozone Nonattainment Area?

Table 2 shows a summary of information on what EPA expects from States to allow EPA to approve the one-hour ozone attainment demonstration SIPs. As explained in the Table, Massachusetts has already completed the actions due by December 31, 1999.

TABLE 2.—SUMMARY SCHEDULE OF FUTURE STATE ACTIONS—SERIOUS NONATTAINMENT AREAS

Req'd no later than	Action
12/31/99	State submits the following to EPA: —Motor vehicle emissions budget (Massachusetts submitted its emissions budget on October 1, 1998). —Commitment to do the following: —Perform an early attainment assessment at the end of the attainment year (Massachusetts submitted a commitment with its July 28, 1998 attainment demonstration committing to assess the progress and implementation of the state and federal measures necessary for attainment).
12/31/03	State submits an early attainment assessment at the end of the attainment year.

E. What Are the Relevant Policy and Guidance Documents?

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

Recent Documents

1. ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: http://www.epa.gov/ttn/scram (file name: ''ADDWOE1H'').

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 the Air Division Directors, Regions I–VI. November 3, 1999. Web site: http://www.epa.gov/oms/transp/trafconf.html.

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 Rulemaking.'' November 8, 1999. Web site: http://www.epa.gov/oms/transp/trafconf.html.

5. Draft Memorandum, ''Analyses To Support Mid-course Review Of SIP's To Meet The 1-hr NAAQS For Ozone.'' From John Seitz, Director, Office of Air Quality Planning and Standards. Web site: http://www.epa.gov/ttn/scram (file name: ''DR6MCR'').

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

Previous Documents

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

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

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

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

5. December 29, 1997 Memorandum from Richard Wilson, Acting Assistant Administrator for Air and Radiation ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS.'' Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

II. How Does the Massachusetts Submittal Satisfy the Frame Work?

This section provides a review of Massachusetts' submittal and an

analysis of how this submittal satisfies the frame work discussed in Section I. of this notice.

A. What Did The State Submit?

The attainment demonstration SIP submitted by the Massachusetts Department of Environmental Protection for the Western Massachusetts area includes a modeling analysis using the CALGRID model. This was submitted on July 27, 1998. The SIP was subject to public notice and comment and a hearing was held in June 1998. Information on how the photochemical grid modeling meets EPA guidance is summarized below. Massachusetts also requested an attainment date extension for this area on August 13, 1999. The state requested a new attainment date of December 2003, which EPA interprets as December 31, 2003. This submittal was subject to public notice and comment. This attainment date extension is discussed below.

B. What Did the Attainment Demonstration SIP Contain?

The one-hour attainment demonstration submitted by Massachusetts is for both the Boston (Eastern Massachusetts) serious area as well as the Springfield (Western Massachusetts) serious area. The Eastern Massachusetts serious area, however, has air quality better than the one-hour standard and in June 1999, EPA issued a final rule determining that the 1-hour ozone standard no longer applied (64 FR 30911) and that Boston no longer needed a one-hour attainment demonstration. EPA has since proposed to reinstate the standard (64 FR 57424). However, even if the one-hour standard is reinstated, Eastern Massachusetts would continue to qualify, based on recent air quality data, as a clean data area under the EPA policy related to ozone nonattainment areas meeting the one-hour ozone NAAQS (May 10, 1995) and the attainment demonstration requirement would be deferred pending redesignation.

The key element of the attainment demonstration is the photochemical grid point modeling required by the CAA. The Massachusetts SIP used the CALGRID model which was approved for use by EPA since it was found to be at least as effective as the guideline model which is UAM–IV. The modeling domain for CALGRID extends from southwest Connecticut, northward 340 km to northern Vermont, and eastward to east of Nantucket, Massachusetts. For the Western Massachusetts nonattainment area, the domain meets EPA guidance since it contains adequate areas both upwind and downwind of the nonattainment area. The domain also includes the monitors with the highest measured peak ozone concentrations in Massachusetts and coastal Maine and New Hampshire. Since the original modeling was done for a much larger domain that includes not only all of Massachusetts but also includes all of Rhode Island, most of Connecticut, southern New Hampshire, southern Vermont, and most of southern Maine, the CALGRID model has several ''source'' areas and several receptor areas. The only receptor area of import to this notice and the Springfield (Western Massachusetts) SIP submittal is the Western Massachusetts area, which includes the following Counties: Berkshire, Franklin, Hampshire and Hampden. For the purposes of this notice, only model results in this four county area will be used, unless otherwise noted. As shown below, EPA believes the modeling portion of the attainment demonstration meets EPA guidance.

The model was run for 10 days during four distinct episodes (August 14–17, 1987, June 21–22, 1988, July 7–8, 1988 and July 10–11, 1988). These episodes represent a variety of ozone conducive weather conditions, and also include the three worst ranked ozone episodes (1987 to 1998) for the domain. The episodes selected reflect days with high measured ozone in a variety of areas within the entire domain. This is because, as stated above, the domain covers several nonattainment areas, and in order to model the meteorology that causes high ozone, several different episodes were needed. The model results for the first day of each episode are not used for attainment demonstration purposes, because they are considered ''ramp-up days.'' Ramp-up days help reduce impacts of initial conditions; after ramp-up days, model results are more reflective of actual emissions being emitted into the atmosphere.

The two key episodes for purposes of assessing whether attainment with the one-hour ozone standard can be achieved are the two July 1988 episodes. This is because these two episodes can use the boundary conditions generated using the modeling done by EPA for OTAG. At the time of the CALGRID modeling, the OTAG modeling was the best regional scale ozone modeling that was available for boundary conditions. OTAG boundary conditions give the best representation of expected future year emissions in upwind areas and certain runs can be used to simulate the effects of the NO_X SIP call promulgated by EPA on October 27, 1998 (63 FR 57356). The other two episodes can not use this newer and better regional modeling for boundary conditions, because OTAG did not model these episodes, and therefore no OTAG boundary conditions are available. For those episodes, the older Regional Oxidant Model (ROM) boundary conditions are used to reflect future benefits from CAA measures. However, there are no ROM boundary conditions that adequately reflect EPA's NO_X SIP call.

Since the best boundary conditions are from OTAG, only two episodes remain relevant for further discussion (July 7–8, 1988 and July 10–11, 1988). Only one of these episodes is relevant to Western Massachusetts and that is the July 7–8, 1988 episode. The July 10–11, 1988 episode had less impact on Western Massachusetts and is more an Eastern Massachusetts and coastal New England episode. As stated above, the model domain was set up in the early 1990's with many nonattainment areas in mind (the Rhode Island serious area, the Eastern Massachusetts serious area, the Portsmouth-Dover-Rochester serious area in New Hampshire and three moderate areas in Maine). The Western Massachusetts area was only one of these competing for episode days.

The CALGRID model was run using the CALMET meteorological processor. This processor took actual meteorological data collected by the National Weather Service and the State Air Pollution Agencies and using extrapolation and other analysis techniques provided winds, temperatures and other meteorological parameters at approximately 400 specific grid points for each hour of the episode at up to 14 levels from the surface to top of the model about 5000 feet. CALMET is described in detail in the Massachusetts attainment demonstration, and was approved by EPA for use in the CALGRID modeling system.

The CALGRID model was run with emissions data prepared by EPA Region I and/or a contractor working with EPA Region I. The data were taken from the EPA Aerometric Informational Retrieval System (AIRS) data base in late 1993 and reflect the emission data supplied from the six New England States. The emission data for the small portion of New York state that forms the western edge of the domain was supplied by New York. EPA Region I quality assured all the New England AIRS data, the New York supplied data and all necessary modifications to the data. The data was further processed through EPS's Emissions Preprocessor System (EPS Version 2.0). To more accurately model ozone in New England, day specific

emissions were simulated for on-road mobile sources (cars, trucks, busses, etc.), and for large power plants in New England.

Future emissions were projected to 1999 accounting for both emission increases due to industrial growth, population growth and growth in the number of miles traveled by cars, as well as emission reductions due to cleaner gasoline, cleaner cars and controls on industrial pollution. Growth factors were derived using the EPA-approved Bureau of Economic Analysis (BEA) factors and all the emissions were processed using the EPS 2.0 system.

Model runs were also performed for the year 2007. Year 2007 emissions estimates were prepared by the states reflecting EPA's proposed NO_X SIP call (62 FR 60318, November 7, 1997). This was accomplished using a two step process. The first step was to project emissions using growth factors to account for increases or decreases in economic activity by industrial sector. In general, the states projected their emissions using the same growth factors that were used in the OTAG modeling effort. The second step involved applying control factors to source categories that would be regulated by the year 2007. States used a combination of information for control levels: those used for the OTAG modeling effort, and state-specific information relating to the effectiveness of control programs planned or in place.

C. What Are the Conclusions From the Modeling?

The EPA guidance for approval of the modeling aspect of a one-hour ozone attainment demonstration is to use the one-hour ozone grid modeling to apply one of two modeled attainment tests (deterministic or statistical) with optional weight of evidence analyses to supplement the modeled attainment test results when the modeled attainment test is failed. The modeling performed for the Western Massachusetts area does not show attainment of the one-hour ozone standard (124 ppb) at every grid cell for every hour of every episode day modeled. Maximum predicted concentrations in western Massachusetts for the relevant episode (July 8, 1988) are 135 ppb. Using the statistical test described above, this is slightly above the acceptable upper limit for that day of 130 ppb.

However, when Massachusetts' weight of evidence analysis is considered, attainment is adequately demonstrated. One of the elements in a weight of evidence analysis is use of the model predicted change in ozone to estimate a future air quality design value. This uses the air quality modeling in a relative sense. The highest design value in Western Massachusetts, based on 1995 to 1997 monitoring data, was 132 ppb. The model shows that, with the planned emission reductions in the two precursor emissions (VOC and NO_X), ground-level ozone concentrations will be lowered to approximately 119 ppb.

More specifically, to strengthen the weight of evidence analyses, the Massachusetts attainment demonstration uses the model predictions in a relative sense to estimate a future design value. This type of analysis is sometimes referred to as a local rollback analysis. It uses the local CALGRID modeling to predict future values (*i.e.,* rollback the current design value) of the current ozone design value. The DEP compared two CALGRID runs to estimate the improvement in ozone air quality levels that would occur after 1999 due to continued implementation of CAA controls within the New England modeling domain (the modeling domain includes most of CT, NH and VT, all of MA and RI and southern ME) and due to controls pursuant to EPA's NO_X SIP call both within the domain and upwind of the domain. The first run used 1999 emission files coupled with 2007 boundary conditions from OTAG modeling just reflecting Clean Air Act controls. [10] The 1999 runs for the two July episodes were then compared with the modeling runs done for 2007 using: (1) 2007 boundary conditions from OTAG modeling reflecting Clean Air Act controls and NO_X reductions equivalent to the regional NO_X SIP call adopted by EPA, and (2) 2007 emissions within the modeling domain reflecting Clean Air Act controls and NO_X reductions equivalent to the regional NO_X SIP call. This comparison showed that recent air quality design values can reasonably be expected to be reduced below 124 ppb based solely on continued additional reductions within the domain (*e.g.,* areas in CT, western MA) subsequent to 1999 and reductions from EPA's NO_X SIP call. Not taken credit for in the analysis is benefits from CAA controls upwind of the New England modeling domain that occur after 1999 (*e.g.,* phase 2 reformulated gasoline, benefits from new automobile standards, *etc.*) making the analysis conservative since reductions from such programs in areas immediately upwind of the modeling domain (*i.e.,* areas in New York and New Jersey) will help Western Massachusetts attain the one-hour ozone standard. The modeling also indicates that ozone reductions from emission reductions in the New England domain would be greater if boundary conditions were cleaner. So emission reduction from future programs like the Tier 2/Sulfur program would further aid in reaching and maintaining attainment of the one-hour ozone standard after 2003.

In summary, based on a weight-of-evidence analysis, the modeling submitted for the Springfield (Western Massachusetts) area meets the EPA guidance and is acceptable.

D. What Do the Ambient Ozone Data Show?

The weight of evidence analysis conducted by Massachusetts is consistent with the most recent ozone data. There are five ozone air quality monitors in the Western Massachusetts nonattainment area. They are in the towns of Chicopee, Agawam, Ware, Adams and Amherst. The monitor in Adams is in a mountaintop location and has only recorded two exceedances of the one-hour ozone standard since 1989 and is clearly in attainment with the ozone standard and therefore is not an issue with respect to attainment/nonattainment. The other four monitors were all recording violations of the one-hour ozone standard when the area was classified as serious in 1991 (based on ozone data from circa 1987 to 1989). Since the original classification all these sites have shown a substantial decrease in ozone due to emission reductions, both within Massachusetts and also upwind from Massachusetts. For example, the site at Agawam has shown a design value (the form of the one-hour ozone standard) drop from 148 ppb in 1989 to 110 ppb in 1998 or a drop of 26%. This site is currently in attainment for the one-hour standard. At Chicopee, the design value has dropped from 159 ppb to 116 ppb in 1998, a drop of 27%. This site is also attainment. At Amherst the design value has dropped from 135 ppb to 106 ppb in 1998 for a drop of 21%. This site is in attainment. At the Ware site the design value has dropped from 167 ppb to 128 ppb in 1999, for a drop of 23%. This is the only site in Western Massachusetts that is still recording violations of the ozone standard. A linear fit of those two design values (167 ppb in 1989 and 128 ppb in 1998) shows a drop of nearly 4 ppb per year of ozone. Since the Ware site is currently only 4 ppb over the one-hour ozone standard, attainment of the standard may be expected with in the

[10] Note that the 1999 emission files did not include I/M emission reductions for an enhanced I/M program in Massachusetts since this program will not be fully implemented until some time after 1999.

next two years (*i.e.,* by 2001). It must be noted that the year to year decline in ozone levels is rarely linear and year to year variations do occur, but, since these four ozone sites all show a substantial downward trend in one-hour ozone concentrations, and precursor emissions are projected to keep falling, both within the nonattainment area and upwind from it, there is no reason to believe that this downward trend will not continue over the near term. The emission reductions will be a result of the following: continued benefits from tighter standards on vehicles due to fleet turnover (California (CA) LEV in Massachusetts and NLEV or CA LEV in upwind areas); the reductions from large point sources due to the OTC NO_X Memorandum of Understanding (MOU) and EPA's NO_X SIP call; Phase II reformulated gasoline; ultimately Tier 2 automobile standards and low sulfur gasoline; and other federal control measures (*i.e.,* controls on non-road engines). In addition, Massachusetts started an enhanced I/M program in October 1999 which will also yield emission reductions.

E. Does the Area Need Additional Measures?

Since the Western Massachusetts area passes the weight-of evidence test it does not need additional measures, including Tier 2 automobile standards.

F. What Is EPA Policy With Regards to an Attainment Date Extension?

On July 16, 1998, a guidance memorandum entitled ''Extension of Attainment Dates for Downwind Transport Areas'' was signed by Richard D. Wilson, then Acting Assistant Administrator for Air and Radiation. That memorandum included EPA's interpretation of the Clean Air Act regarding the possibility of extending attainment dates for ozone nonattainment areas that have been classified as moderate or serious for the 1-hour standard and which are downwind of areas that have interfered with their ability to demonstrate attainment by dates prescribed in the Act. That memorandum stated that EPA will consider extending the attainment date for an area that:

(1) Has been identified as a downwind area affected by transport from either an upwind area in the same State with a later attainment date or an upwind area in another State that significantly contributes to downwind nonattainment;

(2) Has submitted an approvable attainment demonstration with any necessary, adopted local measures and with an attainment date that shows that it will attain the 1-hour standard no later than the date that the reductions are expected from upwind areas under the final NO_X SIP call and/or the statutory attainment date for upwind nonattainment areas, *i.e.,* assuming the boundary conditions reflecting those upwind reductions;

(3) Has adopted all applicable local measures required under the area's current classification and any additional measures necessary to demonstrate attainment, assuming the reductions occur as required in the upwind areas;

(4) Has provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

G. Does the Western Massachusetts Area Qualify for an Attainment Date Extension?

The following analysis shows that the area does meet the above four part test. In its July 27, 1998 attainment demonstration, the MA DEP requested that, since the Western Massachusetts area cannot attain the one-hour ozone standard by its attainment date of 1999, due to the effects of transported ozone, it be allowed an attainment date extension beyond 1999. On August 13, 1999 the MA DEP submitted a letter requesting an attainment date extension to December 2003, which EPA interprets as December 31, 2003. This date matches the MA DEP conformity budget submitted to EPA on October 1, 1998 and is in line with most of the emission reductions expected as a result of the NO_X SIP call.

In order to qualify for an attainment date extension several tests need to be passed. In order to assess the role of transport in Western Massachusetts, two model runs submitted by Massachusetts are examined. The first is a zero out run for Connecticut. In this run, all the anthropogenic emissions from the nearest upwind state are eliminated. This run shows only limited improvement in the Western Massachusetts area from such a large emission reduction. Another run that shows the impact of transport in Western Massachusetts is a run where very clean boundary conditions are assumed. This run uses boundary conditions from the OTAG run IN60, which assumed the reductions similar to NO_X SIP call emissions, plus an additional 60% reduction in NO_X from the ozone nonattainment areas classified as serious or above. This run shows that Western Massachusetts would achieve attainment by 2007, based on a strict exceedance test (*i.e.,* all grid cells below 124 ppb). Thus, it is transported air pollution that is causing the area to be nonattainment and that transport is from upwind areas outside the modeling domain (*e.g.,* New York City). Therefore, lowering transported ozone is extremely important in bringing Western Massachusetts into attainment of the ozone standard. In summary, the Western Massachusetts area is affected by transport. So the first test for an attainment date extension is passed.

The second test is that an area has submitted an approvable attainment demonstration with any necessary, adopted local measures and with an attainment date that shows that it will attain the one-hour standard no later than the date that the reductions are expected from upwind areas under the final NO_X SIP call and/or the statutory attainment date for upwind nonattainment areas, *i.e.,* assuming the boundary conditions reflecting those upwind reductions. Since the area has submitted an attainment demonstration and this notice is proposing approval of that plan without additional measures, this test is passed. Also, since the attainment date requested is December 2003, which is in line with the NO_X SIP call and the Phase III NO_X MOU requirements, that date is reasonable.

The third test is that Massachusetts had to do all the CAA requires for a serious nonattainment area. The Western Massachusetts area is classified as serious and is required to submit certain measures. Table 3 contains a summary of the CAA required ozone SIP elements and the additional measures included in the attainment demonstration. This Table indicates whether a control measure was part of the modeling demonstration and provides a summary of the approval or promulgation status.

TABLE 3.—CONTROL MEASURES IN THE ONE-HOUR OZONE ATTAINMENT PLANS FOR THE WESTERN MASSACHUSETTS SERIOUS OZONE NONATTAINMENT AREA

Name of control measure	Type of measure	Included in local modeling	Approval status
On-board Refueling Vapor Recovery	Federal rule	Yes	Promulgated at 40 CFR 86.
Federal Motor Vehicle Control program	Federal rule	Yes	Promulgated at 40 CFR 86.
Federal Non-road Gasoline Engines	Federal rule	Yes	Promulgated at 40 CFR 90.
Federal Non-road Heavy Duty diesel engines	Federal rule	Yes	Promulgated at 40 CFR 89.
AIM Surface Coatings	State initiative	Yes	SIP approved (60 FR 65242; 12/19/95).
Consumer & commercial products	State initiative	Yes	SIP approved (60 FR 65242; 12/19/95).
Enhanced Inspection & Maintenance	CAA SIP Requirement.	Yes	SIP approval pending (proposed for approval at 64 FR 51937; 9/27/99 and 64 FR 66829; 11/30/99) [1].
NO_X RACT	CAA SIP Requirement.	Yes	SIP approved (64 FR 48095; 9/2/99).
VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of Clean Air Act.	CAA SIP Requirement.	Yes	SIP approved (64 FR 48297; 9/3/99 and 58 FR 34908; 6/30/93).
VOC RACT pursuant to sections 182(b)(2)(A) and (C) of Clean Air Act.	CAA SIP Requirement.	Yes	SIP approved (64 FR 48297; 9/3/99).
Stage II Vapor Recovery	CAA SIP Requirement.	Yes	SIP approved (58 FR 48315; 9/15/93) [2].
Automotive Refinishing	State initiative	Yes	SIP approved (61 FR 5696; 2/14/96).
Reformulated Gasoline	State opt-in	Yes	SIP approval pending (proposed for approval as part of the 15% plan at 64 FR 51943; 9/27/99 and 64 FR 66829;11/30/99).
CA Low Emission Vehicle (CA LEV)	State initiative	Yes	SIP approved (60 FR 6027; 2/1/95).
Clean Fuel Fleets	CAA SIP Requirement.	Yes	SIP approved (60 FR 6027; 2/1/95) [3].
New Source Review	CAA SIP Requirement.	No	SIP approval pending [4].
Base Year Emissions Inventory	CAA SIP Requirement.	N/A [5]	SIP approved (62 FR 37510; 7/14/97).
15% VOC Reduction Plan	CAA SIP Requirement.	Yes [6]	SIP approval pending (proposed for approval at 64 FR 51943; 9/27/99 and 64 FR 66829; 11/30/99).
9% rate of progress plan	CAA SIP Requirement.	Yes [6]	SIP approval pending (proposed for approval at 64 FR 51943; 9/27/99 and 64 FR 66829;11/30/99)).
Emissions Statements	CAA SIP Requirement.	N/A [5]	SIP approved (61 FR 11556; 3/21/96).
Enhanced Monitoring (PAMS)	CAA Requirement	N/A [5]	SIP approved (62 FR 37510; 7/14/97).
OTC NO_X MOU Phase II	State initiative	Yes	SIP approved (64 FR 6/2/99; 64 FR 29567).
NO_X SIP Call	EPA requirement	Yes	SIP approval pending [7].

[1] Massachusetts Enhanced Inspection & Maintenance was proposed for approval based on a showing that their program meets EPA's low enhanced performance standard and secures the emission reduction necessary to meet 15% and 9% rate-of-progress requirements. Massachusetts, however, is claiming reductions greater than these amounts in its attainment demonstration. Massachusetts needs to demonstrate that the emission reduction credit it is claiming from its I/M program in its attainment demonstration is warranted for the combination of test type and equipment that Massachusetts is implementing. On November 3, 1999, MA DEP sent a letter to EPA indicating that it expects submit its I/M program evaluation plan by March 31, 2000. EPA expects that the program evaluation done pursuant to the plan will enable Massachusetts to demonstrate the level of emission reduction credit warranted for its I/M program.

[2] In its Attainment Demonstration SIP submittal, Massachusetts committed to submit a revised Stage II rule by January 1999. Massachusetts has not yet met this commitment but must do so in order for EPA to grant final approval of its attainment demonstration for Western Massachusetts. On November 24, 1999, MA DEP sent a letter to EPA indicating that it expects to adopt the necessary revisions to its stage II rule by April 1, 2000.

[3] Massachusetts used CAL LEV reductions to meet the Clean Fuel Fleet requirement.

[4] The state is not relying on emission reductions from this NSR SIP and therefore it will not have to be finally approved in order to approve the attainment demonstration.

[5] Does not produce emission reductions.

[6] The measures used to demonstrate rate of progress were modeled.

[7] On November 19, 1999, MA DEP submitted a SIP revision in response to the EPA's regulation entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' The SIP submittal included a NO_X budget and allowance trading regulation, 310 CMR 7.28. Although not a CAA required measure, 310 CMR 7.28 requires significant NO_X reductions from 2003 onward which will strengthen the SIP. EPA will take final action on 310 CMR 7.28 prior to finalizing action on the one-hour ozone attainment plan. This also fulfills Massachusetts commitment under the OTC MOU Phase III program.

For the measures that have been submitted to EPA and not yet fully approved by EPA, EPA intends to publish final rules before or at the same time as we publish final approval of the attainment demonstration. Those include the 15% plan and 9% plan through 1999, the enhanced inspection and maintenance program, and the NO_X SIP call SIP. Additionally, there are additional SIP elements that have not been submitted by Massachusetts that EPA needs in order to agree with the reductions claimed by Massachusetts for certain control programs. Because of these outstanding elements, EPA is also proposing, in the alternative, to disapprove this demonstration. These outstanding SIP elements are: (1) Revisions to the Massachusetts stage II vapor recovery rule that were

committed to in the July 27, 1998 attainment demonstration and (2) the demonstration described in EPA's supplementary proposed approval of the Massachusetts 15% rate-of-progress plan published in the **Federal Register** on November 30, 1999 (64 FR 66829), requiring Massachusetts to demonstrate that the emission reduction credit it is claiming for its I/M program in that attainment demonstration is warranted for the combination of test type and equipment that Massachusetts is implementing. Once these outstanding SIP elements are approved into the Massachusetts SIP, the attainment demonstration can be approved and the attainment date extension to December 31, 2003 can be granted.

Finally, the state has provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved. All of the above measures will be implemented by December 2003.

In summary, EPA is proposing to approve the new attainment date of December 31, 2003 for the area. In order to grant full approval, the outstanding SIP issues mentioned above will need to be resolved.

H. What Are the Consequences of State Failure?

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

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

If EPA disapproves a required SIP, such as the attainment demonstration SIPs, section 179(a) provides for the imposition of two sanctions. The first sanction would apply 18 months after EPA disapproves the SIP if the State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to a broader area, but is not proposing to take such action today.

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

In addition to sanctions, if EPA finds that a State failed to submit the required SIP revision or disapproves the required SIP revision EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected. The attainment demonstration SIPs on which EPA is taking action today were originally due in November 1994. However, through a series of policy memoranda, EPA recognized that States had not submitted attainment demonstrations and were constrained to do so until ozone transport had been further analyzed. As 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.

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. Proposed Action

EPA is proposing to approve the ground-level one-hour ozone attainment demonstration State implementation plan (SIP or demonstration) for the Springfield (Western Massachusetts) nonattainment area submitted by Massachusetts on July 27, 1998. We are also proposing to approve an attainment date extension for this area to December 31, 2003 submitted by Massachusetts on August 13, 1999. We are also proposing, in the alternative, to approve in part and disapprove in part this demonstration if the State does not submit the following elements which were discussed in detail above: revisions to the Massachusetts stage II vapor recovery rule and a demonstration adequately proving that the emission reduction credit Massachusetts is claiming from its I/M program in the Western Massachusetts attainment demonstration is warranted for the combination of test type and equipment that Massachusetts is implementing. Also, EPA intends to publish final rulemaking on the 15% plan and 9% plan through 1999, the enhanced inspection and maintenance program, and the NO_X SIP call SIP for Western Massachusetts either before or at the same time as publication of final approval of the attainment demonstration.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These issues will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

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

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the

rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

C. Executive Order 13084

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

D. Executive Order 13132

Executive Order 13132 Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

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

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

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

F. Unfunded Mandates

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

EPA has determined that the proposed approval action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or

to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

G. National Technology Transfer and Advancement Act

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: November 30, 1999.

Mindy S. Lubber,

Deputy Regional Administrator, Region I.

[FR Doc. 99–31709 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT056–7215–FRL–6501–9]

Approval and Promulgation of Implementation Plans; Connecticut; One-Hour Ozone Attainment Demonstration; Greater Connecticut Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the ground-level one-hour ozone attainment demonstration State Implementation Plan (SIP) for the Greater Connecticut ozone nonattainment area submitted by the Commissioner of the Connecticut Department of Environmental Protection (CT DEP) on September 16, 1998. We are also proposing, in the alternative, to disapprove this demonstration if Connecticut does not submit an adequate motor vehicle emissions budget consistent with attainment. EPA is also proposing approval of an attainment date extension until November 15, 2007 for the Greater Connecticut nonattainment area.

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

ADDRESSES: Written comments (in duplicate if possible) should be sent to: David B. Conroy at the EPA Region I (New England) Office, One Congress Street, Suite 1100–CAQ, Boston, Massachusetts 02114–2023.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 1 (New England), One Congress St., 11th Floor, Boston, Massachusetts. Telephone (617) 918–1664, an at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106. Please telephone in advance before visiting.

FOR FURTHER INFORMATION CONTACT: Richard Burkhart (617) 918–1664.

SUPPLEMENTARY INFORMATION: This document provides background information on attainment demonstration SIPs for the one-hour ozone national ambient air quality standard (NAAQS) and an analysis of the one-hour ozone attainment demonstration SIP submitted by the CT DEP for the Greater Connecticut nonattainment area. This document addresses the following questions:

What is the Basis for the Attainment Demonstration SIP?
What are the Components of a Modeled Attainment Demonstration?
What is the Frame Work for Proposing Action on the Attainment Demonstration SIPs?
What Does EPA Expect to Happen with Respect to Attainment Demonstrations for the Greater Connecticut One-hour Ozone Nonattainment Area?
What are the Relevant Policy and Guidance Documents?
How Does the Connecticut Submittal Satisfy the Frame Work?

I. Background

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

1. CAA Requirements

The Clean Air Act (CAA) requires EPA to establish national ambient air quality standards (NAAQS or standards) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. CAA sections 108 and 109. In 1979, EPA promulgated the one-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 one-hour ozone standard each time an ambient air quality monitor records a one-hour average ozone concentration above 0.124 ppm. An area is violating the standard if, over a consecutive three-year period, more than three exceedances are expected to occur at any one monitor. The CAA, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one-hour ozone standard, generally based on air quality monitoring data from the three-year period from 1987–1989. CAA section 107(d)(4); 56 FR 56694 (Nov. 6, 1991). The CAA further classified these areas, based on the area's design value, as marginal, moderate, serious, severe or extreme. CAA section 181(a). Marginal areas were suffering the least significant air pollution problems while the areas classified as severe and extreme had the most significant air pollution problems.

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control

requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas are required to attain the one-hour standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The Greater Connecticut area is classified as serious and its attainment date is November 15, 1999.

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 one-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 reduction can be substituted for the required VOC emission reductions.) Today, in this proposed rule, EPA is proposing action on the attainment demonstration SIP submitted by the CT DEP for Greater Connecticut nonattainment area. EPA will take action on the Connecticut's 9% ROP plan for reductions from 1996–1999 in a separate rulemaking action. (The 9% ROP plan was submitted to EPA on December 31, 1997, with minor revisions on January 7, 1998.) In addition, elsewhere in this **Federal Register**, EPA is today proposing to take action on nine other serious or severe one-hour ozone attainment demonstration and, in some cases ROP SIPs. The additional nine areas are, Springfield (Western Massachusetts), 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), Chicago-Gary-Lake County (IL–IN), and Houston-Galveston-Brazoria (TX).

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

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

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

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by States but noting the remaining difficulties in making attainment demonstration SIP submittals.[1] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the States in the eastern half of the country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)[2] and provided for the States to submit the attainment demonstration SIPs 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 areas: (1) evidence that the applicable control measures in subpart 2 of part D of title I of the CAA were adopted and implemented or were on an expeditious course to being adopted and implemented; (2) a list of measures needed to meet the remaining ROP emissions reduction requirement and to reach attainment; (3) for severe areas only, a commitment to adopt and submit target calculations for post-1999 ROP and the control measures necessary for attainment and ROP plans through the attainment year by the end of 2000; (4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the State submittal.[3] This submission is sometimes referred to as the Phase 2 submission. Motor vehicle emissions budgets can be established based on a commitment to adopt the measures needed for attainment and identification of the measures needed. Thus, State submissions due in April 1998 under the Wilson policy should have included a motor vehicle emissions budget.

Building upon the OTAG recommendations and technical analyses, in November 1997, EPA proposed action addressing the ozone transport problem. In its proposal, the EPA found that current SIPs in 22 States and the District of Columbia (23 jurisdictions) were insufficient to provide for attainment and maintenance of the one-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.

3. Attainment Date Delays Due to Transport

On July 16, 1998, EPA's then Acting Assistant Administrator, Richard Wilson, issued a guidance memorandum intended to provide further relief to areas affected by ozone transport.[4] The memorandum

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

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

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

[4] Memorandum, ''Extension of Attainment Dates for Downwind Transport Areas,'' issued July 16, 1998. This memorandum is applicable to both moderate and serious ozone nonattainment areas. A

Continued

recognized that many moderate and serious areas are affected by transported pollution from either an upwind area in the same State with a higher classification and later attainment date, and/or from an upwind area in another State that is significantly contributing to the downwind area's nonattainment problem. The policy recognized that some downwind areas may be unable to meet their own attainment dates, despite doing all that was required in their local area, because an upwind area may not have adopted and implemented all of the controls that would benefit the downwind area through control of transported ozone before the downwind area's attainment date. Thus, the policy provided that upon a successful demonstration that an upwind area has interfered with attainment and that the downwind area is adopting all measures required for its local area [5] for attainment but for this interference, EPA may grant an extension of the downwind area's attainment date.[6] Once an area receives an extension of its attainment date based on transport, the area would no longer be subject to reclassification to a higher classification and subject to additional requirements for failure to attain by its original attainment date provided it was doing all that was necessary locally.

A request from the CT DEP for such an extension of the attainment date for the Greater Connecticut nonattainment area and EPA's proposed response is discussed in this action.

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

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

5. 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.[7] 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

copy of this policy may be found on EPA's web site at http://www.epa.gov/ttn/oarpg/t1pgm.html.

[5] Local area measures would include all of the measures within the local modeling domain that were relied on for purposes of the modeled attainment demonstration.

[6] The policy provides that the area must meet four criteria to receive an attainment date extension. In summary, the area must: (1) be identified as a downwind area affected by transport from either an upwind area in the same State with a later attainment date or an upwind area in another State that significantly contributes to downwind nonattainment; (2) submit an approvable attainment demonstration with any necessary, adopted local measures and with an attainment date that reflects when the upwind reductions will occur; (3) adopt all local measures required under the area's current classification and any additional measures necessary to demonstrate attainment; and (4) provide that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

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

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

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

The deterministic test requires the State to compare predicted one-hour daily maximum ozone concentrations for each modeled day [8] 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 one-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 one-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 one-hour NAAQS. For example, a monitoring site for which the four highest one-hour average concentrations over a three-year period are 0.136 ppm, 0.130 ppm, 0.128 ppm and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration observed at a location on a single day and it would be the only reading above the standard that would be expected to occur no more than an average of once a year over a three-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

2. Additional Analyses Where Modeling Fails To Show Attainment

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

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

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

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 one-hour attainment demonstration SIPs. These elements are listed below and then described in detail.

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

—NO_X reductions affecting boundary conditions.

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

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

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

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

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 one-hour ozone NAAQS.

In addition, a state may have included more 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 information in Table 1 is a summary of the CAA requirements that need to be met for each serious area for the one-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 table. 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).

TABLE 1.—CAA REQUIREMENTS FOR SERIOUS AREAS

—NSR for VOC and NO_X,[1] 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.[1]
—Enhanced Inspection and Maintenance (I/M) program.
—15% volatile organic compound (VOC) plans.
—Emissions inventory.
—Emission statements.
—Periodic inventories.
—Attainment demonstration.
—9 percent ROP plan through 1999.
—Clean fuels program or substitute.
—Enhanced monitoring Photochemical Assessment Monitoring stations (PAMS).
—Stage II vapor recovery.

[1] Unless the area has in effect a NO_X waiver under section 182(f). The Greater Connecticut area is not such an area.

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

Emission reductions that will be achieved through EPA's NO_X SIP call will reduce the levels of ozone and ozone precursors entering nonattainment areas at their boundaries. For purposes of developing attainment demonstrations, States define local modeling domains that include both the nonattainment area and nearby surrounding areas. The ozone levels at the boundary of the local modeling domain are reflected in modeled attainment demonstrations and are referred to as boundary conditions. With the exception of Houston, the one-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 one-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 [9] for purposes of the modeled attainment demonstration must be adopted and submitted as part of the State's one-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. 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 (NPRM) proposing a major, comprehensive program designed to significantly reduce emissions from passenger cars and light trucks (including sport-utility vehicles, minivans, and pickup trucks) and to reduce sulfur in gasoline. Under the proposed program, automakers would produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners would provide that cleaner gasoline nationwide. The EPA subsequently issued two supplemental notices. 64 FR 35112 (June 30, 1999); 64 FR 57827 (October 27, 1999).

These notices provide one-hour ozone modeling and monitoring information that support EPA's belief that the Tier 2/Sulfur program is necessary to help areas attain the one-hour NAAQS. Under the proposed rule, NO_X and VOC emission reductions (as well as other reductions not directly relevant for attainment of the one-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 one-hour standard applies need the Tier 2/Sulfur program reductions to help attain the one-hour ozone standard. The Greater Connecticut area whose attainment demonstration EPA is proposing action on today is included on that list.

The EPA issued a memorandum that provides estimates of the emissions reductions associated with the Tier 2/Sulfur program proposal.[11] The memorandum provides the tonnage benefits for the Tier 2/Sulfur program in 2007 on a county-by-county basis for all counties within the 10 serious and severe nonattainment areas for which EPA is proposing to take action today and the 2005 tonnage benefits for the 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

[9] 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.

[10] A final budget is preferred; but, if the State public hearing process is not yet complete, then the 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.

[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.

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, Philadelphia-Wilmington-Trenton, Baltimore, Houston-Galveston-Brazoria and Atlanta nonattainment areas, the EPA is proposing to determine that additional emission reduction beyond those provided by the SIP submission are necessary for attainment. With the exception of the Atlanta nonattainment area, a portion of that reduction will be achieved by EPA's Tier 2/Sulfur program, which EPA expects to finalize shortly. States that need to rely in whole or in part on the Tier 2 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 reduction 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; Atlanta and Houston-Galveston-Brazoria even considering the Tier 2/Sulfur program reductions and the WOE, will not achieve attainment without the application of additional emission control measures to achieve additional emission reductions. Thus, for each of these areas, EPA has identified specific tons per day emissions of NO_X and/or VOC that must be reduced through additional control measures in order to demonstrate attainment and to enable EPA to approve the demonstration. The need for additional emission reductions is generally based on a lack of sufficient compelling evidence that the demonstration shows attainment at the current level of adopted or planned emission controls. As discussed below the Greater Connecticut area does contain compelling evidence that attainment will be attained by its proposed attainment date of November 2007, and that the area does not need the additional reductions outlined in this section. The details for the Greater Connecticut area are discussed below.

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 Greater Connecticut area, EPA believes that the

[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.

State must have an enforceable commitment to perform a MCR as described here. [14]

The Connecticut DEP submitted an enforceable commitment with its attainment demonstration on September 16, 1998, to submit a MCR in the 2001/2002 time frame and an additional MCR in 2005. To make it easier for EPA to accept that commitment of an MCR, Connecticut should revise its commitment to agree to perform the MCR immediately following the 2003 ozone season and to submit the results to EPA by December 31, 2003. Connecticut should also revise its commitment to agree 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.

EPA believes that an analysis in 2003 would be most robust since some or all of the regional NO_X emission reductions should be achieved by that date. EPA would then review the results and determine whether any States need to adopt and submit additional control measures for purposes of attainment. The EPA is not requesting that States commit now to adopt new control measures as a result of this process. It would be impracticable for the States to make a commitment that is specific enough to be considered enforceable. Moreover, the MCR could indicate that upwind States may need to adopt some or all of the additional controls needed to ensure an area attains the standard. Therefore, if EPA determines additional control measures are needed for attainment, EPA would determine whether additional emission reductions as necessary from States in which the nonattainment area is located or upwind States, or both. The EPA would require the affected State or States to adopt and submit the new measures within a period specified at the time. The EPA anticipates that these findings would be made as calls for SIP revisions under section 110(k)(5) and, therefore, the period for submission of the measures would be no longer than 18 months after the EPA finding. A draft guidance document regarding the MCR process is located in the docket for this proposal and may also be found on EPA's web site at http://www.epa.gov/ttn/scram.

D. What Does EPA Expect To Happen With Respect to Attainment Demonstrations for the Greater Connecticut One-Hour Ozone Nonattainment Area?

Table 2 shows a summary of information on what EPA expects from States such as Connecticut to allow EPA to approve the one-hour ozone attainment demonstration SIPs.

TABLE 2.—SUMMARY SCHEDULE OF FUTURE ACTIONS RELATED TO THE ATTAINMENT DEMONSTRATION FOR THE GREATER CONNECTICUT SERIOUS NONATTAINMENT AREA

Required no later than:	Action
12/31/99	State submits the following to EPA: —Motor vehicle emissions budget.[1] —Commitments to do the following: —Submit revised SIP & motor vehicle emissions budget one year after MOBILE6 issued.[2] —Perform a mid-course review.
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.
7/1/00	—State revises and submits SIP and motor vehicle emissions budget to account for Tier 2 reductions as needed.[3]
Within one year after release of MOBILE6 model	State submits revised SIP & motor vehicle emissions budget based on MOBILE6.
12/31/03	State submits 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.''

[2] 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 7/1/00).

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

E. What Are the Relevant Policy and Guidance Documents?

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

Recent Documents

1. ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: http://www.epa.gov/ttn/scram/ (file name: ''ADDWOE1H'').

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 from Merrylin Zaw-Mon to the Air Division Directors, Regions I–VI, ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstrations.'' 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,

[14] 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.

''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, ''Analyses To Support Mid-course Review Of SIP's To Meet The 1-hr NAAQS For Ozone.'' From John Seitz, Director, Office of Air Quality Planning and Standards. Web site: http://www.epa.gov/ttn/scram (file name: ''DR6MCR'').

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

Previous Documents

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

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

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

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

5. December 29, 1997 Memorandum from Richard Wilson, Acting Assistant Administrator for Air and Radiation ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS.'' Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html

II. How Does the Connecticut Submittal Satisfy the Frame Work?

This section provides a review of Connecticut's submittal and an analysis of how this submittal satisfies the frame work discussed in Section I. of this notice.

A. What Was Submitted by Connecticut?

As mentioned previously, the CAA requires nonattainment areas classified as moderate or worse for the one-hour ozone standard to prepare air quality modeling, using a photochemical grid model. This modeling is required to show that collective control strategies will reduce ozone to concentrations below the air quality standard by the area's attainment date. Connecticut submitted its modeling in several submittals. A January 4, 1995 submittal gave EPA the then up-to-date status of the state's modeling effort, including the completed elements of the one-hour modeling. The Phase I submittal, required for those states participating in the OTAG effort, was submitted on November 21, 1997. The Phase II submittal, which along with the previous submittals constitutes the attainment demonstration, was submitted on September 16, 1998.

The Greater Connecticut area is classified as a serious ozone nonattainment area. The Greater Connecticut area includes the entire State of Connecticut except for the southwest corner of Connecticut, near New York City. The Greater Connecticut area was required to attain the one-hour ozone standard by November 15, 1999. This area includes all of the following counties: Hartford, Middlesex, New Haven, New London, Tolland, and Windham. It also includes Shelton City in Fairfield County, and all cities and towns in Litchfield County except Bridgewater and New Milford (40 CFR 81.307). The rest of Connecticut, officially titled the New York-Northern New Jersey-Long Island Area, will be referred to in this notice as the Connecticut portion of the New York City area. The Connecticut portion of the New York City area's attainment demonstration is a separate SIP action, and is discussed elsewhere in this **Federal Register**. The rest of the New York City area's attainment demonstration is also a separate SIP action, and is discussed elsewhere in this **Federal Register**.

The Greater Connecticut area was modeled by the New York Department of Environmental Conservation, with input from environmental agency staff of both the States of Connecticut and New Jersey and by staff from EPA Regions I and II. This arrangement was agreed to in 1990 by all the participating parties, with concurrence from EPA Regions I and II. The modeling also includes the modeling for the New York City area.

B. How Was the Model Selected?

EPA recommended that states use the Urban Airshed Model (UAM) version IV as the ozone model of choice for the grid-point modeling required by the Clean Air Act (CAA) for the one-hour attainment demonstrations. Other models are allowed if the states show that they are scientifically valid and they perform (*i.e.* are just as reliable) as well as, or better than, UAM IV. The NYC domain chose to use UAM IV. Details on the model and its selection can be found in the submittal from the State of Connecticut. Many different sensitivity runs and model performance runs were performed using the UAM IV model, also different boundary conditions were tried. The results of these runs are available in the submittal from Connecticut.

C. What Did the Photochemical Grid Modeling Show?

The UAM modeling analysis is contained in the State Implementation Plan (SIP) submitted by the CT DEP. A similar analysis was also submitted by New Jersey (NJDEP) and New York State (NYSDEC) since, as explained above, the modeling performed was conducted both for the Greater Connecticut area and the New York City area.

The domain covers both the New York Northern-New Jersey-Long Island severe area, and the Greater Connecticut serious area. Information on how the UAM modeling meets EPA guidance is summarized here and detailed in the State's submittals.

EPA's Guideline on the use of photochemical grid models recommends that areas model three or more episodes including the types of weather conditions most conducive to ozone formation. The final photochemical grid modeling submitted by Connecticut focused on the UAM–IV modeling for several episodes from 1988 and 1991. All episodes represent significant ozone exceedances, under various meteorological conditions. The episodes have some of the worst case meteorology (*i.e.,* the highest potential for ozone formation) of the episodes in the past forty years. It follows that if an extreme episode, like the ones chosen, pass the modeled attainment test, then less extreme days would pass as well.

The UAM IV was run using the CALMET meteorological processor, with State actual emission inventories for the base years (1988 or 1991 as appropriate) and with projected emissions representing grown and controlled emissions for the attainment year. The projected emissions used were the Case-E scenario developed for EPA–OTC modeling simulations and included the effects of projected growth, the CAA required measures, low emission vehicle (LEV) assumptions for the motor vehicle section, and NO_X reductions equivalent to the regional NO_X SIP call adopted by EPA.

The UAM IV model shows that domain wide there is a 91% decrease in the number of grid cells that exceed the one-hour standard from the base year to 2007. A 100% decrease would be

necessary to pass the deterministic model test. For the model predictions in the Greater Connecticut area and areas downwind, the UAM model predicts levels below the acceptable upper limit on all but two of the days. The predicted peaks in the Greater Connecticut nonattainment portion of the modeling domain for 2007 remain above the one-hour standard with peak concentrations of 152 ppb in 2007. This too does not pass the deterministic test. Since the UAM–IV model, as run for this analysis, does not show attainment in 2007 additional weight of evidence analyses were performed. These additional analyses are discussed below.

D. How Well Did the Model Perform?

The UAM–IV model predicts ozone within the quality limits set by EPA guidance on most days. Qualitatively, the model predicts the peak ozone in the observed locations downwind of New York City. The model shows a slight bias toward over predicting ozone.

As prescribed by EPA Guidance, the UAM–IV modeling predicts ozone concentrations for the year 2007 using the meteorology of the episodes from 1988 and 1991 combined with the emissions that are projected for the year 2007. The 2007 emissions include emission increases due to population and economic growth and decreases due to the control strategies that will be in place by then (including an estimate of the EPA NO_X SIP Call).

E. What Other Type of Analyses Were Performed By Connecticut?

In the past, EPA guidance for use of the UAM model required that all modeling days show attainment of the ozone standard at all grid cells. This is called the deterministic method. The attainment demonstration guidance allows the user to adjust for days that have an extremely high ability to form ozone because of its meteorology. Adjustments are allowed since the one-hour ozone standard allows each location to have one day per year, on average, over the one-hour ozone standard.

The attainment demonstration guidance allows use of additional corroborative analyses to support the attainment demonstration when the modeled attainment test is not passed. These other analyses can be used as part of the weight of evidence to attainment. The weight of evidence used to supplement the modeled attainment test in the Greater Connecticut area attainment demonstration, and how they can help predict that the area will attain the standard, are described here. In addition, one of the factors that EPA can consider as part of the weight-of-evidence analysis is whether there will be additional emission reductions anticipated that are not modeled.

Greater Connecticut is classified as serious, and is required under the CAA to attain the ozone standard by 1999. This is not possible, based on the preliminary measured air quality from the summer of 1999. EPA policy allows for an attainment date extension based on transport, and Connecticut has asked for an extension for the Greater Connecticut area to November 15, 2007, the attainment date for the upwind New York City area. The attainment date extension is discussed here, and EPA's action on the request is discussed below. The State submittal for Greater Connecticut gives evidence of significant transport into the Greater Connecticut area from the south and west. The state performed several model runs and other analyses which show that the Greater Connecticut area is effected by significant transport. These analyses as well as the request for an attainment date extension are discussed below.

Connecticut submitted additional information from other methods that can predict future concentrations of ozone. Air quality trends data show that attainment of the standard by 2007 for the Greater Connecticut area is feasible and this is confirmed by use of recent air quality data combined with ozone reductions predicted by photochemical grid modeling (*i.e.* the Design Value analysis method). In short, and as shown later, these weight of evidence analyses lead EPA to conclude that the Greater Connecticut area is likely to attain the ozone standard by 2007, as a result of additional control measures to be implemented by the States of New York, New Jersey and Connecticut in conjunction with upwind reductions accomplished by CAA requirements for upwind states and reductions from EPA's NO_X SIP call which requires further NO_X reductions from 23 jurisdictions in the Eastern United States.

This notice discusses several analyses, which when combined lead EPA to conclude that the Greater Connecticut area will achieve attainment by 2007. Those analyses are the local Photochemical Grid Modeling (discussed above), Air Quality Trends Analyses, the Design Value Rollback analysis, and an additional analysis done pursuant to EPA memorandum entitled ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.''

F. What Do Air Quality Trends Show?

Linear extrapolation of present air quality trends predicts that the peak ozone values will be less than 125 ppb and the number of exceedances of the air quality standard will be less than one per year about the year 2005. Since a number of emission control programs, such as the NO_X SIP Call, and Tier 2 car standards are still to be implemented and others, like the OTC NO_X agreement and vehicle inspection and maintenance programs, are still being implemented (*i.e.* not achieving full emissions reduction benefit), emissions of ozone precursors will continue to decrease from now through 2007. Connecticut's attainment demonstration states that attainment of the one-hour ozone standard is possible based on an extrapolation of the air quality data.

The attainment demonstration also includes research showing that ozone decreases occur at all of the monitors in the New York City airshed. Even when the trends are adjusted for year-to-year changes in how favorable the weather is for ozone formation (*i.e.* meteorologically adjusted trends), every air quality monitor except one shows decreased ozone. This supports the conclusion that the improvements in air quality during recent years are due to reductions in emissions rather than meteorology.

G. What Does The Regional Design Value Rollback Analysis Show?

One of the analyses in the weight of evidence is the design value rollback analysis. Design value rollback uses the design value from recent air quality data as its starting point. The amount of ozone reduction predicted by the model from the starting point to the attainment year is calculated and the design value from recent air quality data is reduced by that amount.

For the Connecticut analysis, EPA supplied calculations of the percentage reduction in ozone at the grid cells near the monitoring sites. The calculations were from the UAM–V modeling that EPA has been doing for the NO_X SIP Call. EPA ran the UAM–V for the entire eastern United States for various episodes in 1991, 1993 and 1995 with both 1995 and 2007 OTAG emission inventories. The 2007 run included emissions adjusted for growth and reductions from the CAA-required controls plus the NO_X SIP Call, and the National LEV (NLEV) program.

The percentage difference between the base and the future case was calculated for the days when the modeling predicted the highest concentrations near each monitoring

site. The ozone reductions on those days were averaged for each monitoring site. This percent difference was divided by 100 to produce a ''rollback factor.'' The observed ozone design value was multiplied by the rollback factor to obtain the concentration of ozone predicted for the monitoring site for the year 2007. The ozone design value was the fourth highest concentration at each site over the three-year period from 1996 to 1998. The highest predicted design value for 2007 from all the monitoring sites is 122 ppb, less than the 125 ppb one-hour ozone standard. This is how the design value rollback method predicts that the area may attain the ozone standard by 2007. The three years of data used by Connecticut in its submittal to calculate the observed design value were the latest available data at the time: 1996 to 1998. When EPA used the method in the NO_X SIP Call, it used the design value from 1994 to 1996, centered on 1995 when the model begins its reductions in emissions and ozone. The period used by in the analysis submitted by CT DEP does not overlap 1995. It should also be noted that preliminary ozone data from the summer of 1999 for this area shows that ozone levels have risen, most likely due to weather conditions, and that the three year design value has also risen. So the regional design value rollback method, when applied to the most recent air quality data does not show attainment in 2007. Further analyses are thus necessary, such as those discussed below.

The design value rollback technique is a way of using existing air quality and the model in a relative sense to predict how the air quality will improve. Existing air quality is a readily measured quantity. Models may be more accurate at calculating the amount of improvement in air quality as opposed to predicting an absolute concentration. Therefore, this method counteracts some of UAM–IV's biases toward underestimating the extent of ozone reduction. The design value rollback method provides another gauge of whether an area will attain the air quality standard, using a method which does not rely solely on the absolute predictions made by the models.

In summary, the design value rollback method was applied to the New York City airshed, where it used the most recent data to predict that all of the air quality stations will have better air quality than the one-hour air quality standard when the present ozone concentrations are reduced by the percentage ozone reduction that the UAM–V model predicts from the baseline to the attainment year. More recent air quality data call this analysis into question.

H. Does Greater Connecticut Area Need Additional Local Measures?

Realizing that the attainment analysis for Greater Connecticut yields uncertain results regarding whether the area will attain by the year 2007, EPA conducted a further analysis of the attainment demonstration submitted by Connecticut. For this analysis, EPA looked at the base year modeling performed using UAM–IV as well as the future year modeling for 2007. The EPA analysis concentrated only on the Greater Connecticut area. Base year model maximums and future year model maximums were derived from the attainment demonstration submittal. Using the statistical test described above, the future year maximums for each episode day were compared to their acceptable upper limits. For the model predictions in the Greater Connecticut area and areas downwind, the UAM model predicts levels below the acceptable upper limit on all but two of the days. EPA's analysis also looked at the projected ozone benefits from the Tier 2/Sulfur program in 2007. The Tier 2/Sulfur program will show improvements in the modeled peaks.

Since the attainment test is not passed in this additional analysis, EPA analyzed whether additional local measures are necessary to achieve attainment. In order to do this, EPA did an analysis pursuant to EPA memorandum entitled ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' The method used pursuant to this guidance 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 results for the Greater Connecticut area show that the UAM–IV modeling performed for Connecticut estimates the future design value with the benefits of the Tier 2/Sulfur program incorporated to be 116 ppb, which is below the 124 ppb one-hour standard. Therefore, additional emission controls beyond the benefits of the Tier 2/Sulfur program are not expected to be needed for the Greater Connecticut area to demonstrate attainment.

Weighing all of the evidence, as provided in EPA's Guidance, EPA believes the Attainment Demonstration for the Greater Connecticut demonstrates attainment by 2007 and should thus be approved.

I. Does Greater Connecticut Need A Mid-Course Review?

Since Greater Connecticut has requested and EPA is proposing to approve an attainment date extension to November 2007, and since the attainment date extension and attainment demonstration approval are based on a weight-of-evidence analysis, and not a purely deterministic test, EPA guidance provides for a mid-course review to access if the assumptions used in 1999 are still true in the future. This mid-course review should take place after the 2003 ozone season. The Connecticut DEP submitted an enforceable commitment with its attainment demonstration on September 16, 1998, to submit a MCR in the 2001/2002 time frame, and an additional MCR in 2005. In order for EPA to accept that commitment of an MCR, Connecticut will have to agree to perform the MCR immediately following the 2003 ozone season and to submit the results to EPA by December 31, 2003. Connecticut should also 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. Once Connecticut modifies their commitment on the MCR to include these issues, then EPA can move forward to approve the attainment demonstration.

J. What Are EPA's Recommendations With Regard to the Modeling Portion of the Attainment demonstration?

The modeling for Greater Connecticut uses analyses that follow the EPA guidelines for predicting future air quality. These analyses, on balance, show that air quality will meet the one-hour ozone air quality standard by the requested attainment date of 2007. EPA guidance allows for this weight of evidence analysis when other modeling methods give results that contradict the traditional deterministic photochemical grid modeling analysis. The weight-of-evidence in conjunction with additional analyses performed by EPA using the most up-to-date EPA guidance confirm that the trend analysis is correct in determining that the continued decreases in emissions, locally and from distant sources, will result in attainment by 2007.

Connecticut, along with New York and New Jersey, has committed to perform a mid-course review, as recommended by EPA. The states are

expected to follow EPA guidance in conducting this mid-course review.

Because the modeling portion of the submittal demonstrates attainment consistent with EPA's guidance, it should be approved by EPA. As a result of decreases in emissions currently in place and additional reductions expected to continue, the Greater Connecticut area should attain the one-hour ozone standard by 2007.

K. What Is EPA Policy With Regard To An Attainment Date Extension?

On July 16, 1998, a guidance memorandum entitled ''Extension of Attainment Dates for Downwind Transport Areas'' was signed by Richard D. Wilson, then Acting Assistant Administrator for Air and Radiation. That memorandum included EPA's interpretation of the Clean Air Act regarding the possibility of extending attainment dates for ozone nonattainment areas that have been classified as moderate or serious for the 1-hour standard and which are downwind of areas that have interfered with their ability to demonstrate attainment by dates prescribed in the Act. That memorandum stated that EPA will consider extending the attainment date for an area that:

(1) has been identified as a downwind area affected by transport from either an upwind area in the same State with a later attainment date or an upwind area in another State that significantly contributes to downwind nonattainment;

(2) has submitted an approvable attainment demonstration with any necessary, adopted local measures and with an attainment date that shows that it will attain the one-hour standard no later than the date that the reductions are expected from upwind areas under the final NO_X SIP call and/or the statutory attainment date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind reductions;

(3) has adopted all applicable local measures required under the area's current classification and any additional measures necessary to demonstrate attainment, assuming the reductions occur as required in the upwind areas;

(4) has provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

L. Does the Greater Connecticut Area Qualify For An Attainment Date Extension?

As discussed above, Connecticut requested an attainment date extension to November 15, 2007. This is consistent with EPA guidance for attainment date extensions. The first test for an attainment date extension is that you are effected by transport, and but for this transport, you would achieve attainment of the standard by your CAA attainment date.

The CT DEP submitted evidence of significant transport into the Greater Connecticut area. First, it must be stated that, the maximum observed ozone in Northern New Jersey, New York and Connecticut are currently in the Greater Connecticut area. Greater Connecticut is classified as serious, and is required under the CAA to attain the ozone standard 8 years before the New York City area, which has an attainment date of 2007. The Greater Connecticut area is required by the CAA to attain by 1999. This is not possible based on the preliminary measured air quality from the summer of 1999. EPA policy allows for an attainment date extension based on transport, and as mentioned above Connecticut has asked for an extension of the Greater Connecticut area to November 15, 2007, the same attainment date for the upwind New York City area. The State submittal for Greater Connecticut gives evidence of significant transport into Greater Connecticut from the south and west, where the NYC nonattainment area is located. The state performed an ''informal UAM–IV sensitivity analysis investigating the effects within the * * * modeling domain of excluding anthropogenic emissions strictly in Connecticut. The sensitivity run was conducted for the July 6, 1988 event using 1988 data files supplied by the NYSDEC, 1988 ROM boundary conditions, and no anthropogenic emissions within Connecticut.''

Modeled ozone concentrations for this zero-out model run (looking only at levels above the standard) are relatively similar to the ''base case'' or full anthropogenic run, suggesting that even if one could shut down all anthropogenic emission within the Greater Connecticut area it would still violate the ozone standard as of its 1999 attainment date, and furthermore, there would be little improvement to observed ozone levels. This type of analysis shows that Greater Connecticut is affected by significant transport.

Another way to look for evidence of significant transport is to look for differences in the number of grid-cell hours (gch) between ''zero-out'' runs and the base case runs. The following is taken from the Connecticut submittal: ''The improvement (decrease) in the number of grid-cell hours (gch) above 120 ppb, was also determined for the Connecticut zero-out run. In the base case, there were 6032 gch above 120 ppb in the entire modeling domain, of which 3214 gch occurred in Connecticut. In the zero-out run, there were 5321 gch above 120 ppb in the domain, an improvement of 711 gch.'' An improvement of 711 gch out of 3214 gch is only a 22% improvement. This shows that significant emission reductions are needed from upwind areas to reach attainment of the one-hour ozone NAAQS in Greater Connecticut.

Connecticut was also able to use the modeling done by Massachusetts and New Hampshire to bolster its demonstration that it is significantly effected by transport. The model used by these states is CALGRID. The model was run for the July 8, 1988 episode, an episode with very high ozone levels in all of New England, including Connecticut. In the CALGRID run, anthropogenic emissions were eliminated (set to zero) in Connecticut and the model run. These ''zero-out'' results were compared to the same model run assuming 1999 Clean Air Act emissions throughout the domain. Connecticut reached several conclusions using these results. Taken from the attainment demonstration submittal they are as follows:

1. ''Eliminating Connecticut's man-made emissions has very little effect on both the magnitude and the geographical extent of maximum ozone concentrations within Connecticut by its 1999 attainment date. Widespread areas of modeled nonattainment remain in the State. Modeled exceedances in Connecticut for this event are largely due to overwhelming transport from upwind areas.''

2. ''Zeroing out Connecticut emissions for this event does not have much effect on the magnitude or geographic area of modeled exceedances downwind in western and central Massachusetts.''

3. ''Zeroing out Connecticut's man-made emissions results in an area of modeled ozone increases (disbenefits) of 1 to 10 ppb in north-central Connecticut and Central Massachusetts.''

The second test is that an area has submitted an approvable attainment demonstration with any necessary, adopted local measures and with an attainment date that shows that it will attain the one-hour standard no later than the date that the reductions are expected from upwind areas under the final NO_X SIP call and/or the statutory

attainment date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind reductions. Since the CT DEP submitted an attainment demonstration for the Greater Connecticut area and this notice is proposing approval of that plan without additional measures, this test is passed.

The third test that Greater Connecticut had to meet is to show that it met all the CAA requirements for a serious nonattainment area. The Greater Connecticut area is classified as serious and is required to submit certain measures. Table 3 contains a summary of the CAA required ozone SIP elements and of any additional measures included in the attainment demonstration. This Table indicates if a control measure was part of the modeling demonstration and a summary of the approval or promulgation status.

TABLE 3.—CONTROL MEASURES IN THE ONE-HOUR OZONE ATTAINMENT PLANS FOR THE GREATER CONNECTICUT SERIOUS OZONE NONATTAINMENT AREA

Name of control measure	Type of measure	Included in local modeling	Approval status
On-board Refueling Vapor Recovery	federal rule	Yes	Promulgated at 40 CFR 86.
Federal Motor Vehicle Control program.	federal rule	Yes	Promulgated at 40 CFR 86.
Federal Non-road Gasoline Engines	federal rule	Yes	Promulgated at 40 CFR 90.
Federal Non-road Heavy Duty diesel engines.	federal rule	Yes	Promulgated at 40 CFR 89.
AIM Surface Coatings	federal rule	Yes	Promulgated at 40 CFR 59 subpart D.
Consumer & commercial products	federal rule	Yes	Promulgated at 40 CFR 59 subpart C.
Enhanced Inspection & Maintenance	CAA SIP Requirement	Yes	Conditionally SIP approved (64 FR 12005; 3/10/99).[1]
NO_X RACT	CAA SIP Requirement	Yes	SIP approved (62 FR 52016; 10/6/97).
VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of Clean Air Act.	CAA SIP Requirement	Yes	SIP approved (56 FR 52205; 10/18/91 and 64 FR 12019; 3/10/99).
VOC RACT pursuant to sections 182(b)(2)(A) and (C) of Clean Air Act.	CAA SIP Requirement	Yes	Conditionally SIP approved (64 FR 12019; 3/10/99)—SIP approval pending for SIP submitted in response to condition.[2]
Stage II Vapor Recovery	CAA SIP Requirement	Yes	SIP approved (58 FR 65930; 12/17/93).
Stage I Vapor Recovery	CAA SIP Requirement	Yes	SIP approved (56 FR 52205; 10/18/91).
Reformulated Gasoline	CAA required program in NYC and Hartford areas. Opt-in to federal program for remainder of state.	Yes	Promulgated statewide under 40 CFR section 80.70. Also approved for opt-in portion of state as part of 15% plan (64 FR 12015; 3/10/99).
National Low Emission Vehicle (NLEV).	State opt-in	Yes	Federal program promulgated at 40 CFR 86 subpart R. State opt-in SIP approval proposed 8/16/99, 64 FR 44450.[3]
Clean Fuel Fleets	CAA SIP Requirement	Yes	RFG and I/M reductions substitute—SIP approval pending.[4]
New Source Review	CAA SIP Requirement	No	SIP approval pending.[5]
Base Year Emissions Inventory	CAA SIP Requirement	N/A[6]	SIP approved (62 FR 55336; 10/24/97).
15% VOC Reduction Plan	CAA SIP Requirement	Yes[7]	SIP approved (64 FR 12015; 3/10/99).
Enhanced Rule Effectiveness	State measure	Yes[7]	SIP approved (64 FR 12015; 3/10/99).
9% rate of progress plan	CAA SIP Requirement	Yes[7]	SIP approval pending.[8]
Emissions Statements	CAA SIP Requirement	N/A[6]	SIP approved (60 FR 2524; 1/10/95).
Enhanced Monitoring (PAMS)	CAA Requirement	N/A[6]	SIP approved (62 FR 55336; 10/24/97).
OTC NO_X MOU Phase II	State initiative	Yes	SIP approved (64 FR 52233; 9/28/99).
EPA NO_X SIP call	EPA requirement	Yes	SIP approval pending.[9]

[1] The fact that CT's enhanced I/M rule is conditionally approved does not affect the emission reductions that Connecticut can rely on for attainment purposes since the achievement of those emission reductions in no way depends upon the fulfillment of the conditions outlined in that final rule. Rather, the conditions relate to certain procedural requirements only.

[2] With respect to the various VOC and Non-CTG rules, Connecticut submitted a revised non-CTG RACT rule on September 2, 1999. In order to meet the requirements of sections 182(b)(2) (A) and (C), CT revised section 22a–174–32 to remove the exemption for the remaining Appendix E categories, as well as expanding the applicability to sources in industrial categories in CT for which EPA has published final CTGs since the date of enactment (e.g., aerospace, shipbuilding, and wood furniture coating). Appendix E categories are those listed in App. E to EPA's General Preamble 57 FR 18077 (April 28, 1992). EPA deemed the SIP submittal complete on September 10, 1999. EPA will take final action on the revised section 22a–174–32 prior to finalizing action on the one-hour ozone attainment plan.

[3] EPA intends to publish final rules for the NLEV opt-in SIP before or at the same time as we publish final rules on the attainment demonstration.

[4] Since the clean fuels fleet program would simply substitute for RFG and I/M emission reductions already approved into the SIP, the Clean Fuel Fleet program will not have to be finally approved in order to approve the attainment demonstration.

[5] CT submitted its New Source Review (NSR) program for VOC and NO_X as a SIP revision on May 23, 1994. The state is not relying on emission reductions from this NSR SIP, and therefore it will not have to be finally approved in order to approve the attainment demonstration.

[6] Does not produce emission reductions.

[7] The measures used to demonstrate rate of progress were modeled.

[8] The nine percent plan rate-of-progress (ROP) plan SIP was submitted to EPA on December 31, 1997, with minor revisions on January 7, 1998. This plan is currently under review by EPA. A notice of proposed rulemaking will be published soon. EPA intends to publish final rules for the nine percent ROP plan before or at the same time as we publish final rules on the attainment demonstration.

[9] On September 30, 1999, CT submitted a SIP revision in response to EPA's regulation entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' The SIP submittal included a NO_X budget and allowance trading regulation, section 22a–174–22b. Although not a CAA required measure, section 22a–174–22b requires significant NO_X reductions from 2003 onward which will strengthen the SIP. EPA will take final action on section 22a–174–22b prior to finalizing action on the one-hour ozone attainment plan. This also fulfills Connecticut's commitment under the OTC MOU Phase III program.

Finally, the state has provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved. All of the above measures will be implemented before 2007.

In summary since Connecticut has met all the CAA requirements, or will before final approval of the attainment date extension is granted, and since the ozone modeling for the Greater Connecticut area meets the other requirements for an attainment date extension, EPA proposes to approve the attainment date extension for Greater Connecticut to November 15, 2007.

M. Motor Vehicle Emissions Budget

The CT DEP submitted 2007 conformity budgets associated with their attainment demonstration for the Greater Connecticut nonattainment area on February 10, 1999. These budgets were developed from the mobile source inventories developed by EPA for the NO_X SIP call. In its February 10, 1999 letter, CT DEP concluded that it is reasonable to extract 2007 transportation conformity budgets from the NO_X SIP call since Connecticut's ozone attainment demonstrations rely on EPA modeling results developed using emission inventories equivalent to those used by EPA to develop the NO_X SIP call. In a November 19, 1999 letter from Susan Studlien, EPA Region I to Carmine DiBattista, CT DEP, EPA found that the 2007 motor vehicle emissions budgets submitted for the Greater Connecticut area are inadequate for conformity purposes. The budgets were determined to be inadequate because in some instances they do not accurately reflect the mobile source control strategies Connecticut is implementing and, when compared to more recent mobile source emission estimates prepared by the state for conformity, appear to be substantially higher in the attainment year than the most current projections. The letter, which is available in the docket for this action, further outlines the rationale behind this determination.

A notice of public hearing was signed by Arthur Rocque, Jr, Commissioner, Connecticut DEP on November 24, 1999 requesting public comment on proposed changes to the attainment demonstration for the Greater Connecticut serious nonattainment area. In that notice of public hearing, Connecticut DEP has included proposed 2007 conformity budgets for the Greater Connecticut area. These budgets incorporate the benefits of the Tier 2/Sulfur program for the Greater Connecticut area. The EPA is proposing to approve the attainment demonstration SIP should Connecticut correct the deficiencies that cause the motor vehicle emissions budget to be inadequate and, alternatively, to disapprove it if Connecticut does not correct the deficiencies.

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

N. Tier 2/Sulfur Program benefits

As a result of EPA's review of the State's SIP submittal, EPA believes that the ozone modeling submitted by the State for the Greater Connecticut area, for which EPA is proposing to approve or disapprove-in-the-alternative, needs to incorporate EPA's Tier 2/Sulfur program benefits to improve the State's weight-of-evidence analysis. This is the result of a detailed review of the attainment demonstration. With Tier 2/Sulfur program reductions incorporated, the conclusion that attainment can be reached in this area by 2007 can be supported. This is consistent with the conclusions originally reached in the CT DEP attainment demonstration submittal which did not initially include Tier 2/Sulfur program reductions but specifically noted that there are uncertainties in the design value approach used to support the conclusion that attainment can be reached in the Greater Connecticut nonattainment area by November 15, 2007. The uncertainties noted in the attainment demonstration submittal were: (1) Uncertainty in year-to-year meteorological fluctuations; (2) uncertainty in projections of emissions and economic growth; and (3) uncertainties inherent in the modeling system chosen. Additionally, the attainment demonstration noted the need for EPA to pursue other supplemental emission reductions strategies beyond the measures identified in the OTAG recommendations. One action specifically noted was more stringent standards for new on-road vehicles under section 202(i) of the Clean Air Act.

On May 13, 1999, EPA proposed such standards designed to significantly reduce the emissions from new passenger cars and light trucks, including pickup trucks, minivans, and sport-utility vehicles (the ''Tier 2 program''). The proposed program combines requirements for cleaner vehicles and requirements for lower levels of sulfur in gasoline. Tier 2 emission reductions will lower ozone in the Greater Connecticut area and support the conclusion that the future design value for the nonattainment area will be below 125 parts per billion and that the area will achieve attainment by the attainment date requested (i.e., November 15, 2007). EPA, therefore, will require Connecticut to incorporate the Tier 2/Sulfur requirements into the attainment demonstration in order to fully approve the attainment demonstration. As stated previously, a notice of public hearing was signed on November 24, 1999 requesting public comment on proposed changes to the attainment demonstration for the Greater Connecticut serious nonattainment area. In that notice of public hearing, Connecticut DEP has included proposed 2007 conformity budgets for the Greater Connecticut area which incorporate the benefits of the Tier 2/Sulfur program for the Greater Connecticut area.

O. What are the consequences of State failure?

This section explains the CAA consequences of State failure to meet the time frames and terms described generally in this notice. The CAA provides for the imposition of sanctions and the promulgation of a federal implementation plan if States fail to submit a required plan, submit a plan that is determined to be incomplete or if EPA disapproves a plan. (We are using the phrase ''failure to submit'' to cover both the situation where a State makes no submission and the situation where the State makes a submission that

we find is incomplete in accordance with section 110(k)(1)(B) and 40 CFR part 51, Appendix V.) For purposes of sanctions, there are no sanctions clocks in place based on a failure to submit. Thus, the description of the timing of sanctions, below, is linked to a potential disapproval of the State's submission.

1. What are the CAA's provisions for sanctions?

If EPA disapproves a required SIP, such as the attainment demonstration SIPs, section 179(a) provides for the imposition of two sanctions. The first sanction would apply 18 months after EPA disapproves the SIP if the State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to a broader area, but is not proposing to take such action today.

2. What are the CAA's FIP provisions if a State fails to submit a plan?

In addition to sanctions, if EPA finds that a State failed to submit the required SIP revision or disapproves the required SIP revision EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected. The attainment demonstration SIPs on which EPA is taking action today were originally due in November 1994. However, through a series of policy memoranda, EPA recognized that States had not submitted attainment demonstrations and were constrained to do so until ozone transport had been further analyzed. As 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.

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. Proposed Action

EPA is proposing to approve the ground-level one-hour ozone attainment demonstration State implementation plan for the Greater Connecticut nonattainment area submitted by Connecticut on September 16, 1998. This submission includes analyses which taken together and supplemented to include the effects of the Tier 2/Sulfur program leads EPA to conclude that the Greater Connecticut area is likely to attain the ozone standard by 2007. This is a result of additional control measures to be implemented by the States of New York, New Jersey and Connecticut in conjunction with upwind reductions accomplished by CAA requirements for upwind states and reductions from EPA's NO_X SIP call which requires further NO_X reductions from 23 jurisdictions in the Eastern United States. EPA is also proposing to approve an attainment date extension for this area to November 15, 2007, submitted at the same time. EPA is also proposing, in the alternative, to approve in part and disapprove in part this demonstration if the State does not submit: take final action an adequate motor vehicle emissions budget consistent with attainment. Lastly, EPA intends to publish final rules for Nine Percent ROP, NLEV and the NO_X SIP call for Connecticut either before or at the same time as publication of final approval of the attainment demonstration.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These issues will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this action.

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

IV. Administrative Requirements

A. Executive Orders 12866

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

B. Executive Order 13045

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

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

C. Executive Order 13084

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

significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132 Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

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

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

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

F. Unfunded Mandates

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

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

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

G. National Technology Transfer and Advancement Act

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: November 30, 1999.

Mindy S. Lubber,

Deputy Regional Administrator, Region I.

[FR Doc. 99–31710 Filed 12–15–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT057–7216: FRL–6502–1]

Approval and Promulgation of Implementation Plans; Connecticut; One-Hour Attainment Demonstration; Connecticut Portion of the New York-Northern New Jersey-Long Island Severe Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to conditionally approve the ground-level one-hour ozone attainment demonstration State Implementation Plan (SIP) for the Connecticut portion of the New York-Northern New Jersey-Long Island severe ozone nonattainment area submitted by the Commissioner of the Connecticut Department of Environmental Protection (CT DEP) on September 16, 1998. EPA is also proposing to conditionally approve the Connecticut's commitment to submit rate-of-progress (ROP) target calculations for ROP after 1999 and the adopted measures to achieve post-1999 ROP by December 2000. EPA is also proposing, in the alternative, to disapprove this demonstration if Connecticut does not submit an adequate motor vehicle emissions budget and additional control measures to make up for the projected need for additional controls to ensure attainment of the one-hour ozone standard by November 2007.

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

ADDRESSES: Written comments (in duplicate if possible) should be sent to: David B. Conroy at the EPA Region I (New England) Office, One Congress Street, Suite 1100–CAQ, Boston, Massachusetts 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 1 (New England), One Congress St., 11th Floor, Boston, Massachusetts. Telephone (617) 918–1664 an at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106. Please telephone in advance before visiting.

FOR FURTHER INFORMATION CONTACT: Richard Burkhart (617) 918–1664.

SUPPLEMENTARY INFORMATION: This document provides background information on attainment demonstration SIPs for the one-hour ozone national ambient air quality standard (NAAQS) and an analysis of the one-hour ozone attainment demonstration SIP submitted by the CT DEP for the New York-Northern New Jersey-Long Island severe ozone nonattainment area. This document address the following questions:

What is the Basis for the Attainment Demonstration SIP?

What are the Components of a Modeled Attainment Demonstration?

What is the Frame Work for Proposing Action on the Attainment Demonstration SIPs?

What Does EPA Expect to Happen with Respect to the Attainment Demonstrations for the Connecticut Portion of the New York-Northern New Jersey-Long Island Severe One-hour Ozone Nonattainment Area?

What are the Relevant Policy and Guidance Documents?

How Does the Connecticut Submittal Satisfy the Frame Work?

I. Background

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

1. CAA Requirements

The Clean Air Act (CAA) requires EPA to establish national ambient air quality standards (NAAQS or standards) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. CAA sections 108 and 109. In 1979, EPA promulgated the one-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 one-hour ozone standard each time an ambient air quality monitor records a one-hour average ozone concentration above 0.124 ppm. An area is violating the standard if, over a consecutive three-year period, more than three exceedances are expected to occur at any one monitor. The CAA, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one-hour ozone standard, generally based on air quality monitoring data from the three-year period from 1987–1989. CAA section 107(d)(4); 56 FR 56694 (Nov. 6, 1991). The CAA further classified these areas, based on the area's design value, as marginal, moderate, serious, severe or extreme. CAA section181 (a). Marginal areas were suffering the least significant air pollution problems while the areas classified as severe and extreme had the most significant air pollution problems.

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

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 one-hour standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year (rate-of-progress or ROP). (In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions.) Today, in this proposed rule, EPA is proposing action on the attainment demonstration SIP submitted by Connecticut for the New York-Northern New Jersey-Long Island nonattainment area. EPA is also proposing action on the Connecticut's commitment to submit ROP target calculations for rate-of-progress after 1999 and the adopted measures to achieve post-1999 ROP by December 2000. EPA will take action on the Connecticut's 9% ROP plan for reductions from 1996–1999 in a separate rulemaking action. (The 9% ROP plan was submitted to EPA on December 31, 1997, with minor revisions on January 7, 1998.) In addition, elsewhere in this **Federal Register**, EPA is today proposing to take action on nine other serious or severe one-hour ozone attainment demonstration and, in some

cases ROP SIPs. The additional nine areas are Greater Connecticut (CT), Springfield (Western Massachusetts) (MA), Baltimore (MD), Philadelphia-Wilmington-Trenton (PA–NJ–DE–MD), Metropolitan Washington, D.C. (DC–MD–VA), Atlanta (GA), Milwaukee-Racine (WI), Chicago-Gary-Lake County (IL–IN), and Houston-Galveston-Brazoria (TX).

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

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

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

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by States but noting the remaining difficulties in making attainment demonstration SIP submittals.[1] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the States in the eastern half of the country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)[2] and provided for the States to submit the attainment demonstration SIPs 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 public hearing on the State submittal.[4] 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 one-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.

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

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

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

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

[3] 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 that Connecticut 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.

[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.

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.[5] In order to have a complete modeling demonstration submission, States should have submitted the required modeling analysis and identified any additional evidence that EPA should consider in evaluating whether the area will attain the standard.

1. Modeling Requirements

For purposes of demonstrating attainment, the CAA requires serious and severe areas to use photochemical grid modeling or an analytical method EPA determines to be as effective. The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values and to predict air quality changes in the attainment year due to the emission changes which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted concentrations inside the modeling domain are at or below the NAAQS or at an acceptable upper limit above the NAAQS permitted under certain conditions by EPA's guidance. When the predicted concentrations are above the NAAQS, an optional weight of evidence determination which incorporates, but is not limited to, other analyses such as air quality and emissions trends, may be used to address uncertainty inherent in the application of photochemical grid models.

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

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

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 one-hour ozone NAAQS: a deterministic test or a statistical test.

The deterministic test requires the State to compare predicted one-hour daily maximum ozone concentrations for each modeled day [6] 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 one-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 one-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 one-hour NAAQS. For example, a monitoring site for which the four highest one-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.

[6] 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 one-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 that EPA is proposing to take on today.
—NO_X reductions affecting boundary conditions.
—Motor vehicle emissions budget. A motor vehicle emissions budget which can be determined by EPA to be adequate for conformity purposes.
—Tier 2/Sulfur program benefits where needed to demonstrate attainment. Inclusion of reductions expected from EPA's Tier 2 tailpipe and low sulfur-in-fuel standards in the attainment demonstration and the motor vehicle emissions budget.
—In certain areas, additional measures to further reduce emissions to support the attainment test. Additional measures, may be measures adopted regionally such as in the Ozone Transport Region (OTR), or locally (intrastate) in individual States.
—Mid-course review. An enforceable commitment to conduct a mid-course review and evaluation based on air quality and emission trends. The mid-course review would show whether the adopted control measures are sufficient to reach attainment by the area's attainment date, or that additional control measures are necessary.

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 one-hour ozone NAAQS.

In addition, a State 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 information in Table 1 is a summary of the CAA requirements that need to be met for each severe nonattainment area for the one-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 table. 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(d).

TABLE 1.—CAA REQUIREMENTS FOR SEVERE AREAS

—NSR for VOC and NO_X,[1] including an offset ratio of 1.3:1 and a major VOC and NO_X source cutoff of 25 tons per year (tpy).
—Reasonable Available Control Technology (RACT) for VOC and NO_X1.[1]
—Enhanced Inspection and Maintenance (I/M) program.
—15% volatile organic compound (VOC) plans.
—Emissions inventory.
—Emission statements.
—Periodic inventories.
—Clean fuels program or substitute.
—Enhanced monitoring Photochemical Assessment Monitoring Stations (PAMS).
—Stage II vapor recovery.
—Reformulated gasoline.
—Requirement for fees for major sources for failure to attain.
—9 percent ROP plan through attainment year.
—Attainment demonstration.

[1] Unless the area has in effect a NO_X waiver under section 182(f). The Connecticut portion of the New York-Northern New Jersey-Long Island area is not such a area.

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

Emission reductions that will be achieved through EPA's NO_X SIP call will reduce the levels of ozone and ozone precursors entering nonattainment areas at their boundaries. For purposes of developing attainment demonstrations, States define local modeling domains that include both the nonattainment area and nearby surrounding areas. The ozone levels at the boundary of the local modeling domain are reflected in modeled attainment demonstrations and are referred to as boundary conditions. With the exception of Houston, the one-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 one-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 [7] for purposes of the modeled attainment demonstration must be adopted and submitted as part of the State's one-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)

[7] 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 x 5 km or finer. The domain is large enough to ensure that emissions occurring at 8 am in the domain's center are still within the domain at 8 pm the same day. If recirculation of the nonattainment area's previous day's emissions is believed to contribute to an observed problem, the domain is large enough to characterize this.

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.[8] 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.[9] 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 (NPRM) proposing a major, comprehensive program designed to significantly reduce emissions from passenger cars and light trucks (including sport-utility vehicles, minivans, and pickup trucks) and to reduce sulfur in gasoline. Under the proposed program, automakers would produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners would provide that cleaner gasoline nationwide. The EPA subsequently issued two supplemental notices. 64 FR 35112 (June 30, 1999); 64 FR 57827 (October 27, 1999).

These notices provide one-hour ozone modeling and monitoring information that support EPA's belief that the Tier 2/Sulfur program is necessary to help areas attain the one-hour NAAQS. Under the proposed rule, NO_X and VOC emission reductions (as well as other reductions not directly relevant for attainment of the one-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 one-hour standard applies need the Tier 2/Sulfur program reductions to help attain the one-hour ozone standard. The New York-North New Jersey-Long Island area, whose attainment demonstration EPA is proposing to approve today, is included on that list.

The EPA issued a memorandum that provides estimates of the emissions reductions associated with the Tier 2/Sulfur program proposal.[10] The memorandum provides the tonnage benefits for the Tier 2/Sulfur program in 2007 on a county-by-county basis for all counties within the 10 serious and severe nonattainment areas for which EPA is proposing to take action today and the 2005 tonnage benefits for the 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.[11] 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, Philadelphia-Wilmington-Trenton, Baltimore, Atlanta, and Houston-Galveston-Brazoria nonattainment areas, the EPA is proposing to determine that additional emission reduction beyond those provided by the SIP submission are necessary for attainment. With the exception of Atlanta nonattainment area, a portion of that reduction will be achieved by EPA's Tier 2/Sulfur program, which EPA expects to finalize shortly. States that need to rely in whole or in part on the Tier 2 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 reduction 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

[8] 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.

[9] A final budget is preferred; but, if the State public hearing process is not yet complete, then the 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.

[10] 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.html.

[11] 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.html.

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.[12]

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 2/Sulfur program reductions and the WOE, will not achieve attainment without the application of additional emission control measures to achieve additional emission reductions. Thus, for each of these areas, EPA has identified specific tons per day emissions of NO_X and/or VOC that must be reduced through additional control measures in order to demonstrate attainment and to enable EPA to approve the demonstration. The need for additional emission reductions is generally based on a lack of sufficient compelling evidence that the demonstration shows attainment at the current level of adopted or planned emission controls. This is discussed in detail below for the New York-Northern New Jersey-Long Island area. The method used by EPA to calculate the amount of additional reductions is described in a technical support document located in the record for this proposed rule. Briefly, the method makes use of the relationship between ozone and its precursors (VOC and NO_X) to identify additional reductions that, at a minimum, would bring the model predicted future ozone concentration to a level at or below the standard. The relationship is derived by comparing changes in either (1) the model predicted ozone to changes in modeled emissions or (2) in observed air quality to changes in actual emissions.

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

As an initial matter, for areas that need additional 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 list of measures could be selected) that, when implemented, would be expected to provide sufficient additional emission reductions to meet the level of reduction 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 [13]). 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.

[12] 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.

[13] 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.

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.

For areas within the OTR, EPA believes it is appropriate to provide a State that is relying on a regional solution to a Congressionally-recognized regional air pollution problem with more time to adopt and submit measures for additional reductions to EPA than for a State that will rely on intrastate measures to achieve the reductions. Therefore, the EPA believes that States in the OTR must be allowed sufficient time for the OTR to analyze the appropriate measures as well as time for the State to adopt the measures. For these States, EPA believes it is appropriate for them to commit to work through the OTR to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA for these areas. However, as a backstop, the State will need to commit to adopt intrastate measures sufficient to achieve the additional reductions if the regional measures are not identified by the OTR and adopted by the relevant States.

For purposes of conformity, if the State submitted a commitment consistent with the December 1997 Wilson policy and which has been subject to public hearing, the State may amend its current commitment by letter to provide these assurances. However, before EPA can take final rulemaking action to approve the attainment demonstration, the State will need to meet the public hearing requirements for the commitment and submit it to EPA as a SIP revision. The EPA will have to propose and take final action on this SIP revision before EPA can fully approve the State's attainment demonstration. The State will have to submit the necessary measures themselves (and a revised motor vehicle emissions budget that includes the effects, if any, of the measure or measures that are ultimately adopted should any of the measures pertain to motor vehicles) as a SIP revision no later than October 31, 2001.

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 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. That 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 emission 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 Connecticut portion of the New York city area (NYC area), EPA believes that the State must have an enforceable commitment to perform a MCR as described here.[14] The Connecticut DEP submitted an enforceable commitment with its attainment demonstration on September 16, 1998. The commitment made was to submit a MCR in the 2001/2002 time frame and an additional MCR in 2005. EPA is suggesting that Connecticut revise its commitment to provide for the MCR immediately following the 2003 ozone season. Connecticut should also revise its commitment to agree 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.

For severe areas, the States must have an enforceable commitment to perform the MCR preferably following the 2003 ozone season, and to submit the results to EPA by the end of the review year (e.g., by December 31, 2003). EPA believes that an analysis in 2003 would be most robust since some or all of the regional NO_X emission reductions should be achieved by that date. EPA would then review the results and determine whether any States need to adopt and submit additional control measures for purposes of attainment. The EPA is not requesting that States commit now to adopt new control measures as a result of this process. It would be impracticable for the States to make a commitment that is specific enough to be considered enforceable. Moreover, the MCR could indicate that upwind States may need to adopt some or all of the additional controls needed to ensure an area attains the standard. Therefore, if EPA determines additional control measures are needed for attainment, EPA would determine whether additional emission reductions as necessary from States in which the nonattainment area is located or upwind States, or both. The EPA would require the affected State or States to adopt and submit the new measures within a period specified at the time. The EPA anticipates that these findings would be made as calls for SIP revisions under section 110(k)(5) and, therefore, the period for submission of the measures would be no longer than 18 months after the EPA finding. A draft guidance document regarding the MCR process is located in the docket for this proposal and may also be found on EPA's web site at http://www.epa.gov/ttn/scram.

D. What Does EPA Expect to Happen With Respect to the Attainment Demonstration for the Connecticut Portion of the New York-Northern New Jersey-Long Island Severe One-Hour Ozone Nonattainment Area?

Table 2 shows a summary of information on what EPA expects from the states in which the New York-Northern New Jersey-Long Island area is located to allow EPA to approve the one-hour ozone attainment demonstration SIPs.

[14] 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.

TABLE 2.—SUMMARY SCHEDULE OF FUTURE STATE ACTIONS RELATED TO ATTAINMENT DEMONSTRATION FOR THE PORTION OF THE NEW YORK-NORTHERN NEW JERSEY-LONG ISLAND SEVERE NONATTAINMENT AREA IN CONNECTICUT

Req'd 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 10/31/01, measures for additional emission reductions as required in the attainment demonstration test developed through the regional process. (The State must also submit a backstop commitment to adopt and submit by 10/31/01 intrastate measures for the emission reductions in the event the OTR process does not recommend measures that produce emission reductions.) —Submit revised SIP and motor vehicle emissions budget by 10/31/01, if additional measures (due 10/31/01) affect the motor vehicle emissions inventory. —Revise SIP and motor vehicle emissions budget 1 year after MOBILE6 issued.[3] —Perform a mid-course review.—A list of potential control measures identified 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 modeled measures relied on in attainment demonstration and relied on for ROP through the attainment year. —State revises and submits SIP and motor vehicle emissions budget to account for Tier 2 reductions as needed.[5]
10/31/01	—OTR States submit additional measures developed through the regional process. —State revises SIP and motor vehicle emissions budget, if the additional measures are for motor vehicle category.
Within 1 yr after release of MOBILE6 model	State submits revised SIP & motor vehicle emissions budget based on MOBILE6.
12/31/03	State submits to EPA results of mid-course review.

[1] Final budget preferable; however, if public process is not yet complete, then a ''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.''

[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.

[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 7/1/00).

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

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

E. What Are the Relevant Policy and Guidance Documents?

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

Recent Documents

1. ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: http://www.epa.gov/ttn/scram (file name: ''ADDWOE1H'').

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 from Merrylin Zaw-Mon to the Air Division Directors, Regions I–VI, ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstrations.'' 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 Rulemaking,'' November 8, 1999. Web site: http://www.epa.gov/oms/transp/traqconf.htm.

5. Draft Memorandum, ''Analyses To Support Mid-course Review Of SIP's To Meet The 1-hr NAAQS For Ozone.'' From John Seitz, Director, Office of Air Quality Planning and Standards. Web site: http://www.epa.gov/ttn/scram (file name: ''DR6MCR'').

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

Previous Documents

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

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

3. Memorandum, ''Ozone Attainment Demonstrations,'' from Mary D. Nichols,

issued March 2, 1995. Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

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

5. December 29, 1997 Memorandum from Richard Wilson, Acting Assistant Administrator for Air and Radiation ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS.'' Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

II. How Does the Connecticut Submittal Satisfy the Frame Work?

This section provides a review of Connecticut's submittal and an analysis of how this submittal satisfies the frame work discussed in section I of this notice.

A. What Was Submitted by Connecticut?

As mentioned previously the CAA requires nonattainment areas classified as moderate or worse for the one-hour ozone standard to prepare air quality modeling, using a photochemical grid model. This modeling is required to show that collective control strategies will reduce ozone to concentrations below the air quality standard by the area's attainment date. Connecticut submitted its modeling in several submittals. A January 4, 1995 submittal gave EPA the then up-to-date status of the state's modeling effort, including the completed elements of the one-hour modeling. The Phase I submittal, required for those states participating in the OTAG effort, was submitted on November 21, 1997. The Phase II submittal, which along with the previous submittals constitutes the attainment demonstration, was submitted on September 16, 1998.

The New York-New Jersey-Long Island severe ozone nonattainment area, which includes the southwest corner of Connecticut and is classified as severe-17, must attain the one-hour ozone standard by November 15, 2007. The Connecticut portion includes all of Fairfield County, CT except Shelton City, plus the towns of Bridgewater and New Milford, which are both in Litchfield County (40 CFR 81.307). The rest of Connecticut, including Shelton City is officially titled the Greater Connecticut serious area. The Greater Connecticut serious area's attainment demonstration is a separate SIP action, and is discussed elsewhere in this **Federal Register**. The New York-New Jersey-Long Island severe ozone nonattainment area contains the states of Connecticut, New Jersey and New York. All three states are required to submit an attainment demonstration State Implementation Plan (SIP). Since New York and New Jersey are part of EPA Region II, EPA Region II is responsible for their SIP submittal, and those submission are addressed elsewhere in this **Federal Register**.

The Connecticut portion of the New York-Northern New Jersey-Long Island severe nonattainment area was modeled by the New York Department of Environmental Conservation, with input from environmental agency staff of both the States of Connecticut and New Jersey and by staff from EPA Regions I and II. This arrangement was agreed to in 1990 by all the participating parties, with concurrence from EPA Regions I and II. The modeling also includes the modeling for the Greater Connecticut nonattainment area.

B. How Was the Model Selected?

EPA recommended that states use the Urban Airshed Model (UAM) version IV as the ozone model of choice for the grid-point modeling required by the Clean Air Act (CAA) for the one-hour attainment demonstrations. Other models are allowed if the states show that they are scientifically valid and they preform (i.e., are just as reliable) as well as, or better than, UAM IV. The NYC domain chose to use UAM IV. Details on the model and its selection can be found in the submittal from the State of Connecticut. Many different sensitivity runs and model performance runs were performed using the UAM IV model, also different boundary conditions were tried. These runs are available in the submittal from Connecticut.

C. What Did the Photochemical Grid Modeling Show?

The UAM IV modeling analysis is contained in the State Implementation Plan (SIP) submitted by the CT DEP. A mostly similar analysis was also submitted by New Jersey (NJDEP) and New York State (NYSDEC) since, as explained above, their SIPs include portions of the modeling domain. The domain covers both the New York Northern New Jersey-Long Island severe area, and the Greater Connecticut area. Information on how the UAM modeling meets EPA guidance is summarized here and detailed in the State's submittals.

EPA's Guideline on the use of photochemical grid models recommends that areas model three or more episodes including the types of weather conditions most conducive to ozone formation. The final photochemical grid modeling submitted by Connecticut focused on the UAM-IV modeling for several episodes from 1988 and 1991. All episodes represent significant ozone exceedances, under various meteorological conditions. The episodes have some of the worst case meteorology (i.e., the highest potential for ozone formation) of the episodes in the past forty years. It follows that if an extreme episode, like the ones chosen, pass the modeled attainment test, then less extreme days would pass as well.

The UAM IV was run using the CALMET meteorological processor, with State actual emission inventories for the base years (1988 or 1991 as appropriate) and with projected emissions representing grown and controlled emissions for the attainment year. The projected emissions used were the Case-E scenario developed for EPA-OTC modeling simulations and included the effects of projected growth, the CAA required measures, low emission vehicle (LEV) assumptions for the motor vehicle section, and NO_X reductions equivalent to the regional NO_X SIP call adopted by EPA.

The UAM IV model shows that domain wide there is a 91% decrease in the number of grid cells that exceed the one-hour standard from the base year to 2007. A 100% decrease would be necessary to pass the deterministic model test. The predicted peaks for 2007 remain above the one-hour standard with peak concentrations of 171 ppb in 2007. This does not pass the deterministic test. Since the UAM-IV model, as run for this analysis, does not show attainment in 2007 additional weight of evidence analyses were performed. These additional analyses are discussed below.

D. How Well Did the Model Perform?

The UAM-IV model predicts ozone within the quality limits set by EPA guidance on most days. Qualitatively, the model predicts the peak ozone in the observed locations downwind of New York City. The model shows a slight bias toward over predicting ozone.

As prescribed by EPA Guidance, the UAM-IV modeling predicts ozone concentrations for the year 2007 using the meteorology of the episodes from 1988 and 1991 combined with the emissions that are projected to occur by 2007. The 2007 emissions include emission increases due to population and economic growth and decreases due to the control strategies that will be in place by then (including an estimate for the EPA NO_X SIP Call).

E. What Other Type of Analyses Were Performed By Connecticut?

In the past, EPA guidance for use of the UAM model required that all

modeling days show attainment of the ozone standard at all grid cells. This is called the deterministic method. The attainment demonstration guidance allows the user to adjust for days that have an extremely high ability to form ozone because of its meteorology. Adjustments are allowed since the one-hour ozone standard allows each location to have one day per year, on average, over the one-hour ozone standard.

The attainment demonstration guidance allows use of additional corroborative analyses to support the attainment demonstration when the modeled attainment test is not passed. These other analyses can be used as part of the weight of evidence to attainment. The weight of evidence used to supplement the modeled attainment test in the Connecticut portion of the New York-Northern New Jersey-Long Island area attainment demonstration, and how they can help predict that the area will attain the standard, are described here. In addition, one of the factors that EPA can consider as part of the weight-of-evidence analysis is whether there will be additional emission reductions anticipated that are not modeled.

This notice discusses several analyses. Those analyses are the local Photochemical Grid Modeling (discussed above), Air Quality Trends Analyses, the Design Value Rollback analysis, and an additional analysis done pursuant to EPA memorandum entitled ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.''

F. What Do Air Quality Trends Show?

Linear extrapolation of present air quality trends predicts that the peak ozone values will be less than 125 ppb and the number of exceedances of the air quality standard will be less than one per year about the year 2005. Since a number of emission control programs, such as the NO_X SIP Call, and Tier 2 car standards are still to be implemented and others, like the OTC NO_X agreement and vehicle inspection and maintenance programs, are still being implemented (i.e. not achieving full emissions reduction benefit), emissions of ozone precursors will continue to decrease from now through 2007. Connecticut's attainment demonstration states that attainment of the one-hour ozone standard is possible based on an extrapolation of the air quality data.

The attainment demonstration also includes research showing that ozone decreases occur at all of the monitors in the New York City airshed. Even when the trends are adjusted for year-to-year changes in how conducive the weather is for ozone formation (i.e. meteorologically adjusted trends), every air quality monitor except one shows decreased ozone. This supports the conclusion that the improvements in air quality during recent years are due to reductions in emissions rather than meteorology.

G. What Does the Regional Design Value Rollback Analysis Show?

One of the analyses in the weight of evidence is the design value rollback analysis. Design value rollback uses the design value from recent air quality data as its starting point. The amount of ozone reduction predicted by the model from the starting point to the attainment year is calculated and the design value from recent air quality data is reduced by that amount.

For the Connecticut analysis, EPA supplied calculations of the percentage reduction in ozone at the grid cells near the monitoring sites. The calculations were from the UAM–V modeling that EPA has been doing for the NO_X SIP Call. EPA ran the UAM–V for the entire eastern United States for various episodes in 1991, 1993 and 1995 with both 1995 and 2007 OTAG emission inventories. The 2007 run included emissions adjusted for growth and reductions from the CAA-required controls plus the NO_X SIP Call, and the National LEV (NLEV) program.

The percentage difference between the base and the future case was calculated for the days when the modeling predicted the highest concentrations near each monitoring site. The ozone reductions on those days were averaged for each monitoring site. This percent difference was divided by 100 to produce a ''rollback factor.'' The observed ozone design value was multiplied by the rollback factor to obtain the concentration of ozone predicted for the monitoring site for the year 2007. The ozone design value was the fourth highest concentration at each site over the three-year period from 1996 to 1998. The highest predicted design value for 2007 from all the monitoring sites is 122 ppb, less than the 125 ppb one-hour ozone standard. This is how the design value rollback method predicts that the area may attain the ozone standard by 2007. The three years of data used by Connecticut in its submittal to calculate the observed design value were the latest available data at the time: 1996 to 1998. When EPA used the method in the NO_X SIP Call, it used the design value from 1994 to 1996, centered on 1995 when the model begins its reductions in emissions and ozone. The period used by in the analysis submitted by CT DEP does not overlap 1995. It should also be noted that preliminary ozone data from the summer of 1999 for this area shows that ozone levels have risen, most likely due to weather conditions, and that the three year design value has also risen. So the regional design value rollback method, when applied to the most recent air quality data does not show attainment in 2007. Further analyses are thus necessary, such as those discussed below.

The design value rollback technique is a way of using existing air quality and the model in a relative sense to predict how the air quality will improve. Existing air quality is a readily measured quantity. Models may be more accurate at calculating the amount of improvement in air quality as opposed to predicting an absolute concentration. Therefore, this method counteracts some of UAM–IV's biases toward underestimating the extent of ozone reduction. The design value rollback method provides another gauge of whether an area will attain the air quality standard, using a method which does not rely solely on the absolute predictions made by the models.

In summary, the design value rollback method was applied to the New York City airshed, where it used the most recent data to predict that all of the air quality stations will have better air quality than the one-hour air quality standard when the present ozone concentrations are reduced by the percentage ozone reduction that the UAM–V model predicts from the baseline to the attainment year. More recent air quality data call this analysis into question.

H. Does the Connecticut Portion of the New York-Northern New Jersey-Long Island Severe Nonattainment Area Need Additional Local Measures?

EPA does not believe the attainment analysis for New York-Northern New Jersey-Long Island area proves attainment by the year 2007. EPA conducted a further analysis to further determine how much additional reduction is needed in order for EPA to approve or conditionally approve a revised and re-submitted attainment demonstration for this area. The EPA suggests that Connecticut include these calculations as part of the WOE analysis accompanying the adjusted attainment demonstration and revised motor vehicle emissions budget for this area.

EPA calculated the emission reductions needed to make up the difference between the future year modeled ozone values and the ozone standard. The details of this calculation

are contained in the TSD for this notice. The analysis shows an ozone shortfall of 5 ppb for the New York-Northern New Jersey-Long Island severe nonattainment. From this 5 ppb shortfall value, additional local emission reduction targets can be developed. When the appropriate method is applied to this area, it is predicted that an additional 3.8% VOC and 0.3% NO_X reduction from base year 1990 inventories is necessary to approve or conditionally approve a revised and re-submitted attainment demonstration for this area. These additional reductions are over and above the Clean Air Act measures required for this area and the measures already relied on in the demonstration of attainment. Since Tier 2/Sulfur is included in the EPA analysis the percent reduction figures are also over and above Tier 2/Sulfur reductions as well. The three states within the nonattainment area will have to work together to achieve these reductions. A notice of public hearing was signed by Arthur Rocque, Jr, Commissioner, Connecticut DEP on November 24, 1999 requesting public comment on proposed changes to the attainment demonstration for the Connecticut portion of the New York-Northern New Jersey-Long Island severe nonattainment area.. To achieve the additional reductions necessary for attainment, Connecticut has proposed to: (1) Revise the transportation conformity budget to include the effects of EPA's recently proposed Tier 2 motor vehicle emissions control program and associated fuel sulfur control program, (2) commit to adopt additional NO_X emission limits applicable to municipal waste combustors, and (3) commit to work with other jurisdictions of the Ozone Transport Region (OTR) and to submit, by October 31, 2001, additional necessary regional control measures in conjunction with other jurisdictions of the OTR to offset the emissions reduction shortfall in order attain the 1-hour ozone NAAQS by 2007.

I. Does Connecticut Portion of the New York-Northern New Jersey-Long Island Severe Nonattainment Area Need a Mid-Course Review Correction?

EPA guidance requires a mid-course review correction for the Connecticut portion of the New York-Northern New Jersey-Long Island severe nonattainment area to access assess whether the assumptions used in the attainment demonstration are still true in the future. This mid-course review should take place after the 2003 ozone season. The Connecticut DEP submitted an enforceable commitment with its attainment demonstration on September 16, 1998, to submit a MCR in the 2001/2002 time frame, and an additional MCR in 2005. In order for EPA to accept that commitment of an MCR, Connecticut will have to agree to perform the MCR immediately following the 2003 ozone season and to submit the results to EPA by December 31, 2003. Connecticut should agree 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. Once Connecticut modifies their commitment on the MCR to include these issues, then EPA can move forward to approve the attainment demonstration.

J. What Are EPA's Recommendations With Regard to the Modeling Portion of the Attainment Demonstration?

The modeling for the Connecticut portion of the New York-Northern New Jersey-Long Island severe nonattainment area uses analyses that follow the EPA guidelines for predicting future air quality. These analyses, on balance, do not show that air quality will meet the one-hour ozone air quality standard by the requested attainment date of 2007. Additional analyses performed by EPA using the most up-to-date EPA guidance allows for attainment if the state commits to incorporate the Tier 2/Sulfur program into its attainment demonstration and commits to adopt measures which achieve an additional 3.8% VOC and a 0.3% NO_X emission reduction. As stated previously, Connecticut has recently proposed revisions to its attainment demonstration to address these requirements.

K. What Measures Did Connecticut Rely on in Their Attainment Demonstration?

Table 3 shows the measures Connecticut relied on in the attainment demonstration for the Connecticut portion of the New York Northern New Jersey-Long Island nonattainment area. The measures along with their approval status is shown.

TABLE 3.—CONTROL MEASURES IN THE ONE-HOUR OZONE ATTAINMENT PLANS FOR THE CONNECTICUT SEVERE OZONE NONATTAINMENT AREA

Name of control measure	Type of measure	Included in local modeling	Approval status
On-board Refueling Vapor Recovery	Federal rule	Yes	Promulgated at 40 CFR 86.
Federal Motor Vehicle Control program	Federal rule	Yes	Promulgated at 40 CFR 86.
Federal Non-road Gasoline Engines	Federal rule	Yes	Promulgated at 40 CFR 90.
Federal Non-road Heavy Duty diesel engines	Federal rule	Yes	Promulgated at 40 CFR 89.
AIM Surface Coatings	Federal rule	Yes	Promulgated at 40 CFR 59 subpart D.
Consumer & commercial products	Federal rule	Yes	Promulgated at 40 CFR 59 subpart C.
Enhanced Inspection & Maintenance	CAA SIP Requirement.	Yes	Conditionally SIP approved (64 FR 12005; 3/10/99).[1]
NO_X RACT	CAA SIP Requirement.	Yes	SIP approved (62 FR 52016; 10/6/97).
VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of Clean Air Act.	CAA SIP Requirement.	Yes	SIP approved (56 FR 52205; 10/18/91 and 64 FR 12019; 3/10/99).
VOC RACT pursuant to sections 182(b)(2)(A) and (C) of Clean Air Act.	CAA SIP Requirement.	Yes	Conditionally SIP approved (64 FR 12019; 3/10/99)—SIP approval pending for SIP submitted in response to condition.[2]
Stage II Vapor Recovery	CAA SIP Requirement.	Yes	SIP approved (58 FR 65930; 12/17/93).
Stage I Vapor Recovery	CAA SIP Requirement.	Yes	SIP approved (56 FR 52205; 10/18/91).

TABLE 3.—CONTROL MEASURES IN THE ONE-HOUR OZONE ATTAINMENT PLANS FOR THE CONNECTICUT SEVERE OZONE NONATTAINMENT AREA—Continued

Name of control measure	Type of measure	Included in local modeling	Approval status
Reformulated Gasoline	CAA required program in NYC and Hartford areas. Opt-in to federal program for remainder of state.	Yes	Promulgated statewide under 40 CFR section 80.70. Also approved for opt-in portion of state as part of 15% plan (64 FR 12015; 3/10/99).
National Low Emission Vehicle (NLEV)	State opt-in	Yes	Federal program promulgated at 40 CFR 86 subpart R. State opt-in SIP approval proposed 8/16/99, 64 FR 44450.[3]
Clean Fuel Fleets	CAA SIP Requirement.	Yes	RFG and I/M reductions substituted—SIP approval pending.[4]
New Source Review	CAA SIP Requirement.	No	SIP approval pending.[5]
Base Year Emissions Inventory	CAA SIP Requirement.	N/A[6]	SIP approved (62 FR 55336; 10/24/97).
15% VOC Reduction Plan	CAA SIP Requirement.	Yes[7]	SIP approved (64 FR 12015; 3/10/99).
Enhanced Rule Effectiveness	State measure	Yes[7]	SIP approved (64 FR 12015; 3/10/99).
9% rate of progress plans	CAA SIP Requirement.	Yes for the strategies relied on for the first phase from 1996–1999[7].	SIP approval pending for the first phase from 1996–1999.[8] For the ROP plans post 1999, CT provided an enforceable commitment to submit the plans and adopt all necessary rules demonstrating ROP through 2007 by December 2000.[9]
Emissions Statements	CAA SIP Requirement.	N/A[6]	SIP approved (60 FR 2524; 1/10/95).
Enhanced Monitoring (PAMS)	CAA Requirement	N/A[6]	SIP approved (62 FR 55336; 10/24/97).
OTC NO_X MOU Phase II	State initiative	Yes	SIP approved (64 FR 52233; 9/28/99).
EPA NO_X SIP call	EPA requirement	Yes	SIP approval pending.[10]

[1] The fact that CT's enhanced I/M rule is conditionally approved does not affect the emission reductions that Connecticut can rely on for attainment purposes since the achievement of those emission reductions in no way depends upon the fulfillment of the conditions outlined in that final rule. Rather, the conditions relate to certain procedural requirements only.

[2] With respect to the various VOC and Non-CTG rules, Connecticut submitted a revised non-CTG RACT rule on September 2, 1999. In order to meet the requirements of sections 182(b)(2)(A) and (C), CT revised the section 22a–174–32 to remove the exemption for the remaining Appendix E categories, as well as expanding the applicability to sources in industrial categories in CT for which EPA has published final CTGs since the date of enactment (e.g., aerospace, shipbuilding, and wood furniture coating). EPA deemed the SIP submittal complete on September 10, 1999. EPA will take final action on the revised section 22a–174–32 prior to finalizing action on the one-hour ozone attainment plan.

[3] EPA intends to publish final rules for the NLEV opt-in SIP before or at the same time as we publish final rules on the attainment demonstration.

[4] Since RFG and I/M emission reductions already approved into the SIP, the Clean Fuel Fleet program will not have to be finally approved in order to approve the attainment demonstration.

[5] CT submitted its New Source Review (NSR) for VOC and NO_X as a SIP revision on May 23, 1994. The state is not relying on emission reductions from this NSR SIP, and therefore it will not have to be finally approved in order to approve the attainment demonstration.

[6] Does not produce emission reductions.

[7] The measures used to demonstrate rate of progress were modeled.

[8] The nine percent plan rate-of-progress (ROP) plan SIP for reductions from 1996 through 1999 was submitted to EPA on December 31, 1997, with minor revisions on January 7, 1998. This plan is currently under review by EPA. A notice of proposed rulemaking will be published soon. EPA intends to publish final rules for the nine percent ROP before or at the same time as it publishes final rules on the attainment demonstration.

[9] In today's notice, EPA is proposing to conditionally approve Connecticut's attainment demonstration for the New York-Northern New Jersey-Long Island severe ozone nonattainment area, including the enforceable commitment for the Post-99 ROP submission.

[10] On September 30, 1999, CT DEP submitted a SIP revision in response to the EPA's regulation entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' The SIP submittal included a NO_X budget and allowance trading regulation, section 22a–174–22b. Although not a CAA required measure, section 22a–174–22b requires significant NO_X reductions from 2003 onward which will strengthen the SIP. EPA will take final action on section 22a–174–22b prior to finalizing action on the one-hour ozone attainment plan. This also fulfills Connecticut's commitment under the OTC MOU Phase III program.

L. Motor Vehicle Emission Budget

The CT DEP submitted 2007 conformity budgets for the Connecticut portion of the New York-Northern New Jersey-Long Island severe ozone nonattainment area on February 10, 1999. These budgets were developed from the mobile source inventories developed by EPA for the NO_X SIP call. In its February 10, 1999 letter, CT DEP concluded that it is reasonable to extract 2007 transportation conformity budgets from the NO_X SIP call since Connecticut's ozone attainment demonstrations rely on EPA modeling results developed using emission inventories equivalent to those used by EPA to develop the NO_X SIP call. In a November 19, 1999 letter from Susan Studlien, EPA Region I to Carmine DiBattista, CT DEP, EPA found that the 2007 motor vehicle emissions budgets submitted for the Connecticut area are inadequate for conformity purposes. The budgets were determined to be inadequate because in some instances they do not accurately reflect the mobile source control strategies Connecticut is implementing and, when compared to more recent mobile source emission estimates prepared by the state for conformity, appear to be substantial higher in the attainment year than the

most current projections. The letter, which is available in the docket for this action, further outlines the rationale behind this determination.

In November 24, 1999 notice of public hearing discussed previously, Connecticut DEP has included proposed 2007 conformity budgets for the Connecticut portion of the New York Northern New Jersey-Long Island nonattainment area. These budgets incorporate the benefits of the Tier 2/Sulfur program for the Connecticut portion of the New York Northern New Jersey-Long Island nonattainment area. The EPA is proposing to conditionally approve the attainment demonstration SIP should Connecticut corrects the deficiencies that cause the motor vehicle emissions budget to be inadequate and, alternatively, to disapprove it if Connecticut does not correct the deficiencies.

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

M. Tier 2/Sulphur Program Benefits

As result of EPA's review of the State's SIP submittal, EPA believes that the ozone modeling submitted by the State for the New York-Northern New Jersey-Long Island severe nonattainment area on which EPA is proposing to conditionally approve and disapprove-in-the-alternative today will need the emission reductions from EPA's Tier 2/Sulfur to attain the one-hour ozone NAAQS. Further, EPA believes that the New York-Northern New Jersey-Long Island severe nonattainment area will require additional emission reductions identified by EPA, beyond those from EPA's Tier 2/Sulfur program, to attain the one-hour ozone NAAQS.

For the New York-Northern New Jersey-Long Island severe nonattainment area, EPA is proposing to determine that the submitted control strategy does not provide for attainment by the attainment deadline. The emission reductions of EPA's Tier 2/Sulfur program, which are not reflected in the submitted SIP, will assist in attainment and the effects of these standards must be included in the motor vehicle emissions budget.

To assist the State in the preparation of a new submission which could be approved or conditionally approved, EPA has prepared an estimate of the air quality benefits of EPA's Tier 2/Sulfur program. In our calculation, EPA assumed that all of the Tier 2/Sulfur emissions reductions will contribute to the ability of the New York-Northern New Jersey-Long Island severe nonattainment area to demonstrate attainment. The EPA has further calculated how much additional emission reduction is needed for the New York-Northern New Jersey-Long Island severe nonattainment area in order for EPA to approve or conditionally approve a revised and re-submitted attainment demonstration for this area. The EPA suggests that the State include these calculations as part of the WOE analysis accompanying the adjusted attainment demonstration and revised motor vehicle emissions budget for this area. Today EPA is proposing to conditionally approve a new attainment demonstration if it meets this description.

However, Connecticut can use some of EPA's Tier 2/Sulfur program credit for other purposes. Thus, the State could take credit for all or some of EPA's Tier 2/Sulfur program credit for its attainment demonstration.

If the amount of Tier 2/Sulfur program credit that Connecticut is assuming in its adjusted attainment plan is less than the amount that EPA assumed would be available for attainment, *i.e.,* the State is applying some or all of the Tier 2/Sulfur program credit for other purposes, the State will have to calculate the remaining amount of additional emission reductions needed and commit to adopt measures to achieve them. If the State assumes all the Tier 2/Sulfur program credit will go toward attainment, then the State will be able to rely on EPA's estimate of the additional emission reductions needed.

N. What Are the Consequences of State Failure?

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

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

If EPA disapproves a required SIP, such as the attainment demonstration SIPs, section 179(a) provides for the imposition of two sanctions. The first sanction would apply 18 months after EPA disapproves the SIP if the State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to a broader area, but is not proposing to take such action today.

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

In addition to sanctions, if EPA finds that a State failed to submit the required SIP revision or disapproves the required SIP revision EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected. The attainment demonstration SIPs on which EPA is taking action today were originally due in November 1994. However, through a series of policy memoranda, EPA recognized that States had not submitted attainment demonstrations and were constrained to do so until ozone transport had been further analyzed. As 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.

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. Proposed Action

EPA is proposing to conditionally approve the ground-level one-hour ozone attainment demonstration State implementation plan (SIP or demonstration) for the Connecticut portion of the New York-Northern New Jersey-Long Island severe nonattainment Area submitted by Connecticut on September 16, 1998. EPA is also proposing to conditionally approve the Connecticut's commitment to submit ROP target calculations for ROP after 1999 and the adopted measures to achieve post-1999 ROP by December 2000. EPA is also proposing, in the alternative, to approve in part and disapprove in part this demonstration if the State does not submit an adequate motor vehicle emissions budget consistent with attainment, and a commitment to the additional measures required for attainment of the standard. Lastly, EPA intends to publish final rules for Nine Percent ROP, NLEV and the NO_X SIP call for Connecticut either before or at the same time as publication of final approval of the attainment demonstration.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These issues will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this action.

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

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

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

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

C. Executive Order 13084

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

D. Executive Order 13132

Executive Order 13132 Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of

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

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

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

F. Unfunded Mandates

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

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

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

G. National Technology Transfer and Advancement Act

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: November 30, 1999.

Mindy S. Lubber,

Deputy Regional Administrator, Region I.

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

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

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

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

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Proposed rule.

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

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

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

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

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

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

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

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

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

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

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

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

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I. Background Information

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

1. CAA Requirements

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

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

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

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

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

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

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

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

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

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

In recognition of the length of the OTAG process, in a December 29, 1997 memorandum, Richard Wilson, EPA's then Acting Assistant Administrator for Air and Radiation, provided until April 1998 for states to submit the following elements of their Attainment Demonstration SIPs for serious and severe nonattainment areas: (1) Evidence that the applicable control measures in subpart 2 of part D of title I of the CAA were adopted and implemented or were on an expeditious course to being adopted and implemented; (2) a list of measures needed to meet the remaining ROP emissions reduction requirement and to reach attainment; (3) for severe areas only, a commitment to adopt and submit target calculations for post-1999 ROP and the control measures necessary for attainment and ROP plans through the attainment year by the end of 2000; (4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the state submittal.[3] This submission is sometimes referred to as the Phase 2 submission. Motor vehicle emissions budgets can be established based on a commitment to adopt the measures needed for attainment and identification of the measures needed. Thus, state submissions due in April 1998 under the Wilson policy should have included a motor vehicle emissions budget.

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

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

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

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

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

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

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

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

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

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

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

The EPA may issue a conditional approval based on a state's commitment to expeditiously correct a deficiency by a date certain that can be no later than one year following EPA's conditional approval. Such commitments do not need to be independently enforceable because, if the state does not fulfill its commitment, the conditional approval is converted to a disapproval. For example, if a state commits to submit additional control measures and fails to submit them or EPA determines the state's submission of the control measures is incomplete, the EPA will notify the state by letter that the conditional approval has been converted to a disapproval. If the state submits control measures that EPA determines are complete or that are deemed complete, EPA will determine through rulemaking whether the state's Attainment Demonstration SIP is fully approvable or whether the conditional approval of the Attainment Demonstration SIP should be converted to a disapproval.

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

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

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

1. Modeling Requirements

For purposes of demonstrating attainment, the CAA requires serious and severe areas to use photochemical grid modeling or an analytical method EPA determines to be as effective. The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values and to predict air quality changes in the attainment year due to the emission changes which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted concentrations inside the modeling domain are at or below the NAAQS or at an acceptable upper limit above the NAAQS permitted under certain conditions by EPA's guidance. When the predicted concentrations are above the NAAQS, an optional weight of evidence determination which incorporates, but is not limited to, other analyses, such as air quality and emissions trends, may be used to address uncertainty inherent in the application of photochemical grid models.

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

[4] 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, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''UAMREG''). See also U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''O3TEST'').

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

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

The deterministic test requires the state to compare predicted 1-hour daily maximum ozone concentrations for each modeled day [5] to the attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

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

The acceptable upper limit above 0.124 ppm is determined by examining the size of exceedances at monitoring sites which meet the 1-hour NAAQS. For example, a monitoring site for which the four highest 1-hour average concentrations over a three-year period are 0.136 ppm, 0.130 ppm, 0.128 ppm and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration observed at a location on a single day and it would be the only reading above the standard that would be expected to occur no more than an average of once a year over a three-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

2. Additional Analyses Where Modeling Fails to Show Attainment

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

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

The EPA's 1996 modeling guidance also recognizes a need to perform a mid-course review as a means for addressing uncertainty in the modeling results. Because of the uncertainty in long term projections, EPA believes a viable attainment demonstration that relies on WOE needs to contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. The mid-course review is discussed in section C.6.

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

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

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

—NO_X reductions affecting boundary conditions.

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

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

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

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

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

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

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

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

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

CAA REQUIREMENTS FOR SERIOUS AREAS

—NSR for VOC and NO_X [1], 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[1].
—Enhanced Inspection and Maintenance (I/M) program.
—15% volatile organic compound (VOC) plans.
—Emissions inventory.
—Emission statements.
—Periodic inventories.
—Attainment demonstration.
—9 percent ROP plan through 1999.
—Clean fuels program or substitute.
—Enhanced monitoring Photochemical Assessment Monitoring Stations (PAMS).
—Stage II vapor recovery.

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

CAA REQUIREMENTS FOR SEVERE AREAS

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

2. NO_X Reductions Affecting Boundary Conditions

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

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

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

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

As provided in section 1 above, any controls assumed by the state inside the local modeling domain [6] 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.

[6] 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 x 5 km or finer. The domain is large enough to ensure that emissions occurring at 8 am in the domain's center are still within the domain at 8 pm the same day. If recirculation of the nonattainment area's previous day's emissions is believed to contribute to an observed problem, the domain is large enough to characterize this.

3. Motor Vehicle Emissions Budget

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

The EPA has determined that except for the Western MA (Springfield) Attainment Demonstration SIP, the motor vehicle emission budgets for all areas in today's proposals are inadequate or missing from the attainment demonstration. Therefore, EPA is proposing to disapprove the Attainment Demonstration SIPs for those nine areas if the states do not submit motor vehicle emissions budgets that EPA can find adequate by May 31, 2000.[7] In order for EPA to complete the adequacy process by the end of May, states should submit a budget no later than December 31, 1999.[8] If an area does not have a motor vehicle emissions budget that EPA can determine adequate for conformity purposes by May 31, 2000, EPA plans to take final action at that time disapproving in full or in part the area's attainment demonstration. The emissions budget should reflect all the motor vehicle control measures contained in the attainment demonstration, i.e., measures already adopted for the nonattainment area as well as those yet to be adopted.

4. Tier 2/Sulfur Program Benefits

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

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

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

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

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

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

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

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

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

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

allow EPA to include them in the motor vehicle emissions budget adequacy determinations which need to be completed by May 31, 2000. Alternatively, these revisions should be submitted by July 2000 for serious nonattainment areas, as EPA anticipates completing rulemaking on these SIPs in the fall of 2000. For severe nonattainment areas, these revisions should be submitted by December 31, 2000.

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

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

5. Additional Measures To Further Reduce Emissions

The EPA is proposing to find that the Attainment Demonstration SIPs for New York-Northern New Jersey-Long Island; Baltimore; Philadelphia-Wilmington-Trenton; Houston; and Atlanta, even considering the Tier 2/Sulfur program reductions and the WOE, will not achieve attainment without the application of additional emission control measures to achieve additional emission reductions. Thus, for each of these areas, EPA has identified specific tons per day emissions of NO_X and/or VOC that must be reduced through additional control measures in order to demonstrate attainment and to enable EPA to approve the demonstration. The need for additional emission reductions is generally based on a lack of sufficient compelling evidence that the demonstration shows attainment at the current level of adopted or planned emission controls. This is discussed in detail below for the New York-Northern New Jersey-Long Island nonattainment area. The method used by EPA to calculate the amount of additional reductions is described in a technical support document located in the record for this proposed rule. Briefly, the method makes use of the relationship between ozone and its precursors (VOC and NO_X) to identify additional reductions that, at a minimum, would bring the model predicted future ozone concentration to a level at or below the standard. The relationship is derived by comparing changes in either (1) the model predicted ozone to changes in modeled emissions or (2) in observed air quality to changes in actual emissions.

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

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

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

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

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

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

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

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

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

Guidance on Additional Control Measures. Much progress has been made over the past 25 years to reduce VOC emissions and over the past 9 years to reduce NO_X emissions. Many large sources have been controlled to some extent through RACT rules or other emission standards or limitations, such as maximum achievable control technology (MACT), new source performance standards (NSPS) and the emission control requirements for NSR—lowest achievable emissions rate (LAER) and best achievable control technology (BACT). However, there may be controls available for sources that have not yet been regulated as well as additional means for achieving reductions from sources that have already been regulated. The EPA has prepared a report to assist states in identifying additional measures. This report is called ''Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control Measures.'' The purpose of this report is to provide information to state and local agencies to assist them in identifying additional control measures that could, if later determined to be appropriate, be adopted into their SIPs to support the attainment demonstrations for the serious and severe nonattainment areas under consideration. This report has been added to the record for this proposal.

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

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

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

The EPA report lists the various sources EPA used to develop the lists of additional measures. These sources include an EPA draft control measure data base, state and Territorial Air Pollution Administrators and the Association of Local Air Pollution Control 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. The is the approach of ''cap and trade.'' In this approach, a cap is placed on emissions, and existing sources are given emission allotments. Under a declining cap, emissions would be decreased each year. Sources may over-control and sell part of their allotments to other sources which under-control. Overall, the percentage decrease in emissions is maintained, but the reductions are made where they are most economical. A cap and trade program has been in operation in the South Coast Air Quality Management District in California since about 1992.

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

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

Finally, a reduction in VOC and NO_X emissions can be achieved through a wide range of control measures. These measures range from technology based actions such as retrofitting diesel trucks and buses, and controlling ground service equipment at airports to activity based controls such as increased use of transit by utilizing existing Federal tax incentives, market and pricing based programs, and ozone action days. States can also achieve emission reductions by implementing programs involving cleaner burning fuels. The State of Texas is also considering a rule to change the times during the day in which construction can occur to reduce ozone precursor emissions during periods when ozone formation is occurring. There are a wide range of new and innovative programs beyond the few examples listed here. These measures, if taken together, can provide significant emission reductions for attainment purposes. In addition, a variety of mobile source measures could be considered as part of the commitment to meet the need for additional emission reduction measures.

6. Mid-Course Review

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

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

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

For severe areas, the states must have an enforceable commitment to perform the MCR, preferably following the 2003 ozone season, and to submit the results to EPA by the end of the review year (*e.g.,* by December 31, 2003). EPA believes that an analysis in 2003 would be most robust since some or all of the regional NO_X emission reductions should be achieved by that date. EPA would then review the results and determine whether any states need to adopt and submit additional control measures for purposes of attainment. The EPA is not requesting that states commit now to adopt new control measures as a result of this process. It would be impracticable for the states to make a commitment that is specific enough to be considered enforceable. Moreover, the MCR could indicate that upwind states may need to adopt some or all of the additional controls needed to ensure an area attains the standard. Therefore, if EPA determines additional control measures are needed for attainment, EPA would determine whether additional emission reductions as necessary from states in which the nonattainment area is located or upwind states, or both. The EPA would require the affected state or states to adopt and submit the new measures within a period specified at the time. The EPA anticipates that these findings would be made as calls for SIP revisions under section 110(k)(5) and, therefore, the period for submission of the measures would be no longer than 18 months after the EPA finding. A draft guidance document regarding the MCR process is located in the docket for this proposal and may also be found on EPA's web site at http://www.epa.gov/ttn/scram/.

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

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

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

Req'd no later than	Action
12/31/99	State submits the following to EPA: —motor vehicle emissions budget [1]. —Commitments [2] to do the following: —Submit by 10/31/01 measures for additional emission reductions as required in the attainment demonstration test; for additional emission reduction measures developed through the regional process, the State must also submit a commitment for the additional measures and a backstop commitment to adopt and submit by 10/31/01 intrastate measures for the emission reductions in the event the OTR process does not recommend measures that produce emission reductions. —Submit revised SIP & motor vehicle emissions budget by 10/31/01 if additional measures (due by 10/31/01) affect the motor vehicle emissions inventory.

[13] For purposes of conformity, the state needs a commitment that has been subject to public hearing. If the state has submitted a commitment that has been subject to public hearing and that provides for the adoption of all measures necessary for attainment, the state should submit a letter prior to December 31, 1999, amending the commitment to include the MCR.

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

Req'd no later than	Action
	—Revise 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 form any previous submissions made in proposed form by 12/31/99.
Before EPA final rulemaking	State submits enforceable commitments for any above-mentioned commitments that may not yet have been subjected to public hearing.
12/31/00	—State submits adopted modeled measures relied on in attainment demonstration and relied on for ROP through the attainment year.
	—State revises & submits SIP & motor vehicle emissions budget to account for Tier 2 reductions as needed [5].
10/31/01	—OTR States submit additional measures developed through the regional process.
	—State revises SIP & motor vehicle emissions budget if the additional measures are for motor vehicle category.
Within 1 yr after release of MOBILE6 model	State submits revised SIP & motor vehicle emissions budget based on MOBILE6.
12/31/03	State submits to EPA results of mid-course review.

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

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

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

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

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

E. What Are the Relevant Policy and Guidance Documents?

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

Recent Documents

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

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

3. Memorandum, ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstrations,'' from Merrylin Zaw-Mon, Office of Mobile Sources, to Air Division Directors, Regions I–VI. November 3, 1999. Web site: http://www.epa.gov/oms/transp/traqconf.htm.

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

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

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

Previous Documents

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

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

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

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

5. December 29, 1997 Memorandum from Richard Wilson, Acting Assistant Administrator for Air and Radiation ''Guidance for Implementing the 1–Hour Ozone and Pre-Existing PM_{10} NAAQS.'' Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html

II. EPA's Review and Technical Information

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

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

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

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

ROP for Milestone Years 2002, 2005 and 2007

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

NO_X SIP Call

New York identified emission reduction credits resulting from the NO_X SIP Call and is relying on these credits to achieve attainment of the 1-hour ozone standard. New York proposed emission budgets consistent with the NO_X SIP Call and held public hearings on the proposed budgets on August 2 and 3, 1999 and additional public hearings on the emission budget demonstration on August 31, 1999 and September 2, 1999. On November 15, 1999, New York's Environmental Board adopted 6 NYCRR Part 204, ''NO_X Budget Trading Program.'' This regulation will allow New York to comply with the NO_X SIP Call. The regulation will be submitted to EPA after it becomes effective. New York's administrative process takes at least 40 days from adoption to effectiveness.

Emission Inventories

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

Commitments

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

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

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

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

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

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

C. How Did the States Do Photochemical Grid Modeling?

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

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

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

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

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

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

D. What Were the Results of Photochemical Grid Modeling?

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

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

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

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

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

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

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

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

G. What Are the Uncertainties in These Analyses?

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

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

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

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

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

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

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

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

I. What Is Needed To Demonstrate Attainment?

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

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

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

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

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

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

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

1. Conformity Budgets for Milestone Years 2002 and 2005

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

2. Conformity Budgets for Attainment Year 2007

The EPA has found that the motor vehicle emissions budgets in the Attainment Demonstration submitted by New York is inadequate for conformity purposes for Attainment Year 2007 (November 16, 1999, 64 FR 62194). The EPA is proposing to approve the Attainment Demonstration SIP if New York corrects the deficiencies that cause the motor vehicle emissions budget to be inadequate and, alternatively, to disapprove it if New York does not correct the deficiencies. Because many states may shortly be submitting revised demonstrations with revised motor vehicle emission budgets, EPA is providing a 60 day comment period on this proposed rule. If New York submits a revised attainment demonstration, EPA will place the revisions in the docket for this rulemaking and will post a notice on EPA's website at www.epa.gov/oms/traq. By posting notice on the website, EPA will also initiate the adequacy process.

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

1. NO_X SIP Call Submittal

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

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

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

3. Additional Measures To Further Reduce Emissions

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

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

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

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

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

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

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

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

d. New York must commit to recalculate and submit a revised motor vehicle emissions budget if any of the additional emission reductions pertain to motor vehicle measures. This must be done when the measures are submitted as a SIP revision.

5. Mid Course Review

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

M. What Are the Consequences of State Failure?

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

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

If EPA disapproves a required SIP, such as the Attainment Demonstration SIPs, section 179(a) provides for the imposition of two sanctions. The first sanction would apply 18 months after EPA disapproves the SIP if the state fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the state has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to sanction a broader area, but is not proposing to take such action today.

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

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

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

N. What Are EPA's Conclusions?

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

First, EPA is proposing to approve New York's Ozone Attainment Demonstration SIP provided New York submits:

—The adopted NO_X SIP Call program as a SIP revision;

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

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

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

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

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

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

C. Executive Order 13084

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

D. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

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

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

F. Unfunded Mandates

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

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

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

G. National Technology Transfer and Advancement Act

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: November 29, 1999.

Jeanne M. Fox,

Regional Administrator, Region 2.

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

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

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

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

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Proposed rule.

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

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

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

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

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

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

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

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

Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249

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 State of New Jersey.

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I. Background Information

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

1. CAA Requirements

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

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

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas are required to attain the 1-hour standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The Philadelphia, Wilmington, Trenton nonattainment area is classified as severe 15 so its attainment date is November 15, 2005. The New York-Northern New Jersey-Long Island nonattainment area is classified as severe 17 so 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, in this proposed rule, EPA is proposing action on the attainment demonstration SIP submitted by State of New Jersey for the Philadelphia, Wilmington, Trenton and the New York-Northern New Jersey-Long Island nonattainment areas. EPA is also proposing action on the State's commitment to submit ROP target calculations and the adopted measures to achieve ROP by December 2000. In addition, elsewhere in this **Federal Register**, EPA is today proposing to take action on eight other serious or severe 1-hour ozone attainment demonstration and, in some cases, ROP Plan SIPs. The additional nine areas are Greater

Connecticut (CT), Springfield (Western Massachusetts) (MA), Baltimore (MD), Metropolitan Washington, D.C. (DC–MD–VA), Atlanta (GA), Milwaukee-Racine (WI), Chicago-Gary-Lake County (IL–IN), and Houston-Galveston-Brazoria (TX).

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

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

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

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by states but noting the remaining difficulties in making attainment demonstration SIP submittals.[1] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the states in the eastern half of the country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)[2] and provided for the states to submit the attainment demonstration SIPs 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 Plan emissions reduction requirement and to reach attainment; (3) for severe areas only, a commitment to adopt and submit target calculations for post-1999 ROP Plan and the control measures necessary for attainment and ROP through the attainment year by the end of 2000; (4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the state submittal.[3] This submission is sometimes referred to as the Phase 2 submission. Motor vehicle emissions budgets can be established based on a commitment to adopt the measures needed for attainment and identification of the measures needed. Thus, state submissions due in April 1998 under the Wilson policy should have included a motor vehicle emissions budget.

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

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

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

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

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

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

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. 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.[4] The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values and to predict air quality changes in the attainment year due to the emission changes which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted concentrations inside the modeling domain are at or below the NAAQS or at an acceptable upper limit above the NAAQS permitted under certain conditions by EPA's guidance. When the predicted concentrations are above the NAAQS, an optional weight of evidence determination which incorporates but is not limited to other analyses such as air quality and emissions trends may be used to address uncertainty inherent in the application of photochemical grid models.

The EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results. First, the state must develop and implement a modeling protocol. The modeling protocol describes the methods and procedures to be used in conducting the modeling analyses and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (state and local agencies, EPA Regional offices, the regulated community, and public interest groups). Second, for purposes of developing the information to put into the model, the state must select air pollution days, i.e., days in the past with bad air quality, that are representative of the ozone pollution problem for the nonattainment area. Third, the state needs to identify the appropriate dimensions of the area to be modeled, i.e., the domain size. The domain should be larger than the designated nonattainment area to reduce uncertainty in the boundary conditions and should include large upwind sources just outside the nonattainment area. In general, the domain is considered the local area where control measures are most beneficial to bring the area into attainment. Fourth, the state needs to determine the grid resolution. The horizontal and vertical resolutions in the model affect the dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids) may dilute concentrations and may not properly consider impacts of complex terrain, complex meteorology, and land/water interfaces. Fifth, the state needs to generate meteorological data that describe atmospheric conditions and emissions inputs. Finally, the state needs to verify that the model is properly simulating the chemistry and 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[5] 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

[4] 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 (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013 (July 1991). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''UAMREG''). See also U.S. EPA (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007 (June 1996). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''O3TEST'').

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

very extreme day, the statistical test provides that a prediction above 0.124 ppm up to a certain upper limit may be consistent with attainment of the standard. (The form of the 1-hour standard allows for up to three readings above the standard over a three-year period before an area is considered to be in violation.)

The acceptable upper limit above 0.124 ppm is determined by examining the size of exceedances at monitoring sites which meet the 1-hour NAAQS. For example, a monitoring site for which the four highest 1-hour average concentrations over a three-year period are 0.136 ppm, 0.130 ppm, 0.128 ppm and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration observed at a location on a single day and it would be the only reading above the standard that would be expected to occur no more than an average of once a year over a three-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

2. Additional Analyses Where Modeling Fails To Show Attainment

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

Under a Weight of evidence 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 Weight of evidence 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 Weight of evidence 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 Weight of evidence support demonstrating attainment, the EPA has identified the following key elements which must be present in order for EPA to approve or conditionally approve the 1-hour attainment demonstration SIPs. These elements are listed below and then described in detail.

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

—NO_X reductions affecting boundary conditions.

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

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

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

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

1. CAA measures and measures relied on in the modeled attainment demonstration SIP

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

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

The following tables present a summary of the CAA requirements that need to be met for each serious and severe nonattainment area for the 1-hour ozone NAAQS. These requirements are specified in section 182 of the CAA. Information on more measures that states may have adopted or relied on in their current SIP submissions is not shown in the tables. EPA will need to take final action approving all measures relied on for attainment, including the required ROP Plan 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 [1], 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 [1]
—Enhanced Inspection and Maintenance (I/M) program
—15% volatile organic compound (VOC) plans
—Emissions inventory
—Emission statements
—Periodic inventories
—Attainment demonstration
—9 percent ROP plan through 1999
—Clean fuels program or substitute
—Enhanced monitoring Photochemical Assessment Monitoring Stations (PAMS)
—Stage II vapor recovery
—All of the nonattainment area requirements for serious areas
—NSR, including an offset ratio of 1.3:1 and a major VOC and NO_X source cutoff of 25 tons per year (tpy)
—Reformulated gasoline
—9 percent ROP plan through attainment year
—Requirement for fees for major sources for failure to attain

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

2. NO_X Reductions Affecting Boundary Conditions

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

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

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

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

As provided in section 1 above, any controls assumed by the State inside the local modeling domain [6] 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. 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.[7] 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

[6] 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.

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

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

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

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

The EPA issued a memorandum that provides estimates of the emissions reductions associated with the Tier 2/Sulfur program proposal.[8] The memorandum provides the tonnage benefits for the Tier 2/Sulfur program in 2007 on a county-by-county basis for all counties within the 10 serious and severe nonattainment areas for which EPA is proposing to take action today and the 2005 tonnage benefits for the 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.[9] 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 rule benefits. For areas that require all or some portion of the Tier 2 rule 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 nonattainment areas, the EPA is proposing to determine that additional emission reduction beyond those provided by the SIP submission are necessary for attainment. With the exception of the Atlanta nonattainment area, a portion of that reduction will be achieved by EPA's Tier 2/Sulfur program, which EPA expects to finalize shortly. States that need to rely in whole or in part on the Tier 2 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 reduction 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.

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

[8] 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.html.*

[9] 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.html.*

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.

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 and Atlanta, even considering the Tier II/Sulfur program reductions and the Weight of evidence, will not achieve attainment without the application of additional emission control measures to achieve additional emission reductions. Thus, for each of these areas, EPA has identified specific tons per day emissions of NO_X and/or VOC that must be reduced through additional control measures in order to demonstrate attainment and to enable EPA to approve the demonstration. The need for additional emission reductions is generally based on a lack of sufficient compelling evidence that the demonstration shows attainment at the current level of adopted or planned emission controls. This is discussed in detail below for the State of New Jersey. The method used by EPA to calculate the amount of additional reductions is described in a technical support document located in the record for this proposed rule. Briefly, the method makes use of the relationship between ozone and its precursors (VOC and NO_X) to identify additional reductions that, at a minimum, would bring the model predicted future ozone concentration to a level at or below the standard. The relationship is derived by comparing changes in either (1) the model predicted ozone to changes in modeled emissions or (2) in observed air quality to changes in actual emissions.

The EPA is not requesting that states perform new photochemical grid modeling to assess the full air quality impact of the additional reductions that would be adopted. Rather, as described above, one of the factors that EPA can consider as part of the Weight of evidence 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 Weight of evidence 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 affirm that some combination of measures on their list has the potential to meet or exceed the additional reductions identified later in this notice by EPA. These measures may not involve additional limits on highway construction beyond those that could be imposed under the submitted motor vehicle emissions budget. (See memorandum, ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations,'' from Merrylin Zaw-Mon, Office of Mobile Sources, to Air Division Directors, Regions I–VI''). 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.

For areas within the OTR, such as New Jersey, EPA believes it is appropriate to provide a state that is relying on a regional solution to a Congressionally-recognized regional air pollution problem with more time to adopt and submit measures for additional reductions to EPA than for a state that will rely on intrastate measures to achieve the reductions. Therefore, the EPA believes that states in the OTR must be allowed sufficient time for the OTR to analyze the appropriate measures as well as time for the state to adopt the measures. For these states, EPA believes it is appropriate for them to commit to work through the OTR to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA for these areas. However, as a backstop, the state will need to commit to adopt intrastate measures sufficient to achieve the additional reductions if the regional measures are not identified by the OTR and adopted by the relevant states. For purposes of conformity, if the State submitted a commitment consistent with the December 1997 Wilson policy

and which has been subject to public hearing, the State may amend its current commitment by letter to provide these assurances. However, before EPA can take final rulemaking action to approve the attainment demonstration, the state will need to meet public hearing requirements for the commitment and submit it to EPA as a SIP revision. The EPA will have to propose and take final action on this SIP revision before EPA can fully approve the State's attainment demonstration. The State will have to submit the necessary measures themselves (and a revised motor vehicle emissions budget that includes the effects, if any, of the measure or measures that are ultimately adopted should any of the measures pertain to motor vehicles) as a SIP revision no later than October 31, 2001.

Guidance on Additional Control Measures. Much progress has been made over the past 25 years to reduce VOC emissions and over the past 9 years to reduce NOx emissions. Many large sources have been controlled to some extent through RACT rules or other emission standards or limitations, such as maximum achievable control technology (MACT), new source performance standards (NSPS) and the emission control requirements for NSR—lowest achievable emissions rate (LAER) and best achievable control technology (BACT). However, there may be controls available for sources that have not yet been regulated as well as additional means for achieving reductions from sources that have already been regulated. The EPA has prepared a report to assist states in identifying additional measures. This report is called ''Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control Measures.'' The purpose of this report is to provide information to state and local agencies to assist them in identifying additional control measures that could, if later determined to be appropriate, be adopted into their SIPs to support the attainment demonstrations for the serious and severe nonattainment areas under consideration. This report has been added to the record for this proposal.

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

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

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

The EPA report lists the various sources EPA used to develop the lists of additional measures. These sources include an EPA draft control measure data base, State and Territorial Air Pollution Administrators and the Association of Local Air Pollution Control 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. That 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 emission 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 Weight of evidence analysis for the attainment demonstration on which EPA is proposing to take action today. In order to approve the attainment demonstration SIP for the Philadelphia, Wilmington, Trenton and the New York-Northern New Jersey-Long Island nonattainment areas, EPA believes that the state must submit an enforceable commitment to perform a MCR as described here.[10]

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

For severe areas, the states must have an enforceable commitment to perform the MCR preferably following the 2003 ozone season, and to submit the results to EPA by the end of the review year (e.g., by December 31, 2003). EPA believes that an analysis in 2003 would be most robust since some or all of the regional NO_X emission reductions should achieved by that date. EPA would then review the results and determine whether any states need to adopt and submit additional control measures for purposes of attainment. The EPA is not requesting that states commit now to adopt new control measures as a result of this process. It would be impracticable for the states to make a commitment that is specific enough to be considered enforceable. Moreover, the MCR could indicate that upwind states may need to adopt some or all of the additional controls needed to ensure an area attains the standard. Therefore, if EPA determines additional control measures are needed for attainment, EPA would determine whether additional emission reductions as necessary from states in which the nonattainment area is located or upwind states, or both. The EPA would require the affected state or states to adopt and submit the new measures within a period specified at the time. The EPA anticipates that these findings would be made as calls for SIP revisions under section 110(k)(5) and, therefore, the period for submission of the measures would be no longer than 18 months after the EPA finding. A draft guidance document regarding the MCR process is located in the docket for this proposal and may also be found on EPA's web site at *http://www.epa.gov/ttn/scram.*

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

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

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

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 10/31/01 measures for additional emission reductions as required in the attainment demonstration test; for additional emission reduction measures developed through the regional process, the State must also submit a commitment for the additional measures and a backstop commitment to adopt and submit by 10/31/01 intrastate measures for the emission reductions in the event the OTR process does not recommend measures that produce emission reductions. —Submit revised SIP & motor vehicle emissions budget by 10/31/01 if additional measures (due by 10/31/01) affect the motor vehicle emissions inventory —Revise SIP & motor vehicle emissions budget 1 year after MOBILE6 issued.[3] —Perform a mid-course review.[4] —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 form any previous submissions made in proposed form by 12/31/99.
Before EPA final rulemaking	State submits enforceable commitments for any above-mentioned commitments that may not yet have been subjected to public hearing.
12/31/00	—State submits adopted modeled measures relied on in attainment demonstration and relied on for ROP through the attainment year —State revises & submits SIP & motor vehicle emissions budget to account for Tier 2 reductions as needed
10/31/01	—OTR States submit additional measures developed through the regional process. —State revises SIP & motor vehicle emissions budget if the additional measures are for motor vehicle category.
Within 1 yr after release of MOBILE6 model.	State submits revised SIP & motor vehicle emissions budget based on MOBILE6.

[10] For purposes of conformity, the state needs a commitment that has been subject to public hearing. If the state has submitted a commitment that has been subject to public hearing and that provides for the adoption of all measures necessary for attainment, the state should submit a letter prior to December 31, 1999, amending the commitment to include the MCR.

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

Required no later than:	Action
12/31/03	State submits to EPA results of mid-course review

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

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

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

[4] New Jersey's August 31, 1998 submittal contains an enforceable commitment to perform a mid course review.

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

E. What Are the Relevant Policy and Guidance Documents?

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

Recent Documents

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

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

3. Memorandum, ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstrations,'' from Merrylin Zaw-Mon, Office of Mobile Sources, to Air Division Directors, Regions I–VI. November 3, 1999. Web site: http://www.epa.gov/ome/transp/traqconf.ht.

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.'' Web site: http://www.epa.gov/ttn/scram.

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

6. Memorandum, ''Guidance on Reasonably Available Control Measures (RACM) Requirement and 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 PM_{10} NAAQS.'' Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

II. EPA's Review and Technical Information

There are four areas in New Jersey designated nonattainment for the ozone standard: one classified as marginal—the Allentown Bethlehem Easton Area; one classified as moderate—the Atlantic City Area; and two classified as severe—the New York-Northern New Jersey-Long Island Area, and the Philadelphia, Wilmington, Trenton Area. The marginal and moderate areas have monitored attainment of the 1-hour ozone standard for the last three years and consequently, are not required to submit an attainment demonstration. This **Federal Register** action addresses the New Jersey portion of the New York-Northern New Jersey-Long Island and the New Jersey portion of the Philadelphia, Wilmington, Trenton nonattainment areas and will be referred to as, respectively, the Northern New Jersey ozone nonattainment area (NAA) and the Trenton NAA. Unless specifically discussed below, the following discussions apply to both nonattainment areas since New Jersey usually addresses CAA requirements on a statewide basis.

A. What Was Included in New Jersey's Submittals?

On August 31, 1998, Commissioner Shinn of the New Jersey Department of Environmental Protection (NJDEP) submitted to EPA a SIP revision ''Attainment and Maintenance of the Ozone National Ambient Air Quality Standards—Meeting the Requirements of the Alternate Ozone Attainment Demonstration Policy.'' Referred to as the Ozone Attainment Demonstration SIP. On October 16, 1998 this was supplemented with the public participation appendix. New Jersey held a public hearing on the Ozone

Attainment Demonstration SIP on August 6, 1998 and the comment period closed on August 13, 1998.

This SIP submittal addresses the requirements related to attainment of the 1-hour National Ambient Air Quality Standards (NAAQS) for ozone and are intended to fulfill the requirements contained in the March 2, 1995 memo from Mary Nichols and the December 29, 1997 memo from Richard D. Wilson which were previously described. This submittal included the following: Demonstration of Attainment of the 1-hour NAAQS for Ozone for the two nonattainment areas; enforceable commitments described later in this action; control measures adopted to date; and potential control measures the state will be investigating.

Commitments

New Jersey made the following commitments in their Ozone Attainment Demonstration SIP revision:

(1) to submit post-1999 ROP Plans and to submit adopted regulations needed to achieve post-1999 emission reductions by December 31, 2000;

(2) to implement its portion of the EPA regional NO_X cap (NO_X SIP Call);

(3) to undertake an assessment of the ambient air quality and modeling as part of the mid-course review and submit a report to EPA by December 31, 2002;

(4) evaluate additional control measures which are not currently implemented for potential future implementation; and

(5) to propose such reasonable and necessary control measures needed to address any shortfall identified in the mid-course review which are necessary for attainment.

All of these commitments have gone through New Jersey's administrative public hearing process and therefore are considered enforceable commitments.

Post-1999 ROP Plans

Pursuant to the December 29, 1997 Wilson policy memo, New Jersey submitted a SIP commitment to submit a plan on or before the end of 2000 which contains target calculations for post-1999 ROP Plan milestone up to the attainment date and to submit adopted regulations needed to achieve the post-1999 ROP Plan requirements. EPA is proposing to approve this commitment.

NO_X SIP Call

New Jersey has identified emission reduction credits resulting from the NO_X SIP call and are relying on these credits to achieve attainment of the 1-hour ozone standard. New Jersey adopted Subchapter 31 ''NO_X Budget Program'' in 1998 to implement Phase II and Phase III of the Ozone Transport Commission's NO_X Budget Trading Program. Minor revisions to Subchapter 31 were necessary to accommodate EPA's NO_X SIP Call, as well as proposing specific source category budgets. These were proposed on July 2, 1999 and public hearings were held on September 1, 1999. EPA anticipates that New Jersey will complete the adoption process within a few months.

Mid-Course Review

New Jersey's commitment to a mid-course evaluation and submittal of a report to EPA by December 31, 2002 satisfies EPA's requirement discussed earlier for a mid-course review (see section I.C.6.). New Jersey, however, may wish to consider coordinating the mid-course evaluation with the surrounding states which are likely to complete this effort by December 31, 2003. A revised enforceable commitment would be necessary if the date is changed.

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

As discussed previously, EPA's guidance allows the states to use modeling with optional weight of evidence analyses to show that they will attain the
1-hour ozone standard. The goal is to calculate how much ozone-forming emissions need to be reduced to meet the ozone standard by the 2005 attainment deadline for the Trenton NAA and 2007 for the Northern New Jersey NAA. The two main kinds of emissions that form ozone are volatile organic compounds and nitrogen oxides.

The Clean Air Act requires ozone nonattainment areas like the Northern New Jersey NAA to attain the ozone standard by 2007. These areas are called severe-17 since these areas have 17 years from 1990 to attain the standard. This area includes most of northern New Jersey, southeastern New York and southwest Connecticut. The Clean Air Act requires ozone nonattainment areas like the Trenton NAA to attain the ozone standard by 2005. These areas are called severe-15 since they have 15 years from 1990 to attain the standard. This area includes most of southern New Jersey, southeastern Pennsylvania, northern Delaware and northeastern Maryland.

Both areas primarily used a photochemical grid model called Urban Airshed Model-IV (UAM–IV) to predict ozone concentrations for the attainment year. The states also used other methods as well to make a Weight of evidence argument that they will attain the 1-hour ozone standard by the attainment date. One of these methods is called ''design value rollback.'' Design value rollback relies on actual measurements of ozone levels and information from the modeling results to predict future ozone design values. The states also used air quality trends analysis, extrapolating changes in measured air quality over the last decade to project future ozone concentrations.

C. How Did the States Do Photochemical Grid Modeling?

1. Northern New Jersey Nonattainment Area

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

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

states used this regional modeling to provide input into the local modeling on changes in ozone and ozone-forming chemicals coming into the modeling domain from sources outside the nonattainment area.

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

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

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

2. Trenton Nonattainment Area

The states in the Trenton NAA worked together to prepare modeling for their SIPs and developed and followed a modeling protocol. The Ozone Research Center at Rutgers University did the photochemical grid modeling runs for the Philadelphia airshed. The SIPs from these states use modeling results to show how emission control programs will reduce emissions to decrease future ozone concentrations. New York was also in the modeling area and supplied information on its emissions and air monitoring data, as well. The states reviewed the modeling and prepared modeling inputs as they needed to complete the modeling. The modeling domain included the entire Philadelphia area plume including its extent downwind into New Jersey, Delaware and Pennsylvania.

The Ozone Research Center ran the UAM–IV model for the two episodes selected by the states. EPA guidance recommends three episodes from at least two kinds of weather conditions that occur with high ozone concentrations. However, EPA allowed the states to use the two episodes they selected for the following reasons. The states reviewed air quality and weather data from 1987 through 1991 to find periods of high ozone for modeling. The July 1998 and July 1991 episodes were selected as being representative of the days most conducive to ozone formation. The 1988 and 1991 episodes had national modeling which could be used by our states to represent ozone and ozone-forming chemicals coming into the area from sources outside the area the nonattainment area. States modeled one additional episode from June 1987, which was representative of a different weather type than the other two episodes. The other two episodes were more severe and regional modeling was not done for the 1987 episode, so the states did not run an attainment year model since they did not have the information needed by the model at the boundaries of the domain for the attainment year.

The states used emission inventories developed for the regional modeling when they started the modeling, but later, particularly for the 1991 episode, the states developed local emission inventories. To model how the winds distributed the pollution, various methods were tested and compared with observed data. One method was selected by the states since it did a better job at predicting the location of areas of high ozone and was used for future case runs which predicted ozone for 2005.

D. What Were the Results of Photochemical Grid Modeling?

1. Northern New Jersey Nonattainment Area

The modeling for the nonattainment area predicted that ozone levels in 2007 would exceed the 1-hour ozone standard. The highest ozone in the predictions for 2007 using the 1988 and 1991 weather conditions were 171 ppb and 169 ppb, respectively. These concentrations predicted for 2007 are well over the 124 ppb standard. However, the design value for the peak site in and downwind of the Northern New Jersey NAA was less than 163 ppb in the past four years. Since some major controls included in the 163 ppb prediction for 2007 are yet to be implemented, the area's design value for 2007 should be lower than the photochemical grid model's prediction for 2007. To corroborate these results, the states turned to other methods, namely design value rollback and extrapolation of air quality trends.

2. Trenton Nonattainment Area

The photochemical grid modeling for the nonattainment area predicted that ozone concentrations in 2005 would exceed the one-hour ozone standard. The highest ozone predicted for 2005, using 1988 and 1991 weather conditions, was 159 ppb and 149 ppb, respectively. These are the peak concentrations in the portion of the modeling domain affected by the Philadelphia metropolitan area. Since the modeling domain included the entire state of New Jersey, ozone plumes from the New York City metro area are in the modeling domain on some days. These days were modeled by the New York modeling domain and are considered in their modeling and attainment demonstration. Therefore, peak concentrations associated with the New York City nonattainment area are not considered here.

Present air quality in the Trenton NAA is better than the concentrations the model predicts for 2005. Since some major controls included in the model's predictions for 2005 have not been implemented yet, ozone in 2005 should be less than the ozone predicted by the photochemical grid model's prediction for 2005. To corroborate these results, the states turned to other methods, namely, design value rollback and extrapolation of air quality trends.

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

1. Northern New Jersey Nonattainment Area

The results depended on the method selected. The states did several design value rollback calculations using slightly different data sets. Some calculations used the amount of ozone change from the regional or local photochemical grid modeling results. The calculations included different starting points from which the modeling ''rolled back'' to predict the ozone design value in 2007. In general, the calculations predicted that the ozone design value in 2007 could be close to or below the 124 ppb standard, with results ranging from as low as 122 ppb to as high as 131 ppb. The states acknowledged that there was significant uncertainty in these estimates. New Jersey proposed to address this uncertainty by committing to a mid course review.

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

due to meteorology. EPA's results predict nonattainment.

2. Trenton Nonattainment Area

The design value rollback used in the Philadelphia airshed used the 1996 design value as the starting point from which the modeling ''rolled back'' to predict the ozone design value in 2005. The regional modeling from EPA's NOx SIP Call proposal was used. The rollback method predicted ozone of 122 ppb in 2005, which was less than the 124 ppb needed for attainment. As we noted in the discussion of results for the Northern New Jersey NAA, different starting design values and modeling data give different results. In the case of Trenton NAA, these methods predict concentrations at or less than 124 ppb. However, EPA performed its own design value rollback analysis with more robust data to account for fluctuations in the results due to meteorology. EPA's results predict nonattainment.

F. What were the results of air quality trends analyses?

1. Northern New Jersey Nonattainment Area

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

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

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

2. Trenton Nonattainment Area

New Jersey believes that the emission control programs in their SIPs will continue the downward trend in ozone that occurred in earlier years before ozone concentrations leveled off. EPA agrees that ozone will decrease as new programs are implemented. However, EPA believes that these trends data are not quantitative enough to help EPA determine if the standard will be attained in 2005 in the Trenton area downwind of Philadelphia. The design value rollback analyses provide more accurate answers to the question about how much ozone air quality will improve by the 2007 attainment date due to future emission reductions.

G. What Are the Uncertainties in These Analyses?

There is a large difference between the results using the photochemical grid modeling and methods that use air quality data, like design value rollback and extrapolation of air quality trends. For example, in the Northern New Jersey NAA, UAM–IV predicts concentrations in 2007 that would lead to a design value of 163 ppb in 2007, well above the 124 ppb standard. The predictions for 2007 from design value rollback range from 122 to 141 ppb. Air quality trends, if extrapolated, may predict attainment by 2007. A similar wide range of values also occurs for Trenton NAA. The wide range of values from these analyses lead EPA to conclude that additional assurances are needed to conclusively determine that New Jersey's Ozone Attainment SIP will result in attainment and EPA will be able to approve these plans.

H. What are the results of EPA's Evaluation?

1. Northern New Jersey Nonattainment Area

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

EPA determined the amount of additional reductions needed by performing an additional analysis (described later in this document) to better calculate a design value for 2007 using a nationally consistent method for serious and severe ozone nonattainment areas. EPA's analysis included the modeled decrease in ozone due to the emission reductions resulting from all the adopted and implemented measures, including those reductions expected from the NO_X SIP Call (both at the boundaries and in the local area). To make the method more robust and account for fluctuations in ozone due to meteorology, EPA used a three-year average of design values from 1990 through 1992 with the design value rollback technique. The method calculates that the ozone design value in 2007 will be 129 ppb. Since this more robust method predicts a 2007 concentration above the 124 ppb standard, EPA has determined that the states will need to commit to additional emission reductions to demonstrate attainment.

Then EPA developed methods for calculating the amount of additional reductions the states need to attain the ozone standard. Details are in the Technical Support Document. These methods extrapolate the additional VOC and NO_X reductions needed to reduce ozone from 129 to 124 ppb. The additional emission reductions described earlier are after EPA applied credits for the Tier 2/Sulfur program.

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

2. Trenton Nonattainment Area

EPA finds that New Jersey's attainment demonstration does not conclusively predict attainment. The Philadelphia, Wilmington, Trenton NAA will need more reductions in ozone-causing emissions than that presented in New Jersey's Ozone Attainment Demonstration SIP. Specifically, the additional reductions needed is 4.5 percent reduction in VOCs and 0.3 percent reduction in NO_X, based on the 1990 emission inventory. This is equivalent to reducing emissions in the Philadelphia, Wilmington, Trenton NAA by 62 tons of VOC per summer day and 3 tons of NO_X per summer day.

This was calculated using the same method as for the Northern New Jersey NAA. EPA determined that the ozone design value in 2005 will be 128 ppb. Since this, more robust method, predicts a 2005 concentration above the 124 ppb standard, EPA has determined that the states will need to commit to additional emission reductions to demonstrate attainment. The additional reductions described earlier are after EPA applied credits for the Tier 2/Sulfur program. When the states modeled the impact of proportionally reducing emissions of VOC and NO_X together the results showed that reductions in VOC or NO_X together or alone reduces peak ozone concentrations.

I. What Is Needed To Demonstrate Attainment?

EPA's analysis predicts that the states will need additional measures to reduce ozone after all the already planned measures are implemented in order to be more certain that the area will attain the standard by 2007 for Northern New Jersey NAA and 2005 for Trenton NAA. These additional measures include Tier 2/Sulfur program, the NO_X SIP call and some additional local controls.

If the states commit to implementing these additional reductions, they will provide sufficient assurance of attainment by 2007/2005. In addition, New Jersey has committed to a mid-course review as part of their Weight of evidence argument. These commitments account for any uncertainty in the ability of the states to show that they will attain the standard by the attainment date.

J. How is the Tier 2/Sulfur Program needed?

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

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

To assist the State in the preparation of a new submission which could be approved, EPA has prepared an estimate of the air quality benefits of EPA's Tier 2/Sulfur program. In our calculation, EPA assumed that all of the Tier 2/Sulfur emissions reductions will contribute to the ability of New Jersey to demonstrate attainment. The EPA has further calculated how much additional emission reduction is needed for the Northern New Jersey and Trenton NAAs in order for EPA to approve a revised and re-submitted attainment demonstration for this area. The EPA suggests that the State include these calculations as part of the Weight of evidence analysis accompanying the adjusted attainment demonstration and revised motor vehicle emissions budget for this area. Today EPA is proposing to approve a new attainment demonstration if it meets this description.

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

The EPA has found that the motor vehicle emissions budgets in the attainment demonstrations submitted by New Jersey for the Northern New Jersey NAA and the Trenton NAA inadequate for conformity purposes for Attainment Year 2007 and 2005, respectively (November 16, 1999, 64 FR 62197). The EPA is proposing to approve the attainment demonstration SIP if New Jersey corrects the deficiencies that cause the motor vehicle emissions budget to be inadequate and, alternatively, to disapprove it if New Jersey does not correct the deficiencies. Because many states may shortly be submitting revised demonstrations with revised motor vehicle emission budgets, EPA is providing a 60 day comment period on this proposed rule. If New Jersey submits a revised attainment demonstration, EPA will place the revisions in the docket for this rulemaking and will post a notice on EPA's website at www.epa.gov/oms/traq. By posting notice on the website, EPA will also initiate the adequacy process.

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

1. NO_X SIP Call Submittal

Since New Jersey has taken credit for emission reductions associated with the NO_X SIP Call occurring in the Northern New Jersey and the Trenton NAAs for purposes of the 1-hour Attainment Demonstration SIP, it must be adopted as part of an approved 1-hour attainment demonstration.

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

With the exception of two CAA requirements, New Jersey has adopted all required elements. As discussed above, New Jersey provided an enforceable commitment to submit the post-1999 ROP Plans for the Northern New Jersey NAA and the Trenton NAA up to the attainment date and the adopted regulations needed to achieve the post-1999 ROP Plan emission reductions by December 31, 2000. The remaining element involves implementation of the enhanced inspection and maintenance program which EPA has not yet fully approved. For details see 63 FR 45402, August 26, 1998.

New Jersey has made significant strides to implement the enhanced inspection and maintenance program. In a joint letter dated November 19, 1999, from Commissioners Robert C. Shinn (Department of Environmental Protection) and James Weinstein (Department of Transportation), New Jersey confirmed that the enhanced inspection and maintenance program will be operational on December 13, 1999. EPA will be taking action on the enhanced inspection and maintenance program in a separate **Federal Register** action.

Therefore, EPA is proposing to approve this attainment demonstration provided EPA has first fully approved the enhanced inspection and maintenance program. New Jersey must submit: the adopted ROPs along with the supporting control measures by December 31, 2000 which EPA is proposing to approve. New Jersey must continue to implement the enhanced inspection and maintenance program. Failure by New Jersey to implement the enhanced inspection and maintenance program will jeopardize this proposed approval of the 1-hour ozone attainment demonstration since this program is a required CAA measure and has been relied upon in the attainment demonstrations. EPA must fully approve the enhanced inspection and

maintenance program prior to giving full approval to this attainment demonstration.

3. Additional Measures to Further Reduce Emissions

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

New Jersey must commit to work through the OTR to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA. However, as a backstop, New Jersey will need to commit to adopt intrastate measures sufficient to achieve the additional reductions if the regional measures are not identified by the OTR and adopted by the relevant states.

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

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

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

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

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

d. New Jersey must commit to recalculate and submit a revised motor vehicle emissions budget if any of the additional emission reductions pertain to motor vehicle measures. This must be done when the measures are submitted as a SIP revision.

M. What Are the Consequences of State Failure?

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

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

If EPA disapproves a required SIP, such as the Attainment Demonstration SIPs, section 179(a) provides for the imposition of two sanctions. The first sanction would apply 18 months after EPA disapproves the SIP if the state fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the state has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to sanction a broader area, but is not proposing to take such action today.

2. What are the CAA's FIP Provisions If a State Fails to Submit a Plan?

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

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

N. What are EPA's Conclusions?

EPA has evaluated New Jersey's Ozone Attainment Demonstration SIP submittal for consistency with the Act, applicable EPA regulations, and EPA policy. EPA has determined that the ozone standard in the Northern New Jersey NAA and the Trenton NAA will not be achieved until the states and EPA implement some additional measures, including Tier 2/Sulfur program and some additional local controls. EPA is proposing to approve New Jersey's Post

1999 ROP Plan commitment. EPA is proposing two alternative actions on New Jersey's Ozone Attainment Demonstration SIP, depending on whether New Jersey submits the adopted NO_X SIP Call, the revised transportation conformity budgets and necessary enforceable commitments.

First, EPA is proposing to approve New Jersey's Ozone Attainment Demonstration SIP provided New Jersey submits:

—the adopted NOx SIP Call program as a SIP revision;

—an enforceable commitment to adopt sufficient measures to address the required level of emission reductions identified by EPA;

—revised transportation conformity budgets which reflect the additional emission reductions identified by EPA for attainment;

—revised transportation conformity budgets to include the Tier 2/Sulfur program benefits, if these benefits have not already been incorporated;

—an enforceable commitment to revise the Attainment Demonstration SIP, including recalculation of the transportation conformity budgets (if any of the additional emission reductions pertain to motor vehicle measures) to reflect the adopted additional measures needed for attainment; and

—an enforceable commitment to revise the Attainment Demonstration, including transportation conformity budgets, when MOBILE6 is released.

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

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

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action 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.

This final rule is not subject to E.O. 13045 because it does 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic

reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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

F. Unfunded Mandates

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

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

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

G. National Technology Transfer and Advancement Act

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: November 29, 1999.

Jeanne M. Fox,

Regional Administrator, Region 2.

[FR Doc. 99–31713 Filed 12–15–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 074–3046; FRL–6502–4]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; One-Hour Ozone Attainment Demonstration for the Baltimore Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) consisting of the 1-hour ozone attainment demonstration for the Baltimore severe nonattainment area submitted by the Maryland Department of the Environment (MDE) on April 29, 1998 and August 18, 1998. We are also proposing, in the alternative, to disapprove this demonstration if Maryland does not submit an adequate motor vehicle emissions budget consistent with attainment and adopt and submit rules for the regional NO_X reductions consistent with the modeling demonstration. For purposes of an adequate motor vehicle emissions budget, the State will need to reaffirm that its previously submitted enforceable commitment to adopt the measures needed for attainment would apply to the additional measures to reduce emissions to support the attainment test. The reaffirmation must also include the State's commitment to the performance of a mid-course review and to revisions to the SIP and motor vehicle emissions budget after MOBILE6 (the most recent model for estimating mobile source emissions) is released.

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

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178. Or by e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION: This document 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 submitted by MDE for the Baltimore area. This document addresses the following questions:

What is the Basis for the Attainment Demonstration SIP?
What are the Components of a Modeled Attainment Demonstration?
What is the Frame Work for Proposing Action on the Attainment Demonstration SIPs?
What Does EPA Expect to Happen with Respect to Attainment Demonstrations for the Severe 1–Hour Ozone Nonattainment Areas?
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I. Background

A. What is the Basis for the Attainment Demonstration SIP?

1. CAA Requirements

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

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

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas are required to attain the 1-hour standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The Baltimore nonattainment area is classified as severe and its attainment date is November 15, 2005.

Under section 182(c)(2) and (d) of the CAA, serious and severe areas were required to submit by November 15, 1994 demonstrations of how they would attain the 1-hour standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year (rate-of-progress or ROP). In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions. Today, in this proposed rule, EPA is proposing action on the attainment demonstration SIP submitted by Jane T. Nishida, Secretary of the Maryland Department of the Environment for the Baltimore area. EPA will take action on the Maryland's ROP plan in a separate rulemaking action. In addition, elsewhere in this **Federal Register**, EPA is today proposing to take action on nine other serious or severe 1-hour ozone attainment demonstration and, in some cases, ROP SIPs. The additional nine areas are Greater Connecticut (CT), Springfield (Western Massachusetts) (MA), New York-North New Jersey-Long Island (NY–NJ–CT), Philadelphia-Wilmington-Trenton (PA–NJ–DE–MD), Metropolitan-Washington, D.C. (DC–MD–VA), Atlanta (GA), Milwaukee-Racine (WI), Chicago-Gary-Lake County (IL–IN), and Houston-Galveston-Brazoria (TX).

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

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

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

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by States but noting the remaining difficulties in making attainment demonstration SIP submittals.[1] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the States in the eastern half of the country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)[2] and provided for the States to submit the attainment demonstration SIPs 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];

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

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

[3] 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

(4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the State submittal.[4] 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.

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

The States generally submitted the SIPs between April and October of 1998; some States are still submitting additional revisions as described below. Under the CAA, EPA is required to approve or disapprove a State's submission no later than 18 months following submission. (The statute provides up to 6 months for a completeness determination and an additional 12 months for approval or disapproval.) The EPA believes that it is 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 upon 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 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.[5] In order to have a complete modeling demonstration submission, States should have submitted the required modeling analysis and identified any additional evidence that EPA should consider in evaluating whether the area will attain the standard.

1. Modeling Requirements

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

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 the State has relied on a commitment to submit these measures by December 2000, EPA is proposing an approval of the area's attainment demonstration. Some severe areas submitted the actual adopted control measures and are not relying on a commitment.

[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] 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, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''UAMREG''). See also U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''O3TEST'').

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 [6] to the attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

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

The acceptable upper limit above 0.124 ppm is determined by examining the size of exceedances at monitoring sites which meet the 1-hour NAAQS. For example, a monitoring site for which the four highest 1-hour average concentrations over a three-year period are 0.136 ppm, 0.130 ppm, 0.128 ppm and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration observed at a location on a single day and it would be the only reading above the standard that would be expected to occur no more than an average of once a year over a three-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

2. Additional Analyses Where Modeling Fails to Show Attainment

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

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

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

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

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 today.

NO_X reductions affecting boundary conditions.

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

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

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

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

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 NOx controls within the local modeling domain that were relied on for purposes of the modeled attainment demonstration.

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

TABLE 1—CAA REQUIREMENTS FOR SERIOUS AREAS

—NSR for VOC and NO_X [1], 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 [1].
—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.

[1]Unless the area has in effect a NO_X waiver under section 182(f). Baltimore area is not such an area.

TABLE 2—CAA REQUIREMENTS FOR SEVERE AREAS

—All of the nonattainment area requirements for serious areas.
—NSR, including an offset ratio of 1.3:1 and a major VOC and NO_X source cutoff of 25 tons per year (tpy).
—Reformulated gasoline.
—9 percent ROP plan through attainment year.
—Requirement for fees for major sources for failure to attain (SIP due 12/31/00).

2. NO_X Reductions Affecting Boundary Conditions

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

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

Emission reductions that will be achieved through EPA's NO_X SIP call will reduce the levels of ozone and ozone precursors entering nonattainment areas at their boundaries. For purposes of developing attainment demonstrations, States define local modeling domains that include both the nonattainment area and nearby surrounding areas. The ozone levels at the boundary of the local modeling domain are reflected in modeled attainment demonstrations and are referred to as boundary conditions. With the exception of Houston, the 1-hour attainment demonstrations on which EPA is proposing action have relied, in part, on the NO_X SIP Call reductions for purposes of determining the boundary conditions of the modeling domain. Emission reductions assumed in the attainment demonstrations are modeled

to occur both within the State and in upwind States; thus, intrastate reductions as well as reductions in other States impact the boundary conditions. Although the court has indefinitely stayed the SIP submission deadline, the NO_X SIP Call rule remains in effect. Therefore, EPA believes it is appropriate to allow States to continue to assume the reductions from the NO_X SIP call in areas outside the local 1-hour modeling domains. If States assume control levels and emission reductions other than those of the NO_X SIP call within their State but outside of the modeling domain, States must also adopt control measures to achieve those reductions in order to have an approvable plan.

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

As provided in section 1, above, any controls assumed by the State inside the local modeling domain [7] 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.[8] 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.[9] 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 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 (NPRM) proposing a major, comprehensive program designed to significantly reduce emissions from passenger cars and light trucks (including sport-utility vehicles, minivans, and pickup trucks) and to reduce sulfur in gasoline. Under the proposed program, automakers would produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners would provide that cleaner gasoline nationwide. The EPA subsequently issued two supplemental notices. 64 FR 35112 (June 30, 1999); 64 FR 57827 (October 27, 1999).

These two supplemental 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, NOx 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 NOx 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 Baltimore area whose attainment demonstration EPA is proposing to approve today is included on that list.

The EPA issued a memorandum that provides estimates of the emissions reductions associated with the Tier 2/Sulfur program proposal.[10] The memorandum provides the tonnage benefits for the Tier 2/Sulfur program in 2007 on a county-by-county basis for all counties within the 10 serious and severe nonattainment areas for which EPA is proposing to take action today and the 2005 tonnage benefits for the 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.[11] This memorandum explains that conformity analyses in serious and severe ozone nonattainment areas can begin including Tier 2/Sulfur program

[7] 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 x 5 km or finer. The domain is large enough to ensure that emissions occurring at 8 am in the domain's center are still within the domain at 8 pm the same day. If recirculation of the nonattainment area's previous day's emissions is believed to contribute to an observed problem, the domain is large enough to characterize this.

[8] 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.

[9] A final budget is preferred; but, if the State public hearing process is not yet complete, then the 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.

[10] 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.

[11] 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.

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, Philadelphia-Wilmington-Trenton, Baltimore, Atlanta, and Houston nonattainment areas, the EPA is proposing to determine that additional emission reductions beyond those provided by the SIP submission are necessary for attainment. With the exception of the Atlanta nonattainment area, a portion of that reduction will be achieved by EPA's Tier 2/Sulfur program, which EPA expects to finalize shortly. States that need to rely in whole or in part on the Tier 2 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 reduction 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.

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 a commitment in the near term to revise their motor vehicle emissions budget within one year after EPA's release of MOBILE6. This commitment should be submitted to EPA along with the other commitments discussed elsewhere in this document, or alternatively, as part of the SIP revision that modifies the motor vehicle emission inventories and budgets to include the Tier 2/Sulfur program benefits needed in order for EPA to approve the SIP submittal.[12]

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, Atlanta; Houston; Baltimore, and Philadelphia-Wilmington-Trenton even considering the Tier 2/Sulfur program reductions and the WOE, will not achieve attainment without the application of additional emission control measures to achieve additional emission reductions. Thus, for each of these areas, EPA has identified specific percentages of NO_X and/or VOC emissions which must be reduced through additional control measures in order to demonstrate attainment and to enable EPA to approve the demonstration. The need for additional emission reductions is generally based on a lack of sufficient compelling evidence that the demonstration shows attainment at the current level of adopted or planned emission controls. This is discussed in detail below for the Baltimore area. The method used by EPA to calculate the amount of additional reductions is described in a technical support document located in the record for this proposed rule. Briefly, the method makes use of the relationship between ozone and its precursors (VOC and NO_X) to identify additional reductions that, at a minimum, would bring the model predicted future ozone concentration to a level at or below the standard. The relationship is derived by comparing changes in either (1) the model predicted ozone to changes in modeled emissions or (2) in observed air quality to changes in actual emissions.

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

[12] 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.

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. [13]) 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.

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

Guidance on additional control measures. Much progress has been made over the past 25 years to reduce VOC emissions and over the past 9 years to reduce NO_X emissions. Many large sources have been controlled to some extent through RACT rules or other emission standards or limitations, such as maximum achievable control technology (MACT), new source performance standards (NSPS) and the emission control requirements for NSR—lowest achievable emissions rate (LAER) and best achievable control technology (BACT). However, there may be controls available for sources that have not yet been regulated as well as additional means for achieving reductions from sources that have already been regulated. The EPA has prepared a report to assist States in identifying additional measures. This report is called ''Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control Measures.'' The purpose of this report is to provide information to State and local agencies to assist them in identifying additional control measures that 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 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

[13] 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.

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. That 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 emission 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 NOx 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 Baltimore area, EPA believes that the State(s) must submit an enforceable commitment to perform a MCR as described here.[14]

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.

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. December 31, 2003). EPA believes that an analysis in 2003 would be most robust since some or all of the regional NOx emission reductions should be achieved by that date. EPA would then review the results and determine whether any States need to adopt and submit additional control measures for purposes of attainment. The EPA is not requesting that States commit now to adopt new control measures as a result of this process. It would be impracticable for the States to make a commitment that is specific enough to be considered enforceable. Moreover, the MCR could indicate that upwind States may need to adopt some or all of the additional controls needed to ensure an area attains the standard. Therefore,

[14] 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.

if EPA determines additional control measures are needed for attainment, EPA would determine whether additional emission reductions as necessary from States in which the nonattainment area is located or upwind States, or both. The EPA would require the affected State or States to adopt and submit the new measures within a period specified at the time. The EPA anticipates that these findings would be made as calls for SIP revisions under section 110(k)(5) and, therefore, the period for submission of the measures would be no longer than 18 months after the EPA finding. A draft guidance document regarding the MCR process is located in the docket for this proposal and may also be found on EPA's web site at http://www.epa.gov/ttn/scram/.

D. In Summary, What Does EPA Expect to Happen with Respect to Attainment Demonstrations for the Baltimore 1-Hour Ozone Nonattainment Area?

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

TABLE 3.—SUMMARY SCHEDULE OF FUTURE ACTIONS RELATED TO ATTAINMENT DEMONSTRATION FOR THE BALTIMORE SEVERE NONATTAINMENT AREA IN MARYLAND AND WHICH IS LOCATED IN THE OTR

Req'd no later than:	Action
12/31/99	State submits the following to EPA: —Motor vehicle emissions budget [1] —Commitments [2] or reaffirmation of previous enforceable commitment to do the following: —Submit by 10/31/01 measures for additional emission reductions as required in the attainment demonstration test; for additional emission reduction measures developed through the regional process, the State must also submit a commitment for the additional measures and a backstop commitment to adopt and submit by 10/31/01 intrastate measures for the emission reductions in the event the OTR process does not recommend measures that produce emission reductions. —Submit revised SIP & motor vehicle emissions budget by 10/31/01 if additional measures (due by 10/31/01) affect the motor vehicle emissions inventory —Revise 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 modeled measures relied on in attainment demonstration or relied on for ROP through the attainment year. —State revises & submits SIP & motor vehicle emissions budget to account for Tier 2 reductions as needed.[5]
10/31/01	—OTR States submit additional measures developed through the regional process. —State revises SIP & motor vehicle emissions budget if the additional measures are for motor vehicle category.
Within 1 yr after release of MOBILE6 model	State submits revised SIP & motor vehicle emissions budget based on MOBILE6.
12/31/03	State submits to EPA results of mid-course review.

[1] Final budget preferable; however, if public process is not yet complete, then a ''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.''

[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.

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

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

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

E. What are the Relevant Policy and Guidance Documents?

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

Recent Documents

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

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

3. Memorandum, ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstrations,'' from Merrylin Zaw-Mon, Office of Mobile Sources, to Air Division Directors,

Regions I–VI. November 3, 1999. Web site: http://www.epa.gov/oms/transp/traqconf.htm.

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

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

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

Previous Documents

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

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

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

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

5. December 29, 1997 Memorandum from Richard Wilson, Acting Assistant Administrator for Air and Radiation ''Guidance for Implementing the 1–Hour Ozone and Pre-Existing PM_{10} NAAQS.'' Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

II. EPA's Review and Analysis of the Maryland State Submittal

This section provides a review of Maryland's submittal and an analysis of how it satisfies the frame work discussed in Section I. C. of this document. A more detailed description of the Maryland submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action.

A. Analysis of the Local Modeling and Weight-of-Evidence

1. Analysis of the Modeling for the Local Modeling Domain

The CAA requires that serious and above nonattainment areas perform photochemical grid modeling to help determine the emission reductions of VOC and NO_X necessary to achieve the attainment of the 1-hour ozone standard. The MDE fulfilled this requirement through the application of the Urban Airshed Model, Version 4 (UAM–IV) and through the use of the modeling results from the OTAG application of the Urban Airshed Model, Version 5 (UAM–V).

The ozone attainment demonstration for the Baltimore area contains local scale modeling that, other than the number of episodes modeled, fulfills EPA recommended modeling procedures. EPA's recommended modeling procedures require the modeling of three or more episodes. MDE focused on one episode (July 18–20, 1991) in their attainment year modeling demonstration. This episode represents one of the most frequently occurring weather patterns conducive to high ozone in the Baltimore area. Given the severe nature of the episode modeled, even if two more episodes were modeled, the July 18–20, 1991 episode, due to its severity, would most likely be the controlling episode in the determination of the emission reductions needed in the Baltimore area for attainment. In addition, three episodes were analyzed in the design value rollback analysis performed using the modeling results from EPA's NO_X SIP Call (63 FR 25902, May 11, 1998).

When the 2005 emission inventory with Maryland's emission control strategy is modeled, peak ozone concentrations are reduced by approximately 31 ppb. When this reduction is applied to the peak measured concentration from the July 1991 episode (178 ppb) the result is 147 ppb. In this case, EPA's alternative attainment test guidance entitled ''Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS'' will allow a peak concentration of 140 ppb and still consider the result attainment due to the severity of the meteorological forming potential of the episode.

The local modeling for the Baltimore area over-predicts ozone concentrations for the July 1991 episode. The 1991 base case modeling predicts peak concentrations in the Baltimore area between 168–210 ppb while ozone monitors in the same area during the same time period show peak concentrations from 132–178 ppb. This indicates that the model is over-predicting the actual peak ozone concentrations by an average of 22%. When model over prediction is accounted for, the local scale modeling predicts a peak concentration of 129 ppb. This is only 4 ppb higher than the attainment concentration of 124 ppb.

Sensitivity modeling shows that when emission reductions similar to those that will be achieved in the Baltimore area are modeled, improvement in the number of grid cell hours above the standard is close to 90 percent. This result satisfies the requirement of the second bench mark of the Statistical Test, described in EPA's alternative attainment test guidance cited above, which requires that the area control strategy result in a reduction of the number of grid cell hours above the ozone standard of at least 80 percent.

When the area design value in the base modeling period (1991) is adjusted for the air quality improvement predicted in the attainment year by the local-scale modeling according to the screening test described in EPA's guidance entitled ''Draft Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8–Hour Ozone NAAQS'', the result is an 2005 projected design value of 131 ppb.

With the exception of the additional controls needed to satisfy the NO_X SIP Call, all other measures relied on in the demonstration of attainment have been adopted and implemented by the State of Maryland. Maryland has also committed to adopt rules necessary to cover the additional emission reductions needed for attainment as determined by EPA's analysis. The local scale modeling results are close enough to attainment to warrant the consideration of weight-of-evidence arguments that support the demonstration of attainment.

2. Weight of Evidence Analyses

A weight-of-evidence determination is a diverse set of technical analyses performed to assess the confidence one has in the modeled results and to help assess the adequacy of a proposed strategy when the outcome of local scale modeling is close to attainment.

The attainment demonstration SIP for the Baltimore area provides weight-of-evidence arguments that corroborate further that it is likely the Baltimore area will attain the 1-hour ozone standard by the statutory date of 2005. EPA has developed design value adjustment factors based on regional scale modeling performed for the NO_X SIP Call (63 FR 25902, May 11, 1998). These adjustment factors were used to

adjust the 1997 design values for the Baltimore area. The analysis showed all area adjusted design values below 125 ppb except for Baltimore City which has an adjusted value of 126 ppb. MDE believes that because the SNPR modeling did not include approximately 13 ton/day of local VOC emission reductions in the Maryland plan, the adjusted design value for Baltimore City is most likely some value less than 125 ppb. To provide additional information, MDE applied their design value adjustment factors to the 1998 area design values, resulting in all area design values below 124 ppb. Because the Baltimore area local modeling showed some peak concentrations above levels deemed consistent with attainment, EPA conducted an analysis to determine what additional emission reductions may be needed to support ozone attainment in the Baltimore area. The EPA analysis determined that the Baltimore area will need an additional 3.1 percent per day of VOC emission reductions to ensure attainment of the ozone NAAQS. The baseline for this percentage is the 1990 emissions inventory. This reduction is in addition to the NO_X and VOC emission reductions that will be achieved from the Tier 2 rule. The additional VOC reduction may be achieved through NO_X substitution in accordance with existing EPA guidance. The Maryland attainment demonstration SIP contains an enforceable commitment to adopt whatever rules are necessary to attain the 1-hour NAAQS for ozone.

Based on the results of the local scale modeling along with the additional weight of evidence arguments presented above, EPA believes the State of Maryland has demonstrated attainment if the State submits reaffirmation of its previous enforceable commitment to adopt additional measures as specified in section I.C.5.

B. Analysis of Submittal Against EPA's Frame Work for Proposing Action on the Attainment Demonstration SIPs

1. CAA Measures and Measures Relied on in the Current SIP Submission

TABLE 4.—CONTROL MEASURES IN THE 1-HOUR OZONE ATTAINMENT PLAN FOR THE BALTIMORE OZONE NONATTAINMENT AREA AND CLEAN AIR ACT REQUIREMENTS

Name of control measure or SIP element	Type of measure	Included in local modeling	Approval status
Enhanced Inspection & Maintenance	CAA SIP Requirement	Yes	SIP Approval Pending.
NO_X RACT	CAA SIP Requirement	Yes	SIP Approval Pending.
VOC RACT to 25 tpy	CAA SIP Requirement	Yes	SIP Approval Pending.
Stage II Vapor Recovery	CAA SIP Requirement	Yes	SIP Approved.
On-Board Refueling Vapor Recovery	Federal Rule	Yes	Promulgated at 40 CFR 86.
Stage I Vapor Recovery	CAA SIP Requirement	No	SIP Approved.
Federal Motor Vehicle Control Program (Tier 0 & Tier I).	Federal Rule	Yes	Promulgated at 40 CFR 86.
Federal Non-Road Gasoline Engines (Small Gasoline Engines).	Federal Rule	Yes	Promulgated at 40 CFR 90.
Federal Non-Road Heavy Duty Diesel Engines.	Federal Rule	Yes	Promulgated at 40 CFR 89.
AIM Surface Coatings	Federal Rule	Yes	Promulgated at 40 CFR 59 subpart D.
Consumer & Commercial Products	Federal Rule	Yes	Promulgated at 40 CFR 59 subpart C.
Autobody Refinishing	State Rule	Yes	Adopted, Submitted and Approved.
Reformulated Gasoline	Federal Rule	Yes	Promulgated at 40 CFR 80 subpart D.
Surface Cleaning/Degreasing	State Rule	Yes	SIP Approved.
Municipal Landfills	State Rule	Yes	SIP Approved.
Open Burning Ban	State Rule	Yes	SIP Approved.
Lithographic Printing	State Rule	Yes	SIP Approved.
Expandable Polystyrene Products	State Rule	Yes	SIP Approved.
Yeast Manufacturing	State Rule	Yes	SIP Approved.
Commercial Bakery Ovens	State Rule	Yes	SIP Approved.
Screen Printing	State Rule	Yes	SIP Approved.
Fiberglass Manufacturing	State Rule	Yes	SIP Approval Pending.
Marine Vessel Coating	State Rule	Yes	SIP Approval Pending.
Clean Fuel Fleets or substitute	CAA SIP Requirement	No	Requirement Substituted by NLEV; SIP Approval Pending.
National Low Emission Vehicle (NLEV)	State Opt-In	Yes	Federal program promulgated at 40 CFR 86 subpart R. State opt-in adopted and submitted; SIP Approval Pending.
OTC NO_X MOU Phase II	State Initiative	Yes	SIP Approval Pending.
Marine Engine Standards	Federal Rule	Yes	Promulgated at 40 CFR 91.
Railroad Engine Standards	Federal Rule	Yes	Promulgated at 40 CFR 92.
Heavy Duty Diesel Engines (On-Road)	Federal Rule	Yes	Promulgated at 40 CFR 86.
New Source Review	CAA SIP Requirement	No	SIP Approval Pending.
15% VOC Reduction Plan	CAA SIP Requirement	Yes[2]	SIP Approval Pending.
Base Year Emissions Inventory	CAA SIP Requirement	No	SIP Approved.
Emissions Statements	CAA SIP Requirement	No	SIP Approved.
9% Rate of Progress Plans	CAA SIP Requirement	Yes[1]	SIP Approval Pending.
Fees for Major Sources for Failure to Attain.	CAA SIP Requirement	No[2]	SIP Due 12/31/2000.

[1] The measures used to demonstrate rate of progress were modeled.
[2] This measure will only take effect if the area fails to attain by 2005 and would only be implemented after 2005.

Maryland has submitted all CAA mandated measures. Many, but not, all of these measures have been approved. EPA is proposing approval of the attainment demonstration for the Baltimore area contingent upon SIP approval of all CAA required measures and other attainment measures before final approval is issued for the attainment demonstration.

2. NO_X Reductions Affecting Boundary Conditions

The State of Maryland relied on the NO_X SIP Call reductions in the Baltimore area attainment demonstration plan. Therefore, a crucial element of the attainment demonstration for the Baltimore area is the adoption and implementation of NO_X controls consistent with the modeling demonstration. As discussed in Section I.C.2., Maryland must adopt NO_X SIP Call level controls within the modeling domain in order to have an approvable attainment demonstration. Maryland must submit to EPA adopted control measures consistent with the NO_X reductions assumed in the attainment demonstration before EPA may approve the attainment demonstration SIP.

3. Motor Vehicle Emissions Budget

The EPA has found that the motor vehicle emissions budget in the attainment demonstration submitted by Maryland for the Baltimore area is inadequate for conformity purposes. On October 26, 1999, Judith M. Katz, Director, Air Protection Division, EPA, Region III, sent a letter to Ms. Ann Marie DeBiase, Director, Air and Radiation Management Administration, Maryland Department of the Environment indicating that the motor vehicle emissions budgets in their attainment demonstration SIP were not adequate for conformity purposes.

The motor vehicle emission budget in the attainment demonstration for the Baltimore area is inadequate because it does not meet all the requirements in 40 CFR Part 93, section 93.118(e)(4). EPA made this determination because the Maryland attainment demonstration SIP requires additional measures to further reduce emissions to support the attainment test and because the budgets do not reflect all measures assumed in the local modeling. The following paragraphs provide a summary of each of these findings, of the corrective action required and of EPA's proposed action.

Additional measures to further reduce emissions to support the attainment test: The motor vehicle emissions budget(s), when considered together with all other emissions sources are not consistent with applicable requirements for attainment as detailed in section 93.118(e)(4)(iv) of the Conformity rule. Maryland's attainment demonstration identifies motor vehicle emissions budgets for 2005. But the budgets do not meet this requirement because the WOE support for the attainment demonstration will be acceptable only if Maryland provides an approvable commitment to additional measures to further reduce emissions to support the attainment test as specified in section I.C.5. There will be additional mobile source control measures in effect by 2005 that will assist the area in demonstrating attainment in 2005. Table 5 lists these measures and indicates which of these are currently reflected in the motor vehicle emissions budgets.

Budgets do not reflect all measures assumed in the local modeling: The motor vehicle emissions budgets are not consistent with and clearly related to the emissions inventory and the control measures in the submitted SIPs as required by section 93.118(e)(4)(v) of the Conformity rule. Adequate motor vehicle emissions budgets must reflect application of all the control measures assumed in the local modeling demonstration. The current motor vehicle emissions budgets do not reflect a low emissions vehicle program which was assumed in the local modeling. Maryland has adopted and submitted a SIP revision for an NLEV program and thus has adopted this modeled measure.

EPA has interpreted the general adequacy criteria with respect to the 1-hour ozone attainment demonstrations to require the motor vehicle emissions budgets to include the effects of all motor vehicle controls, including federal measures and the mobile source control measures assumed in the NOx SIP Call, that will be in place in the attainment year.[15] Table 5 lists these measures that will contribute to attainment in 2005 and that will affect the budget. Therefore, the revised motor vehicle emissions budget presumptively must include all currently promulgated federal measures and state SIP measures shown in Table 5 with the exception of Clean Fuel Fleets (CFF). Maryland has submitted an NLEV SIP revision as a substitute for CFF. For the motor vehicle emissions budget NLEV must be used as in lieu of CFF.

[15] 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.

TABLE 5.—MOBILE SOURCE CONTROL MEASURES NEEDED FOR THE 2005 MOTOR VEHICLE EMISSIONS BUDGETS

Control measures available in 2005	Control measures contained in the demonstration
Federal Motor Vehicle Control Program (FMVCP):	
Tier 1	Tier 1 FMVCP only.
Tier 2.	
High Enhanced I/M ...	High enhanced I/M.
Phase II RFG	Phase II RFG.
Clean Fuel Fleets & NLEV.	Not in motor vehicle budget.
Heavy-Duty Diesel Vehicle.	Not in motor vehicle budget.

Motor vehicle emissions budget and EPA's proposed action: EPA is proposing to approve the attainment demonstration SIP if Maryland corrects the deficiencies that cause the motor vehicle emissions budget to be inadequate. In the alternative, EPA is proposing to disapprove the attainment demonstration SIP, if by May 31, 2000, EPA has not made a determination that the State of Maryland has an adequate motor vehicle emissions budget for the Baltimore area. Because many States may shortly be submitting revised demonstrations with revised motor vehicle emission budgets, EPA is providing a 60 day comment period on this proposed rule. If Maryland submits a revised attainment demonstration, EPA will place the revisions in the docket for this rulemaking and will post a notice on EPA's website at www.epa.gov/oms/traq. By posting notice on the website, EPA will also initiate the adequacy process.

4. Tier 2/Sulfur Program Benefits

As a result of EPA's review of the Maryland's SIP submittal, EPA believes that the ozone modeling submitted by the State for the Baltimore area on which EPA is proposing to approve and disapprove-in-the-alternative today will need the emission reductions from EPA's Tier 2/Sulfur program to attain the 1-hour ozone NAAQS. Further, EPA believes that the Baltimore area will need additional emission reductions identified by EPA, beyond those from EPA's Tier 2/Sulfur program, to attain the 1-hour ozone NAAQS.

For the Baltimore area, EPA is proposing to determine that the submitted control strategy does not provide for attainment by the attainment deadline. However, the emission reductions of EPA's Tier 2/Sulfur program, which are not reflected in the submitted SIP, will assist in attainment.

Because the Baltimore area must rely on reductions from the Tier 2/Sulfur program in order to demonstrate attainment, the effects of these standards must be included in the motor vehicle emissions budget.

To assist the State in the preparation of a new submission which could be approved or conditionally approved, EPA has prepared an estimate of the air quality benefits of EPA's Tier 2/Sulfur program. EPA assumed that all of the Tier 2/Sulfur emissions reductions will contribute to the ability of the Baltimore area to demonstrate attainment. The EPA has further calculated how much additional emission reduction is needed for the Baltimore area in order for EPA to approve or conditionally approve a revised and re-submitted attainment demonstration for this area. The EPA suggests that Maryland include these calculations as part of the WOE analysis accompanying the adjusted attainment demonstration and revised motor vehicle emissions budget for this area. Today EPA is proposing to approve a new attainment demonstration if it meets this description.

However, Maryland can use some of EPA's Tier 2/Sulfur program credit for other purposes. Thus, the State could take credit for all or some of EPA's Tier 2/Sulfur program credit for its attainment demonstration. If the Tier 2/Sulfur program credit the State of Maryland is assuming for attainment is less than the amount that EPA assumed in calculating the amount of additional emission reductions needed to attain, i.e., the State is applying some or all of the Tier 2/Sulfur program credit for other purposes, the State will have to calculate the new additional emission reductions needed and commit to adopt measures to achieve them. If the State assumes all the Tier 2/Sulfur program credit will go toward attainment, then the State will be able to rely on EPA's estimate of the additional emission reductions needed.

Revisions to the motor vehicle emissions budget and the attainment demonstration when EPA issues the MOBILE6 model. Maryland has previously committed to adopting additional control measures as necessary to attain the one-hour ozone NAAQS as discussed in the preceding section (II.C.3) of this document. EPA believes for the purposes of determining the motor vehicle emissions budget adequate that Maryland already has a commitment to adopt any needed additional measures, but we need reaffirmation from MDE that the intent of the existing commitment meets all the conditions as stated in section I.C of this action including revising the mobile vehicle emissions budget when EPA issues the MOBILE6 model. EPA needs to receive this reaffirmation by December 31, 1999 as discussed in section I. above. If Maryland does not reaffirm by December 31, 1999, that its existing commitment to adopt additional measures as necessary to reach attainment is consistent within the framework of this action, then EPA will be unable to determine the area has an adequate conformity budget. 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 July 1, 2000).

5. Additional Measures to Further Reduce Emissions to Support the Attainment Test

Based on the results of the local scale modeling along with the additional weight-of-evidence analyses provided in the attainment demonstration for the Baltimore area, EPA believes that MDE has successfully demonstrated attainment of the 1-hour ozone standard for the Baltimore area by the 2005 statutory date if the State of Maryland provides a reaffirmation by letter that its previously submitted enforceable commitment to adopt additional measures to further reduce emissions includes those necessary to support the attainment test as specified in section I.C.5., above. EPA has determined that the Baltimore area will need additional emission reductions of 3.1 percent per day of VOC to ensure attainment of the ozone NAAQS. The baseline for this percentage is the 1990 emissions inventory. These reductions are in addition to the NOx and VOC emission reductions that will be achieved from the Tier 2 rule.

In its attainment plan submittal, Maryland provided a list of control measures to be considered if additional reductions are needed for attainment. None of the listed measures impose additional limits on highway construction. EPA believes that Maryland already identified a list of control measures that would not impose additional limits on highway construction, but needs reaffirmation from MDE that the intent of its existing enforceable commitment which included this list of measures meets the provisions of section I.C.5., above.

6. Mid-Course Review

In accordance with the provisions of I.C.6., above, EPA must receive an enforceable commitment or a reaffirmation of a previous enforceable commitment to include a mid-course review from MDE for the Baltimore area by the date specified in Table 3 of this document before the attainment demonstration can be approved.

III. What are the Consequences of State Failure?

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

A. What are the CAA's Provisions for Sanctions?

If EPA disapproves a required SIP, such as the attainment demonstration SIPs, section 179(a) provides for the imposition of two sanctions. The first sanction would apply 18 months after EPA disapproves the SIP if the State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to a broader area, but is not proposing to take such action today.

B. 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.

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.

IV. Proposed Action

EPA is proposing to approve the State of Maryland's attainment demonstration SIP revision which was submitted on April 18, 1998 and August 18, 1998, for the Baltimore area if the following actions occur in accordance with the schedules in section I.D, Table 3:

(1) Maryland adopts and submits an adequate motor vehicle emissions budget.

(2) Maryland reaffirms that the intent of its existing enforceable commitment which provided a list of measures to be considered if additional reductions are needed for attainment meets the provisions discussed section I.C.5, above. The State 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. Note: Maryland's previously submitted list of measures does not involve additional limits on highway construction beyond those that could be imposed under the submitted motor vehicle emissions budget.

(3) Maryland adopts and submits a rule(s) for the regional NOx reductions consistent with the modeling demonstration.

(4) Maryland adopts and submits an enforceable commitment, or reaffirmation of existing enforceable commitment to do the following:

(a) Submit measures by 10/31/01 for additional emission reductions as required in the attainment demonstration test as discussed in section I.C.5. For additional emission reduction measures developed through the regional process, the State must also submit an enforceable commitment for the additional measures and a backstop commitment to adopt and submit intrastate measures for the emission reductions in the event the OTR process does not recommend measures that produce emission reductions.

(b) Submit a revised SIP & motor vehicle emissions budget by 10/31/01 if additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP & motor vehicle emissions budget 1 year after MOBILE6 issued.

(d) Perform a mid-course review.

B. Proposed Disapproval-in-the-Alternative

EPA is also proposing, in the alternative, to disapprove this SIP revision, if any of the actions listed in III.A, above, do not occur in accordance with the schedules in section I.D, Table 3.

EPA is soliciting public comments on the issues discussed in this document or on other relevant issues regarding attainment for the Baltimore area. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** this document. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

V. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action 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.

This final rule is not subject to E.O. 13045 because it does 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

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

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 Maryland, 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 on Maryland's One-Hour Ozone Attainment Demonstration for the Baltimore area 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.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–31714 Filed 12–15–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD 074–3047; FRL–6502–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; One-Hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) consisting of the 1-hour ozone attainment demonstration for the Philadelphia-Wilmington-Trenton severe nonattainment area (the Philadelphia area) submitted by the Maryland Department of the Environment (MDE) on April 29, 1998 and August 18, 1998. We are also proposing, in the alternative, to disapprove this demonstration if Maryland does not submit an adequate motor vehicle emissions budget for its portion of the Philadelphia area consistent with attainment and adopt and submit rules for the regional NO_X reductions consistent with the modeling demonstration. For purposes of an adequate motor vehicle emissions budget, the State will need to reaffirm

that its previously submitted enforceable commitment to adopt the measures needed for attainment would apply to the additional measures to reduce emissions to support the attainment test. The reaffirmation must also include the State's commitment to the performance of a mid-course review and to revisions to the SIP and motor vehicle emissions budget after MOBILE6 (the most recent model for estimating mobile source emissions) is released. The Philadelphia area is comprised of two counties in Delaware, one county in Maryland (namely, Cecil County), seven counties in New Jersey, and five counties in Pennsylvania. Elsewhere in today's **Federal Register**, we are also proposing to take action on the 1-hour ozone attainment demonstration SIP submittals from Delaware, New Jersey, and Pennsylvania for the Philadelphia area.

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

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178. Or by e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION: This document 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 submitted by MDE for the Maryland portion of the Philadelphia area. This document addresses the following questions:

What is the Basis for the Attainment Demonstration SIP?
What are the Components of a Modeled Attainment Demonstration?
What is the Frame Work for Proposing Action on the Attainment Demonstration SIPs?
What Does EPA Expect to Happen with Respect to Attainment Demonstrations for the Severe 1–Hour Ozone Nonattainment Areas?
What are the Relevant Policy and Guidance Documents?
How Does Maryland's Submittal Satisfy the Frame Work?
What Are The Consequences of State Failure?

I. Background

A. What Is the Basis for the Attainment Demonstration SIP?

1. CAA Requirements

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

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

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas are required to attain the 1-hour standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The Philadelphia area is classified as severe and its attainment date is November 15, 2005.

Under section 182(c)(2) and (d) of the CAA, serious and severe areas were required to submit by November 15, 1994 demonstrations of how they would attain the 1-hour standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year (rate-of-progress or ROP). (In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions.) Today, in this proposed rule, EPA is proposing action on the attainment demonstration SIP submitted by Jane T. Nishida, Secretary of the Maryland Department of the Environment for the Philadelphia area. EPA will take action on the State's ROP plan in a separate rulemaking action. In addition, elsewhere in this **Federal Register**, EPA is today proposing to take action on the one-hour ozone attainment demonstration SIPs for the three other States for the Philadelphia area and for nine other serious or severe 1-hour ozone nonattainment areas. The additional nine areas are Greater Connecticut (CT), Springfield (Western Massachusetts) (MA), New-York-North New Jersey-Long Island (NY–NJ–CT), Baltimore (MD), Metropolitan-Washington, D.C. (DC–MD–VA), Atlanta (GA), Milwaukee-Racine (WI), Chicago-Gary-Lake County (IL–IN), and Houston-Galveston-Brazoria (TX).

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

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

Notwithstanding significant efforts by the States, in 1995 EPA recognized that many States in the eastern half of the United States could not meet the November 1994 time frame for submitting an attainment demonstration SIP because emissions of NO_X and VOCs in upwind States (and the ozone formed by these emissions) affected these nonattainment areas and the full

impact of this effect had not yet been determined. This phenomenon is called ozone transport.

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by States but noting the remaining difficulties in making attainment demonstration SIP submittals.[1] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the States in the eastern half of the country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)[2] and provided for the States to submit the attainment demonstration SIPs 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 public hearing on the State submittal.[4] 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.

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

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

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

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

[3] 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 a State has relied upon a commitment to submit these measures by December 2000, EPA is proposing an approval of the area's attainment demonstration. Some severe areas submitted the actual adopted control measures and are not relying upon a commitment.

[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.

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.[5] In order to have a complete modeling demonstration submission, States should have submitted the required modeling analysis and identified any additional evidence that EPA should consider in evaluating whether the area will attain the standard.

1. Modeling Requirements

For purposes of demonstrating attainment, the CAA requires serious and severe areas to use photochemical grid modeling or an analytical method EPA determines to be as effective. The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values and to predict air quality changes in the attainment year due to the emission changes which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted concentrations inside the modeling domain are at or below the NAAQS or at an acceptable upper limit above the NAAQS permitted under certain conditions by EPA's guidance. When the predicted concentrations are above the NAAQS, an optional weight of evidence determination which incorporates, but is not limited to, other analyses, such as air quality and emissions trends, may be used to address uncertainty inherent in the application of photochemical grid models.

The EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results. First, the State must develop and implement a modeling protocol. The modeling protocol describes the methods and procedures to be used in conducting the modeling analyses and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (State and local agencies, EPA Regional offices, the regulated community, and public interest groups). Second, for purposes of developing the information to put into the model, the State must select air pollution days, i.e., days in the past with bad air quality, that are representative of the ozone pollution problem for the nonattainment area. Third, the State needs to identify the appropriate dimensions of the area to be modeled, i.e., the domain size. The domain should be larger than the designated nonattainment area to reduce uncertainty in the boundary conditions and should include large upwind sources just outside the nonattainment area. In general, the domain is considered the local area where control measures are most beneficial to bring the area into attainment. Fourth, the State needs to determine the grid resolution. The horizontal and vertical resolutions in the model affect the dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids) may dilute concentrations and may not properly consider impacts of complex terrain, complex meteorology, and land/water interfaces. Fifth, the State needs to generate meteorological data that describe atmospheric conditions and emissions inputs. Finally, the State needs to verify that the model is properly simulating the chemistry and 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[6] 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

[5] 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, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''UAMREG''). See also U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''O3TEST'').

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

be expected to occur no more than an average of once a year over a three-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

2. Additional Analyses Where Modeling Fails to Show Attainment

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

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

The EPA's 1996 modeling guidance also recognizes a need to perform a mid-course review as a means for addressing uncertainty in the modeling results. Because of the uncertainty in long term projections, EPA believes a viable attainment demonstration that relies on WOE needs to contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. The mid-course review is discussed in Section C.6.

C. What Is the Frame Work for Proposing Action on the Attainment Demonstration SIPs?

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

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

—NO_X reductions affecting boundary conditions.

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

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

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

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

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

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

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

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

TABLE 1.—CAA REQUIREMENTS FOR SERIOUS AREAS

—NSR for VOC and NO_X [1], 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 [1].
—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).

TABLE 1.—CAA REQUIREMENTS FOR SERIOUS AREAS—Continued

—Stage II vapor recovery.

[1] Unless the area has in effect a NO_X waiver under section 182(f). The Philadelphia area is not such an area.

TABLE 2.—CAA REQUIREMENTS FOR SEVERE AREAS

—All of the nonattainment area requirements for serious areas.
—NSR, including an offset ratio of 1.3:1 and a major VOC and NO_X source cutoff of 25 tons per year (tpy).
—Reformulated gasoline.
—9 percent ROP plan through attainment year.
—Requirement for fees for major sources for failure to attain (SIP due 12/31/99).

2. NO_X Reductions Affecting Boundary Conditions

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

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

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

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

As provided above, any controls assumed by the State inside the local modeling domain [7] 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.[8] 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.[9] 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 the area's attainment demonstration. The emissions budget should reflect all the motor vehicle control measures contained in the attainment demonstration, *i.e.,* measures already adopted for the nonattainment area as well as those yet to be adopted.

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

[8] 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.

[9] A final budget is preferred; but, if the State public hearing process is not yet complete, then the 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.

4. Tier 2/Sulfur Program Benefits

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

These two supplemental 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 Philadelphia area whose attainment demonstration EPA is proposing to approve today is included on that list.

The EPA issued a memorandum that provides estimates of the emissions reductions associated with the Tier 2/Sulfur program proposal.[10] The memorandum provides the tonnage benefits for the Tier 2/Sulfur program in 2007 on a county-by-county basis for all counties within the 10 serious and severe nonattainment areas for which EPA is proposing to take action today and the 2005 tonnage benefits for the 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.[11] 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, Philadelphia-Wilmington-Trenton, Baltimore, Atlanta, and Houston nonattainment areas, the EPA is proposing to determine that additional emission reductions beyond those provided by the SIP submission are necessary for attainment. With the exception of the Atlanta nonattainment area, a portion of that reduction will be achieved by EPA's Tier 2/Sulfur program, which EPA expects to finalize shortly. States that need to rely in whole or in part on the Tier 2 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 reduction 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.

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/

[10] 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.

[11] 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.

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.[12]

5. Additional Measures to Further Reduce Emissions

The EPA is proposing to find that the attainment demonstrations for NewYork-North New Jersey-Long Island; Atlanta; Houston; Baltimore; and Philadelphia-Wilmington-Trenton areas; even considering the Tier 2/Sulfur program reductions and the WOE, will not achieve attainment without the application of additional emission control measures to achieve additional emission reductions. Thus, for each of these areas, EPA has identified specific percentages of NO_X and/or VOC emissions which must be reduced through additional control measures in order to demonstrate attainment and to enable EPA to approve the demonstration. The need for additional emission reductions is generally based on a lack of sufficient compelling evidence that the demonstration shows attainment at the current level of adopted or planned emission controls. This is discussed in detail below for the Philadelphia area. The method used by EPA to calculate the amount of additional reductions is described in a Technical Support Document (TSD) located in the record for this proposed rule. Briefly, the method makes use of the relationship between ozone and its precursors (VOC and NO_X) to identify additional reductions that, at a minimum, would bring the model predicted future ozone concentration to a level at or below the standard. The relationship is derived by comparing changes in either (1) the model predicted ozone to changes in modeled emissions or (2) in observed air quality to changes in actual emissions.

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

As an initial matter, for areas that need additional 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.[13]) 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.

For areas within the OTR, EPA believes it is appropriate to provide a State that is relying on a regional solution to a Congressionally-recognized regional air pollution problem with more time to adopt and submit measures for additional reductions to EPA than for a State that will rely on intrastate measures to achieve the reductions. Therefore, the EPA believes that States in the OTR must be allowed sufficient time for the OTR to analyze the appropriate measures as well as time for the State to adopt the measures. For these States, EPA believes it is appropriate for them to commit to work through the OTR to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA for these areas. However, as a backstop, the State

[12] 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.

[13] 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.

will need to commit to adopt intrastate measures sufficient to achieve the additional reductions if the regional measures are not identified by the OTR and adopted by the relevant States. For purposes of conformity, if the State submitted a commitment consistent with the December 1997 Wilson policy and which has been subject to public hearing, the State may amend its current commitment by letter to provide these assurances. However, before EPA can take final rulemaking action to approve the attainment demonstration, the State will need to meet the public hearing requirements for the commitment and submit it to EPA as a SIP revision. The EPA will have to propose and take final action on this SIP revision before EPA can fully approve the State's attainment demonstration. The State will have to submit the necessary measures themselves (and a revised motor vehicle emissions budget that includes the effects, if any, of the measure or measures that are ultimately adopted should any of the measures pertain to motor vehicles) as a SIP revision no later than October 31, 2001.

Guidance on additional control measures. Much progress has been made over the past 25 years to reduce VOC emissions and over the past 9 years to reduce NO_X emissions. Many large sources have been controlled to some extent through RACT rules or other emission standards or limitations, such as maximum achievable control technology (MACT), new source performance standards (NSPS) and the emission control requirements for NSR—lowest achievable emissions rate (LAER) and best achievable control technology (BACT). However, there may be controls available for sources that have not yet been regulated as well as additional means for achieving reductions from sources that have already been regulated. The EPA has prepared a report to assist States in identifying additional measures. This report is called ''Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control Measures.'' The purpose of this report is to provide information to State and local agencies to assist them in identifying additional control measures that 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 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. That 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 emission 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 Philadelphia area, EPA believes that the States whose counties comprise the area must submit an enforceable commitment to perform a MCR as described here.[14]

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.

For severe areas, the States must have an enforceable commitment to perform the MCR, preferably following the 2003 ozone season, and to submit the results to EPA by the end of the review year (*e.g.,* by December 31, 2003). EPA believes that an analysis in 2003 would be most robust since some or all of the regional NO_X emission reductions should be achieved by that date. EPA would then review the results and determine whether any States need to adopt and submit additional control measures for purposes of attainment. The EPA is not requesting that States commit now to adopt new control measures as a result of this process. It would be impracticable for the States to make a commitment that is specific enough to be considered enforceable. Moreover, the MCR could indicate that upwind States may need to adopt some or all of the additional controls needed to ensure an area attains the standard. Therefore, if EPA determines additional control measures are needed for attainment, EPA would determine whether additional emission reductions as necessary from States in which the nonattainment area is located or upwind States, or both. The EPA would require the affected State or States to adopt and submit the new measures within a period specified at the time. The EPA anticipates that these findings would be made as calls for SIP revisions under section 110(k)(5) and, therefore, the period for submission of the measures would be no longer than 18 months after the EPA finding. A draft guidance document regarding the MCR process is located in the docket for this proposal and may also be found on EPA's web site at http://www.epa.gov/ttn/scram/.

D. In Summary, What Does EPA Expect to Happen With Respect To Attainment Demonstrations for the Philadelphia 1–Hour Ozone Nonattainment Area?

The following table shows a summary of information on what EPA expects from the States in which the Philadelphia area is located to allow EPA to approve the 1-hour ozone attainment demonstration SIPs.

TABLE 3.—SUMMARY SCHEDULE OF FUTURE ACTIONS RELATED TO ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA-WILMINGTON-TRENTON SEVERE NONATTAINMENT AREA IN MARYLAND AND WHICH IS LOCATED IN THE OTR

Req'd no later than:	Action
12/31/99	State submits the following to EPA: —Motor vehicle emissions budget.[1] —Commitments[2] or reaffirmation of a previous enforceable commitment to do the following: —Submit by 10/31/01 measures for additional emission reductions as required in the attainment demonstration test;[3] for additional emission reduction measures developed through the regional process, the State must also submit a commitment for the additional measures and a backstop commitment to adopt and submit by 10/31/01 intrastate measures for the emission reductions in the event the OTR process does not recommend measures that produce emission reductions. —Submit revised SIP & motor vehicle emissions budget by 10/31/01 if additional measures (due by 10/31/01) affect the motor vehicle emissions inventory. —Revise 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 modeled measures relied on in attainment demonstration or relied upon for ROP through the attainment year. —State revises & submits SIP & motor vehicle emissions budget to account for Tier 2 reductions as needed.[5]
10/31/01	—OTR States submit additional measures developed through the regional process.

[14] 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.

TABLE 3.—SUMMARY SCHEDULE OF FUTURE ACTIONS RELATED TO ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA-WILMINGTON-TRENTON SEVERE NONATTAINMENT AREA IN MARYLAND AND WHICH IS LOCATED IN THE OTR—Continued

Req'd no later than:	Action
	—State revises SIP & motor vehicle emissions budget if the additional measures are for motor vehicle category.
Within 1 yr after release of MOBILE6 model	State submits revised SIP & motor vehicle emissions budget based on MOBILE6.
12/31/03	State submits to EPA results of mid-course review.

[1] Final budget preferable; however, if public process is not yet complete, then a ''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.''

[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.

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

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

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

E. What Are the Relevant Policy and Guidance Documents?

This proposal cited several policy and guidance memoranda. The EPA has also developed several technical documents related to the rulemaking action in this proposal. Some of these documents have been referenced above. These 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. Website: http://www.epa.gov/ttn/scram/.

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

3. Memorandum, ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstrations,'' from Merrylin Zaw-Mon, Office of Mobile Sources, to Air Division Directors, Regions I–VI. November 3, 1999. Web site: http://www.epa.gov/oms/transp/traqconf.htm.

4. Memorandum from Lydia Wegman and Merrylin Zaw-Mon to the Air Division Directors, Regions I–VI, ''1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur 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. Website: http://www.epa.gov/ttn/scram/.

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 PM_{10} NAAQS.'' Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

II. EPA's Review and Analysis of the Maryland State Submittal

This section provides a review of Maryland's submittal and an analysis of how it satisfies the frame work discussed in Section I. C. of this document. A more detailed description of the Maryland submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action.

A. Analysis of the Local Modeling and Weight-of-Evidence

1. Analysis of the Modeling for the Local Modeling Domain

The CAA requires that serious and above nonattainment areas perform photochemical grid modeling to help determine the emission reductions of VOC and NO_X necessary to achieve the attainment of the 1-hour ozone standard. The MDE fulfilled this requirement through the application of the Urban Airshed Model, Version 4 (UAM–IV) and through the use of the modeling results from the OTAG application of the Urban Airshed Model, Version 5 (UAM–V).

The ozone attainment demonstration for the Philadelphia area contains local scale modeling that, other than the number of episodes modeled, fulfills EPA recommended modeling procedures. EPA modeling guidance requires that a total of three episodes be modeled from at least two meteorological regimes. Modeling was performed for two episodes (July 7–8, 1988 & July 18–20, 1991) in the

Philadelphia area. Given the severe nature of the episodes modeled, even if three episodes were modeled, the two episodes that were modeled would most likely be the controlling episodes in the determination of the emission reductions needed in the Philadelphia area for attainment. The two episodes that were modeled also represent the most frequently occurring meteorological conditions conducive to high ozone in the Philadelphia area. When the 2005 emission inventory with the control strategy is modeled, peak ozone concentration is reduced by approximately 31 ppb from the modeled peak concentrations in the 1988 and 1991 base cases. When this reduction is applied to the peak measured concentration for the July 1991 episode (155 ppb), the resulting concentration is 124 ppb which indicates attainment.

The local modeling for the Philadelphia area over-predicts ozone concentrations for the July 1991 episode. The modeling predicts peak concentrations in the Philadelphia area plume of between 156–190 ppb while ozone monitors in the same area during the same time period show a peak concentrations of 151 ppb. This indicates that the model is over-predicting the actual ozone concentration by an average of 15%. When model over prediction is accounted for in the July 1991 episode, the local-scale modeling predicts a peak concentration of 127 ppb. In this case, EPA's alternative attainment test guidance entitled ''Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS'' will allow a peak concentration of 141 ppb and still consider the modeled result attainment due to the severity of the meteorological ozone forming potential of the episode day. The local modeling for the July 1988 episode does not over-predict ozone concentrations. Modeled peak concentrations for the July 1988 episode exceed levels consistent with attainment. Therefore, it is necessary to warrant the consideration of WOE arguments that support the demonstration of attainment.

The attainment emission control strategy contained in Maryland's attainment demonstration, when combined with the control strategies being implemented in the other states that are part of the Philadelphia area, results in the improvement in the number of grid cell hours above the standard between 81–85 percent. This result satisfies the requirement of the second bench mark of the Statistical Test, described in EPA's alternative attainment test guidance cited above, which requires that the area control strategy result in a reduction of the number of grid cell hours above the ozone standard of at least 80 percent.

When the Philadelphia area design values in the base case modeling period are adjusted for the air quality improvement predicted in the attainment year by the local-scale modeling according to the screening test outlined in EPA's guidance entitled ''Draft Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS,'' the result is a 2005 projected design value of 126 ppb.

The local-scale modeling results are close enough to attainment to warrant the consideration of WOE arguments that support the demonstration of attainment. With the exception of the additional controls on point sources needed to satisfy the NO_X SIP call, all other measures modeled in the demonstration of attainment have been adopted and implemented by Maryland and the other States with counties comprising the Philadelphia area.

2. Weight of Evidence (WOE) Analyses

A WOE determination is a diverse set of technical analyses performed to assess the confidence one has in the modeled results and to help assess the adequacy of a proposed strategy when the outcome of local scale modeling is close to attainment. The attainment demonstration for the Philadelphia area provides WOE arguments that corroborate further that it is likely the Philadelphia area will attain the 1-hour ozone standard by the statutory date of 2005. EPA has developed design value adjustment factors based on regional scale modeling for the supplemental notice of proposed rulemaking of the NO_X SIP Call (63 FR 25902, May 11, 1998). These adjustment factors were used to adjust the 1996 design values for the Philadelphia area. This analysis showed all adjusted design values below 125 ppb in the Philadelphia area. To provide additional information, these adjustment factors were also applied to the 1997 and 1998 design values for the Philadelphia area, resulting in all design values below 124 ppb.

Because the Philadelphia area local modeling showed some peak concentrations above levels deemed consistent with attainment, EPA has conducted an analysis to determine what additional emission reductions may be needed to support ozone attainment in the Philadelphia area. EPA has determined that the Philadelphia area will need additional emission reductions of 0.3 percent per day of NO_X and 4.5 percent per day of VOC to ensure attainment of the ozone NAAQS. The baseline for these percentages is the 1990 emissions inventory. These reductions are in addition to the NO_X and VOC emission reductions that will be achieved from the Tier 2 rule. The additional VOC reductions may be achieved through NO_X substitution in accordance with existing EPA guidance. The State of Maryland has submitted an enforceable commitment to adopt whatever rules are necessary to attain the 1-hour NAAQS for ozone. This enforceable commitment was made by Maryland as part of a SIP revision submitted on December 24, 1997.

Based upon the results of the local scale modeling along with the additional weight of evidence arguments presented above, EPA believes the State of Maryland has demonstrated attainment if MDE submits reaffirmation of its previous enforceable commitment to adopt additional measures as specified in section I.C.5.

B. Analysis of Submittal Against EPA's Frame Work for Proposing Action on the Attainment Demonstration SIPs

1. CAA Measures and Measures Relied on in the Current SIP Submission

TABLE 4.—CONTROL MEASURES IN MARYLAND'S 1–HOUR OZONE ATTAINMENT PLAN FOR THE MARYLAND PORTION OF THE PHILADELPHIA-WILMINGTON-TRENTON OZONE NONATTAINMENT AREA

Name of control measure or SIP element	Type of measure	Included in local modeling	Approval status
Enhanced Inspection & Maintenance	CAA SIP Requirement.	Yes	SIP Approval Pending.
NO_X RACT	CAA SIP Requirement.	No [1]	SIP Approval Pending.

TABLE 4.—CONTROL MEASURES IN MARYLAND'S 1–HOUR OZONE ATTAINMENT PLAN FOR THE MARYLAND PORTION OF THE PHILADELPHIA-WILMINGTON-TRENTON OZONE NONATTAINMENT AREA—Continued

Name of control measure or SIP element	Type of measure	Included in local modeling	Approval status
VOC RACT to 25 tpy	CAA SIP Requirement.	Yes	SIP Approval Pending.
Stage II Vapor Recovery	CAA SIP Requirement.	Yes	SIP Approved.
On-Board Refueling Vapor Recovery	Federal Rule	Yes	Promulgated at 40 CFR 86.
Stage I Vapor Recovery	CAA SIP Requirement.	Yes	SIP Approved.
Federal Motor Vehicle Control Program (Tier 0 & Tier I).	Federal Rule	Yes	Promulgated at 40 CFR 86.
Federal Non-Road Gasoline Engines (Small Gasoline Engines).	Federal Rule	Yes	Promulgated at 40 CFR 90.
Federal Non-Road Heavy Duty Diesel Engines	Federal Rule	Yes	Promulgated at 40 CFR 89.
AIM Surface Coatings	Federal Rule	Yes	Promulgated at 40 CFR 59 subpart D.
Consumer & Commercial Products	Federal Rule	Yes	Promulgated at 40 CFR 59 subpart C.
Autobody Refinishing	State Rule	Yes	SIP Approved.
Reformulated Gasoline	Federal Rule	Yes	Promulgated at 40 CFR 80 subpart D.
Surface Cleaning/Degreasing	State Rule	Yes	SIP Approved
Municipal Landfills	State Rule	No	SIP Approved.
Open Burning Ban	State Rule	Yes	SIP Approved.
Lithographic Printing	State Rule	No	SIP Approved.
Expandable Polystyrene Products	State Rule	No	SIP Approved.
Yeast Manufacturing	State Rule	No	SIP Approved.
Commercial Bakery Ovens	State Rule	No	SIP Approved.
Screen Printing	State Rule	No	SIP Approved.
Fiberglass Manufacturing	State Rule	No	SIP Approval Pending.
Marine Vessel Coating	State Rule	No	SIP Approval Pending.
OTC NO_X MOU Phase II	State Initiative	No	SIP Approval Pending.
Clean Fuel Fleets or substitute	CAA SIP Requirement.	No	Requirement Substituted by NLEV; SIP Approval Pending.
National Low Emission Vehicle (NLEV)	State Opt-In	Yes	Federal program promulgated at 40 CFR 86 subpart R. State opt-in adopted and submitted; SIP Approval Pending.
Marine Engine Standards	Federal Rule	No	Promulgated at 40 CFR 91.
Railroad Engine Standards	Federal Rule	Yes	Promulgated at 40 CFR 92.
Heavy Duty Diesel Engines (On-Road)	Federal Rule	Yes	Promulgated at 40 CFR 86.
New Source Review	CAA SIP Requirement.	No	SIP Approval Pending.
15% VOC Reduction Plan	CAA SIP Requirement.	Yes[2]	SIP Approval Pending.
Base Year Emissions Inventory	CAA SIP Requirement.	No	SIP Approved.
Emissions Statements	CAA SIP Requirement.	No	SIP Approved.
9% Rate of Progress Plans	CAA SIP Requirement.	Yes[2]	Adopted and Submitted; Full Approval Pending.
Fees for Major Sources for Failure to Attain	CAA SIP Requirement.	No[3]	SIP Due 12/31/2000.

[1] This is a SIP element that was not included in the modeling because there are no sources subject to the measure in the Maryland portion of the Philadelphia area.
[2] The measures used to demonstrate rate of progress were modeled.
[3] This measure will only take effect if the area fails to attain by 2005 and would only be implemented after 2005.

Maryland has submitted all CAA mandated measures. Many, but not all, of these measures have been approved. EPA is proposing approval of Maryland's attainment demonstration for the Philadelphia area contingent upon issuance of a SIP approval of all CAA required measures and other attainment measures before final approval is issued for the attainment demonstration.

2. NO_X Reductions Consistent With the Modeling Demonstration

The State of Maryland relied on the NO_X SIP Call reductions in the Philadelphia area attainment demonstration plan. Therefore, a crucial element of the attainment demonstration for the Philadelphia area is the adoption and implementation of NO_X controls consistent with the modeling demonstration. As discussed in Section I.C.1. above, Maryland must adopt NO_X SIP Call level controls within the modeling domain in order to have an approvable attainment demonstration. Maryland must submit to EPA adopted control measures consistent with the NO_X reductions assumed in the attainment demonstration before EPA may approve the attainment demonstration SIP.

3. Motor Vehicle Emissions Budget

The EPA has found that the motor vehicle emissions budget in the attainment demonstration submitted by Maryland is inadequate for conformity purposes. On October 26, 1999, Judith

M. Katz, Director, Air Protection Division, EPA, Region III, sent a letter to Ms. Ann Marie DeBiase, Director, Air and Radiation Management Administration, Maryland Department of the Environment indicating that the motor vehicle emissions budgets in their attainment demonstration SIP were not adequate for conformity purposes.

The motor vehicle emission budget in the attainment demonstration for the Maryland portion of the Philadelphia area is inadequate because it does not meet all the requirements in 40 CFR Part 93, section 93.118(e)(4). EPA made this determination because the Maryland attainment demonstration SIP requires additional measures to further reduce emissions to support the attainment test and because the budgets do not reflect all measures assumed in the local modeling. The following paragraphs provide a summary of each of these findings, of the corrective action required and of EPA's proposed action.

Additional measures to further reduce emissions to support the attainment test: The motor vehicle emissions budget(s), when considered together with all other emissions sources are not consistent with applicable requirements for attainment as detailed in section 93.118(e)(4)(iv) of the Conformity rule. Maryland's attainment demonstration identifies motor vehicle emissions budgets for 2005. But the budgets do not meet this requirement because the WOE support for the attainment demonstration will be acceptable only if Maryland provides a reaffirmation by letter that its previously submitted enforceable commitment to adopt additional measures to further reduce emissions includes those necessary to support the attainment test as specified in section I.C.5., above. There will be additional mobile source control measures in effect by 2005 that will assist the area in demonstrating attainment in 2005. Table 5 lists these measures and indicates which of these are currently reflected in the motor vehicle emissions budgets.

Budgets do not reflect all measures assumed in the local modeling: The motor vehicle emissions budgets are not consistent with and clearly related to the emissions inventory and the control measures in the submitted SIPs as required by section 93.118(e)(4)(v) of the Conformity rule. Adequate motor vehicle emissions budgets must reflect application of all the control measures assumed in the local modeling demonstration. The current motor vehicle emissions budgets do not reflect a low emissions vehicle program which was assumed in the local modeling. Maryland has adopted and submitted a SIP revision for an NLEV program and thus has adopted this modeled measure.

EPA has interpreted the general adequacy criteria with respect to the 1-hour ozone attainment demonstrations to require the motor vehicle emissions budgets to include the effects of all motor vehicle controls, including federal measures and the mobile source control measures assumed in the NO_X SIP Call, that will be in place in the attainment year.[15] Table 5 lists these measures that will contribute to attainment in 2005 and that will affect the budget. Therefore, the revised motor vehicle emissions budget presumptively must include all currently promulgated federal measures and state SIP measures shown in Table 5 with the exception of Clean Fuel Fleets (CFF). Maryland has submitted an NLEV SIP revision as a substitute for CFF. For the Maryland component of the motor vehicle emissions budget NLEV must be used as in lieu of CFF.

TABLE 5.—MOBILE SOURCE CONTROL MEASURES NEEDED FOR THE 2005 MOTOR VEHICLE EMISSIONS BUDGETS

Control measures available in 2005	Control measures contained in the demonstration
Federal Motor Vehicle Control Program (FMVCP)	
Tier 1	Tier 1 FMVCP only.
Tier 2	
High enhanced I/M	High Enhanced I/M.
Phase II RFG	Phase II RFG.
Clean Fuel Fleets & NLEV.	Not in motor vehicle budget.
Heavy-Duty Diesel Vehicle.	Not in motor vehicle budget.

Motor vehicle emissions budget and EPA's proposed action: EPA is proposing to approve the attainment demonstration SIP if Maryland corrects the deficiencies that cause the motor vehicle emissions budget to be inadequate. In the alternative, EPA is proposing to disapprove the attainment demonstration SIP, if by May 31, 2000, EPA has not made a determination that the State of Maryland has an adequate motor vehicle emissions budget for the Maryland portion of the Philadelphia area. Because many States may shortly be submitting revised demonstrations with revised motor vehicle emission budgets, EPA is providing a 60-day comment period on this proposed rule. If Maryland submits a revised attainment demonstration, EPA will place the revisions in the docket for this rulemaking and will post a notice on EPA's website at www.epa.gov/oms/traq. By posting notice on the website, EPA will also initiate the adequacy process.

4. Tier 2/Sulfur Program Benefits

As a result of EPA's review of the Maryland's SIP submittal, EPA believes that the ozone modeling submitted by the State of Maryland for the Philadelphia area on which EPA is proposing to approve and to disapprove-in-the-alternative will need the emission reductions from EPA's Tier 2/Sulfur program to attain the 1-hour ozone NAAQS. Further, EPA believes that the Philadelphia area will need additional emission reductions identified by EPA, beyond those from EPA's Tier 2/Sulfur program, to attain the 1-hour ozone NAAQS.

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

To assist the States whose counties comprise the Philadelphia area in the preparation of a new submission which could be approved or conditionally approved, EPA has prepared an estimate of the air quality benefits of EPA's Tier 2/Sulfur program. EPA assumed that all of the Tier 2/Sulfur emissions reductions will contribute to the ability of the Philadelphia area to demonstrate attainment. The EPA has further calculated how much additional emission reduction is needed for the Philadelphia area in order for EPA to approve or conditionally approve a revised and re-submitted attainment demonstration for this area. The EPA suggests that Maryland include these calculations as part of the WOE analysis accompanying the adjusted attainment demonstration and revised motor vehicle emissions budget for this area. Today EPA is proposing to approve a new attainment demonstration if it meets this description.

However, States can use some of EPA's Tier 2/Sulfur program credit for other purposes. Thus, the States could take credit for all or some of EPA's Tier 2/Sulfur program credit for its

[15] 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.

attainment demonstration. If the Tier 2/Sulfur program credit the States are assuming for attainment is less than the amount that EPA assumed in calculating the amount of additional emission reductions needed to attain, *i.e.,* the States are applying some or all of the Tier 2/Sulfur program credit for other purposes, the States will have to calculate the new additional emission reductions needed and commit to adopt measures to achieve them. If the States assume all the Tier 2/Sulfur program credit will go toward attainment, then the States will be able to rely on EPA's estimate of the additional emission reductions needed.

Revisions to the motor vehicle emissions budget and the attainment demonstration when EPA issues the MOBILE6 model: Maryland has previously committed to adopting additional control measures as necessary to attain the one-hour ozone NAAQS as discussed in the preceding section (II.C.3) of this document. EPA believes for the purposes of determining the motor vehicle emissions budget adequate that Maryland already has a commitment to adopt any needed additional measures, but we need reaffirmation from MDE that the intent of the existing commitment meets all the conditions as stated in section I.C of this action including revising the mobile vehicle emissions budget when EPA issues the MOBILE6 model. EPA needs to receive this reaffirmation by December 31, 1999 as discussed in section I. above. If Maryland does not reaffirm by December 31, 1999, that its existing commitment to adopt additional measures as necessary to reach attainment is consistent within the framework of this action, then EPA will be unable to determine the area has an adequate conformity budget. 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 July 1, 2000).

5. Additional Measures to Further Reduce Emissions To Support the Attainment Test

Based on the results of the local scale modeling along with the additional weight-of-evidence analyses provided in the attainment demonstration for the Philadelphia area, EPA believes that MDE has successfully demonstrated attainment of the 1-hour ozone standard for the Philadelphia area by the 2005 statutory date if the MDE provides a reaffirmation by letter that its previously submitted enforceable commitment to adopt additional measures to further reduce emissions includes those necessary to support the attainment test as specified in section I.C.5., above. EPA has determined that the Philadelphia area will need additional emission reductions of 0.3 percent per day of NO_X and 4.5 percent per day of VOC to ensure attainment of the ozone NAAQS. The baseline for these percentages is the 1990 emissions inventory. These reductions are in addition to the NO_X and VOC emission reductions that will be achieved from the Tier 2 rule.

In their attainment demonstration submittal, Maryland provided a list of control measures to be considered if additional reductions are needed for attainment. None of the listed measures impose additional limits on highway construction. EPA believes that Maryland already identified a list of control measures that would not impose additional limits on highway construction, but needs reaffirmation from MDE that the intent of its existing enforceable commitment which included this list of measures meets the provisions of section I.C.5., above.

6. Mid-Course Review

In accordance with the provisions of I.C.6., above, EPA must receive an enforceable commitment or a reaffirmation of a previous enforceable commitment to include a mid-course review from MDE for the Philadelphia area by the date specified in Table 3 of this document before the attainment demonstration can be approved.

III. What Are the Consequences of State Failure?

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

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

If EPA disapproves a required SIP, such as the attainment demonstration SIPs, section 179(a) provides for the imposition of two sanctions. The first sanction would apply 18 months after EPA disapproves the SIP if the State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to a broader area, but is not proposing to take such action today.

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

In addition to sanctions, if EPA finds that a State failed to submit the required SIP revision or disapproves the required SIP revision EPA must promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected. The attainment demonstration SIPs on which EPA is taking action today were originally due in November 1994. However, through a series of policy memoranda, EPA recognized that States had not submitted attainment demonstrations and were constrained to do so until ozone transport had been further analyzed. As 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.

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.

IV. Proposed Action

A. Proposed Approval

EPA is proposing to approve Maryland's attainment demonstration SIP revision for the Philadelphia area which was submitted on April 18, 1998

and supplemented on August 18, 1998 if the following actions occur in accordance with the schedules in section I.D, Table 3:

(1) Maryland adopts and submits an adequate motor vehicle emissions budget.

(2) Maryland reaffirms that the intent of its existing enforceable commitment which provided a list of measures to be considered if additional reductions are needed for attainment meets the provisions discussed section I.C.5, above. The State 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. Note: Maryland's previously submitted list of measures does not involve additional limits on highway construction beyond those that could be imposed under the submitted motor vehicle emissions budget.

(3) Maryland adopts and submits a rule(s) for the regional NO_X reductions consistent with the modeling demonstration.

(4) Maryland adopts and submits an enforceable commitment, or reaffirmation of existing enforceable commitment to do the following:

(a) Submit measures by 10/31/01 for additional emission reductions as required in the attainment demonstration test as discussed in section I.C.5. For additional emission reduction measures developed through the regional process, the State must also submit an enforceable commitment for the additional measures and a backstop commitment to adopt and submit intrastate measures for the emission reductions in the event the OTR process does not recommend measures that produce emission reductions.

(b) Submit a revised SIP & motor vehicle emissions budget by 10/31/01 if additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP & motor vehicle emissions budget 1 year after MOBILE6 issued.

(d) Perform a mid-course review.

B. Proposed Disapproval-in-the-Alternative

EPA is also proposing, in the alternative, to disapprove this SIP revision, if any of the actions listed in III.A, above, do not occur in accordance with the schedules in section I.D, Table 3.

EPA is soliciting public comments on the issues discussed in this document and any other relevant issues regarding attainment for the Philadelphia area. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** this document. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

V. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action 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.

This final rule is not subject to E.O. 13045 because it does 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power

and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

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

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 Maryland, 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 on Maryland's One-Hour Ozone Attainment Demonstration for the Philadelphia Area 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.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–31715 Filed 12–15–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA117–4095; FRL–6502–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; One-Hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) consisting of the 1-hour ozone attainment demonstration for the Philadelphia-Wilmington-Trenton severe nonattainment area (the Philadelphia area) submitted by the Pennsylvania Department of Environmental Protection (PADEP) on April 30, 1998 and supplemented on August 21, 1998. We are also proposing, in the alternative, to disapprove this demonstration if Pennsylvania does not submit an adequate motor vehicle emissions budget for its portion of the Philadelphia area consistent with attainment and adopt and submit rules for the regional NO_X reductions consistent with the modeling demonstration. For purposes of an adequate motor vehicle emissions budget, the State will need to reaffirm that its previously submitted enforceable commitment to adopt the measures needed for attainment would apply to the additional measures to reduce emissions to support the attainment test. The reaffirmation must also include the State's commitment to the performance of a mid-course review and to revisions to the SIP and motor vehicle emissions budget after MOBILE6 (the most recent model for estimating mobile source emissions) is released. The Philadelphia area is comprised of two counties in Delaware, one county in Maryland, seven counties in New Jersey, and five counties in Pennsylvania (namely, Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties). Elsewhere in today's **Federal Register**, we are also proposing to take action on the 1-hour ozone attainment demonstration SIP submittals from

Delaware, Maryland, and New Jersey for the Philadelphia area.

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

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Jill Webster, (215) 814–2033. Or by e-mail at webster.jill@epa.gov.

SUPPLEMENTARY INFORMATION: This document 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 submitted by PADEP for the Philadelphia area. This document addresses the following questions:

What is the Basis for the Attainment Demonstration SIP?

What are the Components of a Modeled Attainment Demonstration?

What is the Frame Work for Proposing Action on the Attainment Demonstration SIPs?

What Does EPA Expect to Happen with Respect to Attainment Demonstrations for the Severe 1–Hour Ozone Nonattainment Areas?

What are the Relevant Policy and Guidance Documents?

How Does Pennsylvania's Submittal Satisfy the Frame Work?

What are the Consequences of State Failure?

I. Background

A. What is the Basis for the Attainment Demonstration SIP?

1. CAA Requirements

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

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

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas are required to attain the 1-hour standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The Philadelphia area is classified as severe and its attainment date is November 15, 2005.

Under section 182(c)(2) and (d) of the CAA, serious and severe areas were required to submit by November 15, 1994 demonstrations of how they would attain the 1-hour standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year (rate-of-progress or ROP). (In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions.) Today, in this proposed rule, EPA is proposing action on the attainment demonstration SIP submitted by James Seif, Secretary of the Pennsylvania Department of Environmental Protection for the Philadelphia area. In addition, elsewhere in this **Federal Register**, EPA is today proposing to take action on the one-hour ozone attainment demonstration SIPs for the three other States for the Philadelphia area and for nine other serious or severe 1-hour ozone nonattainment areas. The additional nine areas are Greater Connecticut (CT), Springfield (Western Massachusetts) (MA), New-York-North New Jersey-Long Island (NY–NJ–CT), Baltimore (MD), Metropolitan-Washington, D.C. (DC–MD–VA), Atlanta (GA), Milwaukee-Racine (WI), Chicago-Gary-Lake County (IL–IN), and Houston-Galveston-Brazoria (TX).

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

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

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

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by States but noting the remaining difficulties in making attainment demonstration SIP submittals.[1] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the States in the eastern half of the country to evaluate and address transport of ozone

[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.

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 public hearing on the State submittal.[4]

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

[3] 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 a State has relied upon a commitment to submit these measures by December 2000, EPA is proposing an approval of the area's attainment demonstration. Some severe areas submitted the actual adopted control measures and are not relying upon a commitment.

[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.

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.

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

The States generally submitted the SIPs between April and October of 1998; some States are still submitting additional revisions as described below. Under the CAA, EPA is required to approve or disapprove a State's submission no later than 18 months following submission. (The statute provides up to 6 months for a completeness determination and an additional 12 months for approval or disapproval.) The EPA believes that it is 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 upon 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.[5] In order to have a complete modeling demonstration submission, States should have submitted the required modeling analysis and identified any additional evidence that EPA should consider in evaluating whether the area will attain the standard.

1. Modeling Requirements

For purposes of demonstrating attainment, the CAA requires serious and severe areas to use photochemical grid modeling or an analytical method EPA determines to be as effective. The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values and to predict air quality changes in the attainment year due to the emission changes which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted concentrations inside the modeling domain are at or below the NAAQS or at an acceptable upper limit above the NAAQS permitted under certain conditions by EPA's guidance. When the predicted concentrations are above the NAAQS, an optional weight of evidence determination which incorporates, but is not limited to, other analyses, such as air quality and emissions trends, may be used to address uncertainty inherent in the application of photochemical grid models.

The EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results. First, the State must develop and implement a modeling protocol. The modeling protocol describes the methods and procedures to be used in conducting the modeling analyses and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (State and local agencies, EPA Regional offices, the regulated community, and public interest groups). Second, for purposes of developing the information to put into the model, the State must select air pollution days, i.e., days in the past with bad air quality, that are representative of the ozone pollution problem for the nonattainment area. Third, the State needs to identify the appropriate dimensions of the area to be modeled, i.e., the domain size. The domain should be larger than the designated nonattainment area to reduce uncertainty in the boundary conditions and should include large upwind sources just outside the nonattainment area. In general, the domain is considered the local area where control measures are most beneficial to bring the area into attainment. Fourth, the State needs to determine the grid resolution. The horizontal and vertical resolutions in the model affect the dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids) may dilute concentrations and may not properly consider impacts of complex terrain, complex meteorology, and land/water interfaces. Fifth, the State needs to generate meteorological data that describe atmospheric conditions and emissions inputs. Finally, the State needs to verify that the model is properly simulating the chemistry and 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[6] 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.

[5] 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, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''UAMREG''). See also U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''O3TEST'').

[6] 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.

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

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

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

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

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

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

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

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

TABLE 1.—CAA REQUIREMENTS FOR SERIOUS AREAS

—NSR for VOC and NO_X,[1] 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[1]
—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

[1] Unless the area has in effect a NO_X waiver under section 182(f). The Philadelphia area is not such an area.

TABLE 2.—CAA REQUIREMENTS FOR SEVERE AREAS

—All of the nonattainment area requirements for serious areas
—NSR, including an offset ratio of 1.3:1 and a major VOC and NO_X source cutoff of 25 tons per year (tpy)
—Reformulated gasoline
—9 percent ROP plan through attainment year

TABLE 2.—CAA REQUIREMENTS FOR SEVERE AREAS—Continued

—Requirement for fees for major sources for failure to attain (SIP due 12/31/99)

2. NO_X Reductions Affecting Boundary Conditions

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

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

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

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

As provided above, any controls assumed by the State inside the local modeling domain [7] 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.[8] 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.[9] 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 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 (NPRM) proposing a major, comprehensive program designed to significantly reduce emissions from passenger cars and light trucks (including sport-utility vehicles, minivans, and pickup trucks) and to reduce sulfur in gasoline. Under the proposed program, automakers would produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners would provide that cleaner gasoline nationwide. The EPA subsequently issued two supplemental notices. 64 FR

[7] 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 x 5 km or finer. The domain is large enough to ensure that emissions occurring at 8 am in the domain's center are still within the domain at 8 pm the same day. If recirculation of the nonattainment area's previous day's emissions is believed to contribute to an observed problem, the domain is large enough to characterize this.

[8] 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.

[9] A final budget is preferred; but, if the State public hearing process is not yet complete, then the 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.

35112 (June 30, 1999); 64 FR 57827 (October 27, 1999).

These two supplemental 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 Philadelphia area whose attainment demonstration EPA is proposing to approve today is included on that list.

The EPA issued a memorandum that provides estimates of the emissions reductions associated with the Tier 2/Sulfur program proposal.[10] The memorandum provides the tonnage benefits for the Tier 2/Sulfur program in 2007 on a county-by-county basis for all counties within the 10 serious and severe nonattainment areas for which EPA is proposing to take action today and the 2005 tonnage benefits for the 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.[11] 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, Philadelphia-Wilmington-Trenton, Baltimore, Atlanta, and Houston nonattainment areas, the EPA is proposing to determine that additional emission reductions beyond those provided by the SIP submission are necessary for attainment. With the exception of the Atlanta nonattainment area, a portion of that reduction will be achieved by EPA's Tier 2/Sulfur program, which EPA expects to finalize shortly. States that need to rely in whole or in part on the Tier 2 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 reduction 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.

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

[10] 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.

[11] 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.

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.[12]

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; Atlanta; Houston; Baltimore; and Philadelphia-Wilmington-Trenton areas; even considering the Tier 2/Sulfur program reductions and the WOE, will not achieve attainment without the application of additional emission control measures to achieve additional emission reductions. Thus, for each of these areas, EPA has identified specific percentages of NO_X and/or VOC emissions which must be reduced through additional control measures in order to demonstrate attainment and to enable EPA to approve the demonstration. The need for additional emission reductions is generally based on a lack of sufficient compelling evidence that the demonstration shows attainment at the current level of adopted or planned emission controls.

This is discussed in detail below for the Philadelphia area. The method used by EPA to calculate the amount of additional reductions is described in a Technical Support Document (TSD) located in the record for this proposed rule. Briefly, the method makes use of the relationship between ozone and its precursors (VOC and NO_X) to identify additional reductions that, at a minimum, would bring the model predicted future ozone concentration to a level at or below the standard. The relationship is derived by comparing changes in either (1) the model predicted ozone to changes in modeled emissions or (2) in observed air quality to changes in actual emissions.

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

As an initial matter, for areas that need additional 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.[13]) 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.

For areas within the OTR, EPA believes it is appropriate to provide a State that is relying on a regional solution to a Congressionally-recognized regional air pollution problem with more time to adopt and submit measures for additional reductions to EPA than for a State that will rely on intrastate measures to achieve the reductions. Therefore, the EPA believes that States in the OTR must be allowed sufficient time for the OTR to analyze the appropriate measures as well as time for the State to adopt the measures. For these States, EPA believes it is appropriate for them to commit to work through the OTR to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA for these areas. However, as a backstop, the State will need to commit to adopt intrastate measures sufficient to achieve the additional reductions if the regional measures are not identified by the OTR and adopted by the relevant States. For purposes of conformity, if the State submitted a commitment consistent with the December 1997 Wilson policy and which has been subject to public hearing, the State may amend its current commitment by letter to provide these assurances. However, before EPA can take final rulemaking action to approve the attainment demonstration, the State will need to meet the public hearing requirements for the commitment and submit it to EPA as a SIP revision. The EPA will have to propose and take final

[12] 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.

[13] 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 memo may be found on EPA's web site at http://www.epa.gov/oms/transp/traqconf.htm .

action on this SIP revision before EPA can fully approve the State's attainment demonstration. The State will have to submit the necessary measures themselves (and a revised motor vehicle emissions budget that includes the effects, if any, of the measure or measures that are ultimately adopted should any of the measures pertain to motor vehicles) as a SIP revision no later than October 31, 2001.

Guidance on additional control measures. Much progress has been made over the past 25 years to reduce VOC emissions and over the past 9 years to reduce NO_X emissions. Many large sources have been controlled to some extent through RACT rules or other emission standards or limitations, such as maximum achievable control technology (MACT), new source performance standards (NSPS) and the emission control requirements for NSR—lowest achievable emissions rate (LAER) and best achievable control technology (BACT). However, there may be controls available for sources that have not yet been regulated as well as additional means for achieving reductions from sources that have already been regulated. The EPA has prepared a report to assist States in identifying additional measures. This report is called ''Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control Measures.'' The purpose of this report is to provide information to State and local agencies to assist them in identifying additional control measures that 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 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. There 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 emission 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 Philadelphia area, EPA believes that the States whose counties comprise the area must submit an enforceable commitment to perform a MCR as described here.[14]

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.

For severe areas, the States must have an enforceable commitment to perform the MCR, preferably following the 2003 ozone season, and to submit the results to EPA by the end of the review year (e.g., by December 31, 2003). EPA believes that an analysis in 2003 would be most robust since some or all of the regional NO_X emission reductions should be achieved by that date. EPA would then review the results and determine whether any States need to adopt and submit additional control measures for purposes of attainment. The EPA is not requesting that States commit now to adopt new control measures as a result of this process. It would be impracticable for the States to make a commitment that is specific enough to be considered enforceable. Moreover, the MCR could indicate that upwind States may need to adopt some or all of the additional controls needed to ensure an area attains the standard. Therefore, if EPA determines additional control measures are needed for attainment, EPA would determine whether additional emission reductions as necessary from States in which the nonattainment area is located or upwind States, or both. The EPA would require the affected State or States to adopt and submit the new measures within a period specified at the time. The EPA anticipates that these findings would be made as calls for SIP revisions under section 110(k)(5) and, therefore, the period for submission of the measures would be no longer than 18 months after the EPA finding. A draft guidance document regarding the MCR process is located in the docket for this proposal and may also be found on EPA's web site at http://www.epa.gov/ttn/scram/ .

D. In Summary, What Does EPA Expect to Happen with Respect to Attainment Demonstrations for the Severe 1–Hour Ozone Nonattainment Areas?

The following table shows a summary of information on what EPA expects from the States in which the Philadelphia area is located to allow EPA to approve the 1-hour ozone attainment demonstration SIPs.

TABLE 3.—SUMMARY SCHEDULE OF FUTURE ACTIONS RELATED TO ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA-WILMINGTON-TRENTON SEVERE NONATTAINMENT AREA IN PENNSYLVANIA AND WHICH IS LOCATED IN THE OTR

Required no later than	Action
12/31/99	State submits the following to EPA: —Motor vehicle emissions budget[1] —Commitments[2] or reaffirmation of a previous commitment to do the following: —Submit by 10/31/01 measures for additional emission reductions as required in the attainment demonstration test; for additional emission reduction measures developed through the regional process, the State must also submit a commitment for the additional measures and a backstop commitment to adopt and submit by 10/31/01 intrastate measures for the emission reductions in the event the OTR process does not recommend measures that produce emission reductions. —Submit revised SIP & motor vehicle emissions budget by 10/31/01 if additional measures (due by 10/31/01) affect the motor vehicle emissions inventory —Revise SIP & motor vehicle emissions budget 1 year after MOBILE6 issued.[3] —Perform a mid-course review. —A list of potential control measures 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 modeled measures relied on in attainment demonstration and relied on for ROP through the attainment year. —State revises & submits SIP & motor vehicle emissions budget to account for Tier 2 reductions as needed.[5]
10/31/01	—OTR States submit additional measures developed through the regional process. —State revises SIP & motor vehicle emissions budget if the additional measures are for motor vehicle category.
Within 1 yr after release of MOBILE6 model	State submits revised SIP & motor vehicle emissions budget based on MOBILE6.

[14] 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.

TABLE 3.—SUMMARY SCHEDULE OF FUTURE ACTIONS RELATED TO ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA-WILMINGTON-TRENTON SEVERE NONATTAINMENT AREA IN PENNSYLVANIA AND WHICH IS LOCATED IN THE OTR—Continued

Required no later than	Action
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.''

[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.

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

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

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

E. What are the Relevant Policy and Guidance Documents?

In this document we have cited several policy and guidance memoranda. We have also developed several technical documents related to today's proposed action. These documents and their location on our web site are listed below, and we have placed a copy of these documents in the docket for this proposed action.

Recent documents

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

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

3. Memorandum, ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstrations,'' from Merrylin Zaw-Mon, Office of Mobile Sources, to Air Division Directors, Regions I–VI. November 3, 1999. Web site: http://www.epa.gov/oms/transp/traqconf.htm.

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

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

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. Website: http://www.epa.gov/ttn/oarpg/t1pgm.html.

4. Memorandum, ''Extension of Attainment Dates for Downwind Transport Areas,'' issued July 16, 1998. Website: 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 PM_{10} NAAQS.'' Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

II. EPA's Review and Analysis of the Pennsylvania State Submittal

This section provides a review of Pennsylvania's submittal and an analysis of how it satisfies the frame work discussed in section I.C. of this document. A more detailed description of the Pennsylvania submittal and EPA's evaluation are included in a TSD prepared in support of this rulemaking action.

A. Analysis of the Local Modeling and Weight of Evidence

1. Analysis of the Modeling for the Local Modeling Domain

The CAA requires that serious areas and above perform photochemical grid modeling to help determine the emission reductions of VOC and NO_X necessary to achieve the attainment of the 1-hour ozone standard. The PADEP fulfilled this requirement through the application of the Urban Airshed Model, Version 4 (UAM–IV) and through the use of the modeling results from the OTAG application of the Urban Airshed Model, Version 5 (UAM–V).

The ozone attainment demonstration for the Philadelphia area contains local scale modeling that, other than the number of episodes modeled, fulfills EPA recommended modeling procedures. EPA modeling guidance requires that a total of three episodes be modeled from at least two meteorological regimes. Modeling was performed for two episodes (July 7–8, 1988 & July 18–20, 1991) in the Philadelphia area. Given the severe nature of the episodes modeled, even if three episodes were modeled, the two episodes that were modeled would most likely be the controlling episodes in the determination of the emission reductions needed in the Philadelphia

area for attainment. The two episodes that were modeled also represent the most frequently occurring meteorological conditions conducive to high ozone in the Philadelphia area. When the 2005 emission inventory with the control strategy is modeled, peak ozone concentration is reduced by approximately 31 ppb from the modeled peak concentrations in the 1988 and 1991 base cases. When this reduction is applied to the peak measured concentration for the July 1991 episode (155 ppb), the resulting concentration is 124 ppb which indicates attainment.

The local modeling for the Philadelphia area over-predicts ozone concentrations for the July 1991 episode. The modeling predicts peak concentrations in the Philadelphia area plume of between 156–190 ppb while ozone monitors in the same area during the same time period show a peak concentration of 151 ppb. This indicates that the model is over-predicting the actual ozone concentration by an average of 15%. When model over-prediction is accounted for in the July 1991 episode, the local-scale modeling predicts a peak concentration of 127 ppb. In this case, EPA's alternative attainment test guidance entitled ''Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS'' will allow a peak concentration of 141 ppb and still consider the modeled result attainment due to the severity of the meteorological ozone forming potential of the episode day. The local modeling for the July 1988 episode does not over-predict ozone concentrations. Modeled peak concentrations for the July 1988 episode exceed levels consistent with attainment. Therefore, it is necessary to warrant the consideration of weight-of-evidence arguments that support the demonstration of attainment.

The attainment emission control strategy contained in Pennsylvania's attainment demonstration, when combined with the control strategies being implemented in the other states that are part of the Philadelphia area, results in the improvement in the number of grid cell hours above the standard between 81–85 percent. This result satisfies the requirement of the second bench mark of the Statistical Test, described in EPA's alternative attainment test guidance cited above, which requires that the area control strategy result in a reduction of the number of grid cell hours above the ozone standard by 80 percent.

When the Philadelphia area design values in the base case modeling period are adjusted for the air quality improvement predicted in the attainment year by the local-scale modeling according to the screening test outlined in EPA's guidance entitled ''Draft Guidance on the Use of Models and Other Analysis in Attainment Demonstrations for the 8–Hour Ozone NAAQS,'' the result is a 2005 projected design value of 126 ppb.

The local-scale modeling results are close enough to attainment to warrant the consideration of WOE arguments that support the demonstration of attainment. With the exception of the additional controls on point sources needed to satisfy the NO_X SIP call, all other measures modeled in the demonstration of attainment have been adopted and implemented by Pennsylvania and the other States comprising the Philadelphia area.

2. Weight of Evidence (WOE) Analyses

A WOE determination is a diverse set of technical analyses performed to assess the confidence one has in the modeled results and to help assess the adequacy of a proposed strategy when the outcome of local scale modeling is close to attainment. The attainment demonstration for the Philadelphia area provides WOE arguments that corroborate further that it is likely the Philadelphia area will attain the 1-hour ozone standard by the statutory date of 2005. EPA has developed design value adjustment factors based on regional scale modeling for the supplemental notice of proposed rulemaking of the NO_X SIP call (63 FR 25902, May 11, 1998). These adjustment factors were used to adjust the 1996 design values for the Philadelphia area. This analysis showed all adjusted design values below 125 ppb in the Philadelphia area.

Because the Philadelphia area local modeling showed some peak concentrations above levels deemed consistent with attainment, EPA has conducted an analysis to determine what additional emission reductions may be needed to support ozone attainment in the Philadelphia area. EPA has determined that the Philadelphia area will need additional emission reductions of 0.3 percent of NO_X and 4.5 percent of VOC to ensure attainment of the ozone NAAQS. These reductions are in addition to the NO_X and VOC emission reductions that will be achieved from the Tier 2 rule. The additional VOC reductions may be achieved through NO_X substitution in accordance with existing EPA guidance. PADEP has submitted an enforceable commitment to adopt whatever rules are necessary to attain the 1-hour NAAQS for ozone. This enforceable commitment was made by Pennsylvania as part of a formal SIP revision submitted on July 31, 1998.

Based upon the results of the local scale modeling along with the additional weight of evidence arguments presented above, EPA believes the Commonwealth of Pennsylvania has demonstrated attainment if PADEP submits a reaffirmation of its previous enforceable commitment to adopt additional measures as specified in section I.C.5.

B. Analysis of State Submittal Against the Framework for Proposing Action

1. CAA Measures and Measures Relied Upon in the Current SIP Submission

Table 4 contains the CAA required control measures the Commonwealth has implemented and the federal approval status of each.

TABLE 4.—COMMONWEALTH OF PENNSYLVANIA CONTROL MEASURES IN THE 1–HOUR OZONE ATTAINMENT PLANS FOR THE PHILADELPHIA AREA

Name of control measure or SIP element	Type of measure	Included in local modeling	Approval status
Enhanced Inspection & Maintenance.	CAA SIP Requirement	Yes	SIP approved.
NO_X RACT	CAA SIP Requirement	Yes	SIP approval pending.
VOC RACT	CAA SIP Requirement	Yes	SIP approval pending.
Stage II Vapor Recovery	CAA SIP Requirement	Yes	SIP approved.
On-board Refueling Vapor Recovery.	federal rule	Yes	Promulgated at 40 CFR 86.
Stage I Vapor Recovery	CAA SIP Requirement	Yes	SIP approved.
Federal Motor Vehicle Control program.	federal rule	Yes	Promulgated at 40 CFR 86.

TABLE 4.—COMMONWEALTH OF PENNSYLVANIA CONTROL MEASURES IN THE 1–HOUR OZONE ATTAINMENT PLANS FOR THE PHILADELPHIA AREA—Continued

Name of control measure or SIP element	Type of measure	Included in local modeling	Approval status
Federal Non-road Gasoline Engines.	federal rule	Yes	Promulgated at 40 CFR 90.
Federal Non-road Heavy Duty diesel engines.	federal rule	Yes	Promulgated at 40 CFR 89.
AIM Surface Coatings	federal rule	Yes	Promulgated at 40 CFR 59 subpart D.
Consumer & commercial products	federal rule	Yes	Promulgated at 40 CFR 59 subpart C.
Autobody refinishing	federal rule	Yes	Promulgated at 40 CFR 59 subpart B.
Reformulated Gasoline	federal rule	Yes	Promulgated at 40 CFR 80 subpart D.
National Low Emission Vehicle (NLEV).	State opt-in	Yes	Federal program promulgated at 40 CFR 86 subpart R. State opt-in adopted and submitted; SIP approval pending.
OTC NO_X MOU Phase II	State initiative	Yes	SIP approval pending.
Clean Fuel Fleets (CFF)	CAA SIP Requirement	No-NLEV was modeled	NLEV Substitute Adopted and submitted.
Marine Engine Standards	federal rule	No	Promulgated at 40 CFR 91.
Railroad Engine Standards	federal rule	No	Promulgated at 40 CFR 92.
Heavy Duty Diesel Engines (On-road).	federal rule	No	Promulgated at 40 CFR 86.
New Source Review	CAA SIP Requirement	N/A [1]	SIP approval pending.
15% VOC Reduction Plan	CAA SIP Requirement	Yes [2]	SIP approval pending.
Base Year Emissions Inventory	CAA SIP Requirement	N/A	SIP approved.
Emissions Statements	CAA SIP Requirement	N/A	SIP approved.
9% rate of progress plans	CAA SIP Requirement	Yes [2]	SIP approval pending.
Improving rule effectiveness from 80% to 90%.	State Initiative	Yes	SIP approval pending.
Fees for Major Sources for failure to attain.	CAA SIP Requirement	No [3]	SIP due 12/31/2000

[1] Does not produce emission reductions.
[2] The measures used to demonstrate rate of progress were modeled.
[3] This measure will only take effect if the area fails to attain by 2005 and would only be implemented after 2005.

The PADEP has submitted all CAA mandated measures. Many, but not all, of these measures have been approved. EPA is proposing approval of Pennsylvania's attainment demonstration for the Philadelphia area contingent upon approval of all CAA required measures and other attainment measures before final approval is issued for the attainment demonstration.

2. NO_X Reductions Affecting Boundary Conditions

The Commonwealth of Pennsylvania relied upon the NO_X SIP Call reductions in the Philadelphia area attainment demonstration plan. Therefore, a crucial element of the attainment demonstration for the Philadelphia area is the adoption and implementation of NO_X controls consistent with the modeling demonstration. As discussed in Section I.C.1. above, Pennsylvania must adopt NO_X SIP call level controls within the modeling domain in order to have an approvable attainment demonstration. Pennsylvania must submit to EPA adopted control measures consistent with the NO_X reductions assumed in the attainment demonstration before EPA may approve the attainment demonstration SIP.

3. Motor Vehicle Emissions Budget

The EPA has found that the motor vehicle emissions budget in the attainment demonstration submitted by Pennsylvania is inadequate for conformity purposes. On October 26, 1999, Judith M. Katz, Director, Air Protection Division, EPA, Region III, sent a letter to Mr. James Salvaggio, Director, Bureau of Air Quality Control, Pennsylvania Department of Environmental Protection indicating that the motor vehicle emissions budgets in their demonstration SIP were not adequate for conformity purposes.

The motor vehicle emission budget in the attainment demonstration for the Pennsylvania portion of the Philadelphia area is inadequate because it does not meet all the requirements in 40 CFR Part 93, section 93.118(e)(4). EPA made this determination because the plan requires additional measures to further reduce emissions to support the attainment test and because the budgets do not reflect all measures assumed in the local modeling. The following paragraphs provide a summary of each of these findings, of the corrective action required and of EPA's proposed action.

Additional measures to further reduce emissions to support the attainment test: The motor vehicle emissions budget(s), when considered together with all other emissions sources are not consistent with applicable requirements for attainment as detailed in section 93.118(e)(4)(iv) of the Conformity rule. The attainment plan identifies motor vehicle emissions budgets for 2005. But the budgets do not meet this requirement because the WOE support for the attainment demonstration will be acceptable only if Pennsylvania provides a reaffirmation by letter that its previously submitted enforceable commitment to adopt additional measures to further reduce emissions includes those necessary to support the attainment test as specified in section I.C.5., above. There will be additional mobile source control measures in effect by 2005 that will assist the area in

demonstrating attainment in 2005. Table 5 lists these measures and indicates which of these are currently reflected in the motor vehicle emissions budgets.

Budgets do not reflect all measures assumed in the local modeling: The motor vehicle emissions budgets are not consistent with and clearly related to the emissions inventory and the control measures in the submitted SIPs as required by section 93.118(e)(4)(v) of the Conformity rule. Adequate motor vehicle emissions budgets must reflect application of all the control measures assumed in the local modeling demonstration. The current motor vehicle emissions budgets do not reflect a low emissions vehicle program which was assumed in the local modeling. Pennsylvania has adopted and submitted a SIP revision for an NLEV program and thus has adopted this modeled measure.

EPA has interpreted the general adequacy criteria with respect to the 1-hour ozone attainment demonstrations to require the motor vehicle emissions budgets to include the effects of all motor vehicle controls, including federal measures and the mobile source control measures assumed in the NO_X SIP call, that will be in place in the attainment year.[15] Table 5 lists these measures that will contribute to attainment in 2005 and that will affect the budget. Therefore, the revised motor vehicle emissions budget presumptively must include all currently promulgated federal measures and state SIP measures shown in Table 5 with the exception of Clean Fuel Fleets (CFF). Pennsylvania has submitted an NLEV SIP revision as a substitute for CFF. For the Pennsylvania component of the motor vehicle emissions budget NLEV must be used as in lieu of CFF.

TABLE 5.—ADDITIONAL MOBILE SOURCE CONTROL MEASURES NEEDED FOR THE 2005 MOTOR VEHICLE EMISSIONS BUDGETS

Control measures available in 2005	Control measures contained in the budgets
Federal Motor Vehicle Control Program Tier 1 (FMVCP).	Tier 1 FMVCP only.
Tier 1	
Tier 2	
High enhanced I/M (State Adopted).	High enhanced I/M.
Phase II RFG	Phase II RFG.
National Low Emissions Vehicles (NLEV) (State).	Not factored into budget.
On-board vapor recovery (Federal).	On-board vapor recovery.
Stage II Vapor Recovery ..	Stage II Vapor Recovery.
Heavy-duty Diesel Vehicle (HDV) 2 gm std.	Not factored into budget.

Motor vehicle emissions budget and EPA's proposed action: EPA is proposing to approve the attainment demonstration SIP if Pennsylvania corrects the deficiencies that cause the motor vehicle emissions budget to be inadequate. In the alternative, EPA is proposing to disapprove the attainment demonstration SIP, if by May 31, 2000, EPA has not made a determination that Pennsylvania has an adequate motor vehicle emissions budget for Pennsylvania's portion of the Philadelphia area. Because many States may shortly be submitting revised demonstrations with revised motor vehicle emission budgets, EPA is providing a 60 day comment period on this proposed rule. If Pennsylvania submits a revised attainment demonstration, EPA will place the revisions in the docket for this rulemaking and will post a notice on EPA's website at www.epa.gov/oms/traq. By posting notice on the website, EPA will also initiate the adequacy process.

4. Tier 2/Sulfur Program Benefits

As a result of EPA's review of the State's SIP submittal, EPA believes that the ozone modeling submitted by the Commonwealth of Pennsylvania for the Philadelphia area upon which EPA is proposing to approve and to disapprove-in-the-alternative will need the emission reductions from EPA's Tier 2/Sulfur program to attain the 1-hour ozone NAAQS. Further, EPA believes that the Philadelphia area will need additional emission reductions identified by EPA, beyond those from EPA's Tier 2/Sulfur program, to attain the 1-hour ozone NAAQS.

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

To assist the States whose counties comprise the Philadelphia area in the preparation of a new submission which could be approved or conditionally approved, EPA has prepared an estimate of the air quality benefits of EPA's Tier 2/Sulfur program. In our calculation, EPA assumed that all of the Tier 2/Sulfur emissions reductions will contribute to the ability of the Philadelphia area to demonstrate attainment. The EPA has further calculated how much additional emission reduction is needed for the Philadelphia area in order for EPA to approve or conditionally approve a revised and re-submitted attainment demonstration for this area. The EPA suggests that the States include these calculations as part of the WOE analysis accompanying the adjusted attainment demonstration and revised motor vehicle emissions budget for this area. Today, EPA is proposing to approve a new attainment demonstration if it meets this description.

However, States can use some of EPA's Tier 2/Sulfur program credit for other purposes. Thus, the States could take credit for all or some of EPA's Tier 2/Sulfur program credit for their attainment demonstration. If the Tier 2/Sulfur program credit the States are assuming for attainment is less than the amount that EPA assumed in calculating the amount of additional emission reductions needed to attain, i.e., the States are applying some or all of the Tier 2/Sulfur program credit for other purposes, the States will have to calculate the new additional emission reductions needed and commit to adopt measures to achieve them. If the States assume all the Tier 2/Sulfur program credit will go toward attainment, then the States will be able to rely on EPA's estimate of the additional emission reductions needed.

Revisions to the motor vehicle emissions budget and the attainment demonstration when EPA issues the MOBILE6 model: Pennsylvania has previously committed to adopting additional control measures as necessary to attain the one-hour ozone NAAQS as discussed in the preceding section (II.C.3) of this document. EPA believes for the purposes of determining the motor vehicle emissions budget adequate that Pennsylvania already has a commitment to adopt any needed additional measures, but we need

[15] 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.

reaffirmation from PADEP that the intent of the existing commitment meets all the conditions as stated in section I.C of this action including revising the mobile vehicle emissions budget when EPA issues the MOBILE6 model. EPA needs to receive this reaffirmation by December 31, 1999 as discussed in section I. above. If Pennsylvania does not reaffirm by December 31, 1999, that its existing commitment to adopt additional measures as necessary to reach attainment is consistent within the framework of this action, then EPA will be unable to determine the area has an adequate conformity budget. 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 July 1, 2000).

5. Additional Measures to Further Reduce Emissions to Support the Attainment Test

Based on the results of the local scale modeling along with the additional weight-of-evidence analyses provided in the attainment demonstration for the Philadelphia area, EPA believes that PADEP has successfully demonstrated attainment of the 1-hour ozone standard for the Philadelphia area by the 2005 statutory date if PADEP provides a reaffirmation by letter that its previously submitted enforceable commitment to adopt additional measures to further reduce emissions includes those necessary to support the attainment test as specified in section I.C.5., above. EPA has determined that the Philadelphia area will need additional emission reductions of 0.3 percent per day of NO_X and 4.5 percent per day of VOC to ensure attainment of the ozone NAAQS. The baseline for these percentages is the 1990 emissions inventory. These reductions are in addition to the NO_X and VOC emission reductions that will be achieved from the Tier 2 rule.

6. Mid-course Review

In accordance with the provisions of I.C.6., above, EPA must receive an enforceable commitment or a reaffirmation of a previous enforceable commitment to include a mid-course review from PADEP for the Philadelphia area by the date specified in Table 3 of this document before the attainment demonstration can be approved.

III. What Are The Consequences of State Failure?

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

A. What are the CAA's Provisions for Sanctions?

If EPA disapproves a required SIP, such as the attainment demonstration SIPs, section 179(a) provides for the imposition of two sanctions. The first sanction would apply 18 months after EPA disapproves the SIP if the State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to a broader area, but is not proposing to take such action today.

B. 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.

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.

IV. Proposed Action

A. Proposed Approval

EPA is proposing to approve the Commonwealth of Pennsylvania's attainment demonstration SIP revision which was submitted on April 30, 1998 for the Philadelphia area if the following actions occur in accordance with the schedules in section I.D, Table 3:

(1) Pennsylvania adopts and submits an adequate motor vehicle emissions budget.

(2) Pennsylvania submits a list of control measures that, when implemented, would be expected to provide sufficient additional emission reductions to attain the standard as discussed in I.C.5. The Commonwealth 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.

(3) Pennsylvania adopts and submits a rule(s) for the regional NO_X reductions consistent with the modeling demonstration.

(4) Pennsylvania adopts and submits an enforceable commitment, or reaffirmation of existing enforceable commitment to do the following:

(a) Submit measures by 10/31/01 for additional emission reductions as required in the attainment demonstration test as discussed in section I.C.5. For additional emission reduction measures developed through the regional process, the State must also submit an enforceable commitment for the additional measures and a backstop commitment to adopt and submit intrastate measures for the emission reductions in the event the OTR process does not recommend measures that produce emission reductions.

(b) Submit a revised SIP & motor vehicle emissions budget by 10/31/01 if

additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP & motor vehicle emissions budget 1 year after MOBILE6 issued.

(d) Perform a mid-course review.

B. Proposed Disapproval-in-the-Alternative

EPA is also proposing, in the alternative, to disapprove this SIP revision, if any of the actions listed in III.A, above, do not occur in accordance with the schedules in section I.D, Table 3.

EPA is soliciting public comments on the issues discussed in this document or on other relevant issues relating to the attainment demonstration for the Philadelphia area. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** sectioin of this document. A more detailed description of the Commonwealth's submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

V. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action 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. This final rule is not subject to E.O. 13045 because it does 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

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

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 Commonwealth of Pennsylvania, 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, proposing approval of Pennsylvania's One-Hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area, 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.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–31716 Filed 12–15–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE038–1028; FRL–6502–7]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; One-Hour Ozone Attainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) consisting of the 1-hour ozone attainment demonstration for the Philadelphia-Wilmington-Trenton severe nonattainment area (the Philadelphia area) submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on May 22, 1998 and October 8, 1998. We are also proposing, in the alternative, to disapprove this demonstration if Delaware does not submit an adequate motor vehicle emissions budget for its portion of the Philadelphia area consistent with attainment and adopt and submit rules for the regional NO_X reductions consistent with the modeling demonstration. For purposes of an adequate motor vehicle emissions budget, the State will need to reaffirm that its previously submitted enforceable commitment to adopt the measures needed for attainment would apply to the additional measures to reduce emissions to support the attainment test. The reaffirmation must also include the State's commitment to the performance of a mid-course review and to revisions to the SIP and motor vehicle emissions budget after MOBILE6 (the most recent model for estimating mobile source emissions) is released. The Philadelphia area is comprised of two counties in Delaware (namely Kent and New Castle Counties), one county in Maryland, seven counties in New Jersey, and five counties in Pennsylvania. Elsewhere in today's **Federal Register**, we are also proposing to take action on the 1-hour ozone attainment demonstration SIPs from Maryland, New Jersey, and Pennsylvania for the Philadelphia area.

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

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

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION: This document 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 submitted by DNREC for the Delaware portion of the Philadelphia area. This document addresses the following questions:

What Is The Basis For The Attainment Demonstration SIP?
What Are The Components Of A Modeled Attainment Demonstration?
What Is The Frame Work For Proposing Action On The Attainment Demonstration SIPs?
What Does EPA Expect To Happen With Respect To Attainment Demonstrations For The Severe 1-Hour Ozone Nonattainment Areas?
What Are The Relevant Policy And Guidance Documents?
How Does Delaware's Submittal Satisfy The Frame Work?
What Are The Consequences of State Failure?

I. Background

A. What is the Basis for the Attainment Demonstration SIP?

1. CAA Requirements

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

An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.124 ppm. An area is violating the standard if, over a consecutive three-year period, more than three exceedances are expected to occur at any one monitor. The CAA, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based upon air quality monitoring data from the three-year period from 1987–1989. CAA section 107(d)(4); 56 FR 56694 (Nov. 6, 1991). The CAA further classified these areas, based upon 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. Serious areas are required to attain the 1-hour standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The Philadelphia area is classified as severe and its attainment date is 2005.

Under section 182(c)(2) and (d) of the CAA, serious and severe areas were required to submit by November 15, 1994 demonstrations of how they would attain the 1-hour standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year (rate-of-progress or ROP). In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions. Today, in this proposed rule, EPA is proposing action on the attainment demonstration SIP submitted by Christopher A.G. Tulou, Secretary of Delaware DNREC for the Philadelphia area. EPA is also proposing action on the State's commitment to submit ROP target calculations and the adopted measures to achieve ROP by December 2000; and take action on the State's ROP plan in a separate rulemaking action. In addition, elsewhere in this **Federal Register**, EPA is today proposing to take action on nine other serious or severe 1-hour ozone attainment demonstration SIPs. The additional nine areas are Greater Connecticut (CT), Springfield (Western Massachusetts) (MA), New York-North New Jersey-Long Island (NY–NJ–CT), Baltimore (MD), Metropolitan Washington D.C. (DC–MD–VA), Atlanta (GA), Milwaukee-Racine (WI), Chicago-Gary-Lake County (IL–IN), and Houston-Galveston-Brazoria (TX).

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

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

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

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by States but noting the remaining difficulties in making attainment demonstration SIP submittals.[1] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the States in the eastern half of the country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)[2] and provided for the States to submit the attainment demonstration SIPs 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];

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

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

[3] Memorandum, ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM 10 NAAQS,'' issued December 29, 1997. A copy of this

Continued

(4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the State submittal.[4] 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, States submissions due in April 1998 under the Wilson policy should have included a motor vehicle 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.

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

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

Depending upon 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 on the part of 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.

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.

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, 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?

EPA provides that States may rely upon a modeled attainment demonstration supplemented with additional evidence to demonstrate attainment. 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.[5] The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to

memorandum may be found on EPA's web site at http://www.epa.gov/ttn/oarpg/t1pgm.html.

[4] 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 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 the State's submittal relies upon a commitment to submit these measures by December 2000, EPA is proposing approval of the area's attainment demonstration. Some severe areas submitted the actual adopted control measures and are not relying upon a commitment.

[5] 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, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''UAMREG''). See also U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''O3TEST'').

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.

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[6] to the attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

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

The acceptable upper limit above 0.124 ppm is determined by examining the size of exceedances at monitoring sites which meet the 1-hour NAAQS. For example, a monitoring site for which the four highest 1-hour average concentrations over a three-year period are 0.136 ppm, 0.130 ppm, 0.128 ppm and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration observed at a location on a single day and it would be the only reading above the standard that would be expected to occur no more than an average of once a year over a three-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

2. Additional Analyses Where Modeling Fails to Show Attainment

When the modeling does not conclusively demonstrate attainment, additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in some of the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. 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 upon 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. 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.

EPA's 1996 modeling guidance also recognizes a need to perform a mid-

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

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 I.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, EPA has identified the following key elements which must be present in order for EPA to approve or conditionally approve the 1-hour attainment demonstration SIPs. These elements are listed below and then described in detail.

—CAA measures and measures relied on in the modeled attainment demonstration SIP. This includes adopted and submitted rules for all previously required CAA mandated measures for the specific area classification. This also includes measures that may not be required for the area classification but that the State relied on in the SIP submission for attainment and ROP plans on which EPA is proposing to take action on today.
—NO_X reductions affecting boundary conditions.
—Motor vehicle emissions budget. A motor vehicle emissions budget which can be determined by EPA to be adequate for conformity purposes.
—Tier 2/Sulfur program benefits where needed to demonstrate attainment. Inclusion of reductions expected from EPA's Tier 2 tailpipe and low sulfur-in-fuel standards in the attainment demonstration and the motor vehicle emissions budget.
—In certain areas, additional measures to further reduce emissions to support the attainment test. Additional measures may be measures adopted regionally such as in the Ozone Transport Region (OTR), or locally (intrastate) in individual States.
—Mid-course review. An enforceable commitment to conduct a mid-course review and evaluation based on air quality and emission trends. The mid-course review would show whether the adopted control measures are sufficient to reach attainment by the area's attainment date, or that additional control measures are necessary.

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

TABLE 1.—CAA REQUIREMENTS FOR SERIOUS AREAS

—NSR for VOC and NO_X,[1] 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[1]
—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

[1] Unless the area has in effect a NO_X waiver under section 182(f). The Philadelphia area does not.

TABLE 2.—CAA REQUIREMENTS FOR SEVERE AREAS

—All of the nonattainment area requirements for serious areas
—NSR, including an offset ratio of 1.3:1 and a major VOC and NO_X source cutoff of 25 tons per year (tpy)
—Reformulated gasoline
—9 percent ROP plan through attainment year
—Requirement for fees for major sources for failure to attain (SIP due 12/31/2000)

2. NO_X Reductions Affecting Boundary Conditions

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

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

Emission reductions that will be achieved through EPA's NO_X SIP call will reduce the levels of ozone and ozone precursors entering nonattainment areas at their boundaries. For purposes of developing attainment demonstrations, States define local modeling domains that include both the nonattainment area and nearby surrounding areas. The ozone levels at the boundary of the local modeling domain are reflected in modeled attainment demonstrations and are referred to as boundary conditions. With the exception of Houston, the 1-hour attainment demonstrations on which

EPA is proposing action have relied, in part, on the NO_X SIP Call reductions for purposes of determining the boundary conditions of the modeling domain. Emission reductions assumed in the attainment demonstrations are modeled to occur both within the State and in upwind States; thus, intrastate reductions as well as reductions in other States impact the boundary conditions. Although the court has indefinitely stayed the SIP submission deadline, the NO_X SIP Call rule remains in effect. Therefore, EPA believes it is appropriate to allow States to continue to assume the reductions from the NO_X SIP call in areas outside the local 1-hour modeling domains. If States assume control levels and emission reductions other than those of the NO_X SIP call within their State but outside of the modeling domain, States must also adopt control measures to achieve those reductions in order to have an approvable plan.

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

As provided above, any controls assumed by the State inside the local modeling domain [7] 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.[8] 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.[9] 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 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 (NPRM) proposing a major, comprehensive program designed to significantly reduce emissions from passenger cars and light trucks (including sport-utility vehicles, minivans, and pickup trucks) and to reduce sulfur in gasoline. Under the proposed program, automakers would produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners would provide that cleaner gasoline nationwide. The EPA subsequently issued two supplemental notices. 64 FR 35112 (June 30, 1999); 64 FR 57827 (October 27, 1999). These two 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 Philadelphia area whose attainment demonstration EPA is proposing to approve today is included on that list.

The EPA issued a memorandum that provides estimates of the emissions reductions associated with the Tier 2/Sulfur program proposal.[10] The memorandum provides the tonnage benefits for the Tier 2/Sulfur program in 2007 on a county-by-county basis for all counties within the 10 serious and severe nonattainment areas for which EPA is proposing to take action today and the 2005 tonnage benefits for the 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.[11] This

[7] 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 x 5 km or finer. The domain is large enough to ensure that emissions occurring at 8 am in the domain's center are still within the domain at 8 pm the same day. If recirculation of the nonattainment area's previous day's emissions is believed to contribute to an observed problem, the domain is large enough to characterize this.

[8] 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.

[9] A final budget is preferred; but, if the State public hearing process is not yet complete, then the 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.

[10] 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.

[11] 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

Continued

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, Philadelphia-Wilmington-Trenton, Baltimore, Atlanta, and Houston nonattainment areas, the EPA is proposing to determine that additional emission reductions beyond those provided by the SIP submission are necessary for attainment. With the exception of the Atlanta nonattainment area, a portion of that reduction will be achieved by EPA's Tier 2/Sulfur program, which EPA expects to finalize shortly. States that need to rely in whole or in part on the Tier 2 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 reduction 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.

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.[12]

5. In Certain Areas, Additional Measures to Further Reduce Emissions to Support the Attainment Test

EPA is proposing to find that the attainment demonstrations for New York-North New Jersey-Long Island; Baltimore; Philadelphia-Wilmington-Trenton; and Atlanta; even considering the Tier 2/Sulfur program reductions and the WOE, will not achieve attainment without the application of additional emission control measures to achieve additional emission reductions. Thus, for each of these areas, EPA has identified specific percentages of NO_X and/or VOC emissions which must be reduced through additional control measures in order to demonstrate attainment and to enable EPA to approve the demonstration. The need for additional emission reductions is generally based on a lack of sufficient compelling evidence that the demonstration shows attainment at the current level of adopted or planned emission controls. This is discussed in detail below for the Philadelphia area. The method used by EPA to calculate the amount of additional reductions is described in a Technical Support Document (TSD) located in the record for this proposed rule. Briefly, the method makes use of the relationship between ozone and its precursors (VOC and NO_X) to identify additional reductions that, at a minimum, would bring the model predicted future ozone concentration to a level at or below the standard. The relationship is derived by comparing changes in either (1) the model predicted ozone to changes in modeled emissions or (2) in observed air quality to changes in actual emissions.

EPA is not requesting that States perform new photochemical grid modeling to assess the full air quality impact of the additional measures that

this memorandum may be found on EPA's web site at http://www.epa.gov/oms/transp/traqconf.htm.

[12] 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.

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 previously 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 [13].) 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.

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

Guidance on Additional Control Measures. Much progress has been made over the past 25 years to reduce VOC emissions and over the past 9 years to reduce NO_X emissions. Many large sources have been controlled to some extent through RACT rules or other emission standards or limitations, such as maximum achievable control technology (MACT), new source performance standards (NSPS) and the emission control requirements for NSR—lowest achievable emissions rate (LAER) and best achievable control technology (BACT). However, there may be controls available for sources that have not yet been regulated as well as additional means for achieving reductions from sources that have already been regulated. The EPA has prepared a report to assist States in identifying additional measures. This report is called ''Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control Measures.'' The purpose of this report is to provide information to State and local agencies to assist them in identifying additional control measures that 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 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

[13] 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.

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. There 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 emission 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 Philadelphia area, EPA believes that the States whose counties comprise the Philadelphia area, including Delaware, must submit an enforceable commitment to perform a MCR as described here.[14]

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.

For severe areas, the States must have an enforceable commitment to perform the MCR, preferably following the 2003 ozone season, and to submit the results to EPA by the end of the review year (e.g., by December 31, 2003). EPA believes that an analysis in 2003 would be most robust since some or all of the regional NO_X emission reductions should be achieved by that date. EPA would then review the results and determine whether any States need to adopt and submit additional control measures for purposes of attainment. The EPA is not requesting that States

[14] 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.

commit now to adopt new control measures as a result of this process. It would be impracticable for the States to make a commitment that is specific enough to be considered enforceable. Moreover, the MCR could indicate that upwind States may need to adopt some or all of the additional controls needed to ensure an area attains the standard. Therefore, if EPA determines additional control measures are needed for attainment, EPA would determine whether additional emission reductions as necessary from States in which the nonattainment area is located or upwind States, or both. The EPA would require the affected State or States to adopt and submit the new measures within a period specified at the time. The EPA anticipates that these findings would be made as calls for SIP revisions under section 110(k)(5) and, therefore, the period for submission of the measures would be no longer than 18 months after the EPA finding. A draft guidance document regarding the MCR process is located in the docket for this proposal and may also be found on EPA's web site at http://www.epa.gov/ttn/scram/.

D. In Summary, What Does EPA Expect To Happen With Respect to Attainment Demonstrations for the Severe 1-Hour Ozone Nonattainment Areas?

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

TABLE 3.—SUMMARY SCHEDULE OF FUTURE ACTIONS RELATED TO ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA-WILMINGTON-TRENTON SEVERE NONATTAINMENT AREA IN PENNSYLVANIA AND WHICH IS LOCATED IN THE OTR

Required no later than	Action
12/31/99	State submits the following to EPA: —Motor vehicle emissions budget [1] —Commitments [2] or reaffirmation of a previous commitment to do the following: —Submit by 10/31/01 measures for additional emission reductions as required in the attainment demonstration test; [3] for additional emission reduction measures developed through the regional process, the State must also submit a commitment for the additional measures and a backstop commitment to adopt and submit by 10/31/01 intrastate measures for the emission reductions in the event the OTR process does not recommend measures that produce emission reductions. —Submit revised SIP and motor vehicle emissions budget by 10/31/01 if additional measures (due by 10/31/01) affect the motor vehicle emissions inventory. —Revise SIP and motor vehicle emissions budget 1 year after MOBILE6 is issued. —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 submit enforceable commitments for any above-mentioned commitments that may not yet have been subjected to public hearing.
12/31/00	—State submits adopted modeled measures relied on in attainment demonstration or relied upon for ROP through the attainment year. —State revises and submits SIP and motor vehicle emissions budget to account for Tier 2 reductions as needed [5].
10/31/01	—OTR States submit additional measures developed through regional process or intrastate measures. —State revises SIP and motor vehicle emissions budget if the additional measures are for motor vehicle category.
Within 1 yr. after release of MOBILE6 model	State submits revised SIP and 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.''

[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.

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

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

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

E. What are the Relevant Policy and Guidance Documents?

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

Recent Documents

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

2. ''Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control

Measures.'' Draft Report. November 3, 1999. Ozone Policy and Strategies Group. U.S. EPA, RTP, NC.

3. Memorandum, ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstration,'' 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 Rulemaking''. November 8, 1999. Web site: http://www.epa.gov/oms/transp/traqconf.htm.

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

6. Memorandum, ''Guidance on 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. Website: 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 PM_{10} NAAQS.'' Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

II. EPA's Review and Analysis of Delaware's Submittal

This section provides a review of DNREC's submittal and an analysis of how it satisfies the frame work discussed in section I.C. of this document. A more detailed description of the Delaware submittal and EPA's evaluation are included in a TSD prepared in support of this rulemaking action.

A. Analysis of the Local Modeling and Weight-of-Evidence

1. Analysis of the Modeling for the Local Modeling Domain

The CAA requires that serious areas and above perform photochemical grid modeling to help determine the emission reductions of VOCs and NOx necessary to achieve the attainment of the 1-hour ozone standard. DNREC fulfilled this requirement through the application of the Urban Airshed Model, Version 4 (UAM–IV) and through the use of the modeling results from the OTAG application of the Urban Airshed Model, Version 5 (UAM–V).

The ozone attainment demonstration for the Philadelphia area contains local scale modeling that, other than the number of episodes modeled, fulfills EPA recommended modeling procedures. EPA modeling guidance requires that a total of three episodes be modeled from at least two meteorological regimes. Modeling was performed for two episodes (July 7–8, 1988 & July 18–20, 1991) in the Philadelphia area. Given the severe nature of the episodes modeled, even if three episodes were modeled, the two episodes that were modeled would most likely be the controlling episodes in the determination of the emission reductions needed in the Philadelphia area for attainment. The two episodes that were modeled also represent the most frequently occurring meteorological conditions conducive to high ozone in the Philadelphia area. When the 2005 emission inventory with the control strategy is modeled, peak ozone concentration is reduced by approximately 31 ppb from the modeled peak concentrations in the 1988 and 1991 base cases. When this reduction is applied to the peak measured concentration for the July 1991 episode (155 ppb), the resulting concentration is 124 ppb which indicates attainment.

The local modeling for the Philadelphia area over-predicts ozone concentrations for the July 1991 episode. The modeling predicts peak concentrations in the Philadelphia area plume of between 156–190 ppb while ozone monitors in the same area during the same time period show a peak concentration of 151 ppb. This indicates that the model is over-predicting the actual concentration by an average of 15%. When model over-prediction is accounted for in the July 1991 episode, the local-scale modeling predicts a peak concentration of 127 ppb. In this case, EPA's alternative attainment test guidance entitled ''Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS'' will allow a peak concentration of 141 ppb and still consider the modeled result attainment due to the severity of the meteorological ozone forming potential of the episode day. The local modeling for the July 1998 episode does not over-predict ozone concentrations. Modeled peak concentrations for the July 1998 episode exceed levels consistent with attainment. Therefore, it is necessary to warrant the consideration of WOE arguments that support the demonstration of attainment.

The attainment emission control strategy contained in the Delaware's attainment demonstration, when combined with the control strategies being implemented in the other states that are part of the Philadelphia area, results in the improvement in the number of grid cell hours above the standard between 81–85 percent. This result satisfies the requirement of the second bench mark of the Statistical Test, described in EPA's alternative attainment test guidance cited above, which requires that the area control strategy result in a reduction of the number of grid cell hours above the ozone standard of at least 80 percent. When the Philadelphia area design values in the base case modeling period are adjusted for the air quality improvement predicted in the attainment year by the local-scale modeling, according to the screening test outlined in the EPA's guidance entitled ''Draft Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8–Hour Ozone NAAQS,'' the result is a 2005 projected design value of 126 ppb.

The local-scale modeling results are close enough to attainment to warrant the consideration of WOE arguments that support the demonstration of attainment. With the exception of the additional controls on point sources needed to satisfy the NO_X SIP call, all other measures modeled in the demonstration of attainment have been adopted and implemented by Delaware and the other States comprising the Philadelphia area.

2. Weight of Evidence (WOE) Analyses

A WOE determination is a diverse set of technical analyses performed to assess the confidence one has in the modeled results and to help assess the adequacy of a proposed strategy when the outcome of local scale modeling is

close to attainment. The attainment demonstration for the Philadelphia area provides WOE arguments that corroborate further that it is likely the Philadelphia area will attain the 1-hour ozone standard by the statutory date of 2005. EPA has developed design value adjustment factors based on regional scale modeling for the supplemental notice of proposed rulemaking of the NO_X SIP Call (63 FR 25902, May 11, 1998). These adjustment factors were used to adjust the 1996 design values for the Philadelphia area. This analysis showed all adjusted design values below 125 ppb in the Philadelphia area.

Because the Philadelphia area local modeling showed some peak concentrations above levels deemed consistent with attainment, EPA has conducted an analysis to determine what additional emission reductions may be needed to support ozone attainment in the Philadelphia area. EPA has determined that the Philadelphia area will need additional emission reductions of 0.3% of NO_X and 4.5% of VOC to ensure attainment of the ozone NAAQS. These reductions are in addition to the NO_X and VOC emission reductions that will be achieved from the Tier 2 rule. The additional VOC reductions may be achieved through NO_X substitution in accordance with existing EPA guidance. The DNREC submitted an enforceable commitment to adopt whatever rules are necessary to meet ROP requirements and to attain the 1-hour NAAQS for ozone. This enforceable commitment was made by Delaware as part of a SIP revision submitted on December 29, 1997.

Based upon the results of the local scale modeling along with the additional WOE arguments presented above, EPA believes the State of Delaware has demonstrated attainment if DNREC submits reaffirmation of its previous enforceable commitment to adopt additional measures as specified in section I.C.5.

B. Analysis of Submittal Against EPA's Frame Work for Proposing Action on the Attainment Demonstration SIPs

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

TABLE 4.—CONTROL MEASURES IN THE 1–HOUR OZONE ATTAINMENT DEMONSTRATION FOR THE DELAWARE PORTION OF THE PHILADELPHIA-WILMINGTON-TRENTON OZONE NONATTAINMENT AREA

Name of control measure or SIP element	Type of measure	Included in local modeling	Approval status
Enhanced Inspection & Maintenance	CAA SIP Requirement	Yes	SIP approved.
NO_X RACT	CAA SIP Requirement	Yes	SIP approval pending.
VOC RACT	CAA SIP Requirement	Yes	SIP approved.
Offset Lithography	State Rule	Yes	SIP approved.
Industrial Cleaning Solvents	State Rule	Yes	SIP approved.
Motor Vehicle Refinishing	State Rule	Yes	SIP approved.
Stage II Vapor Recovery	CAA SIP Requirement	Yes	SIP approved.
On-board Refueling Vapor Recovery	Federal Rule	Yes	Promulgated at 40 CFR 86.
Stage I Vapor Recovery	CAA SIP Requirement	Yes	SIP approved.
Federal Motor Vehicle Control Program	Federal Rule	Yes	Promulgated at 40 CFR 86.
Federal Non-road Gasoline Engines	Federal Rule	Yes	Promulgated at 40 CFR 90.
Federal Non-road Heavy Duty Diesel Engines	Federal Rule	Yes	Promulgated at 40 CFR 89.
AIM Surface Coatings	Federal Rule	Yes	Promulgated at 40 CFR 59 subpart D.
Consumer & Commercial Products	Federal Rule	Yes	Promulgated at 40 CFR 59 subpart C.
Reformulated Gasoline	Federal Rule	Yes	Promulgated at 40 CFR 80 subpart D.
Benzene Waste Rule	Federal Rule	Yes	Promulgated at 40 CFR 61 subpart FF.
Sanitary Landfills	State Rule	Yes	Approved 111(d) plan. SIP approval pending.
Open Burning	State Rule	Yes	SIP approved.
Enhanced Monitoring (PAMS)	CAA SIP Requirement	Yes	SIP approved.
National Low Emission Vehicle (NLEV)	State Opt-in	No (OTC LEV was modeled)	Federal program promulgated at 40 CFR 86 subpart R. State opt-in, SIP approval pending.
OTC NO_X MOU Phase II	State Initiative	Yes	SIP approval pending.
Clean Fuel Fleets (CFF)	CAA SIP Requirement	No (NLEV was modeled)	NLEV was adopted & submitted as a substitute SIP.
Marine Engine Standards	Federal Rule	No	Promulgated at 40 CFR 91.
Railroad Engine Standards	Federal Rule	No	Promulgated at 40 CFR 92.
Heavy Duty Diesel Engines (On-road)	Federal Rule	No	Promulgated at 40 CFR 86.
New Source Review	CAA SIP Requirement	N/A[1]	SIP approval pending.
15% VOC Reduction Plan	CAA SIP Requirement	Yes[2]	SIP approved.
Base Year Emissions Inventory	CAA SIP Requirement	N/A	SIP approved.
Emissions Statements	CAA SIP Requirement	N/A	SIP approved.
9% Rate of Progress Plans	CAA SIP Requirement	Yes[2]	SIP approval of Post 96 ROP plan (97–99) pending. DE provided an enforceable commitment to adopt all necessary rules for Post 99 ROP Plans demonstrating ROP through 2005 and attainment of the 1-hour ozone NAAQS.

TABLE 4.—CONTROL MEASURES IN THE 1–HOUR OZONE ATTAINMENT DEMONSTRATION FOR THE DELAWARE PORTION OF THE PHILADELPHIA-WILMINGTON-TRENTON OZONE NONATTAINMENT AREA—Continued

Name of control measure or SIP element	Type of measure	Included in local modeling	Approval status
Fees for Major Sources for Failure to Attain	CAA SIP Requirement	No [3]	SIP due 12/31/2000.

[1] Does not produce emission reductions.
[2] The measures used to demonstrate rate of progress were modeled.
[3] This measure will only take effect if the area fails to attain by 2005 and would only be implemented after 2005.

With the exception of the Post-99 ROP plans for which it has made an enforceable commitment to submit by 12/2000, DNREC has submitted all CAA mandated measures. As indicated in Table 4, above, many but not all of these measures have been approved to date. EPA is proposing approval of Delaware's attainment demonstration for the Philadelphia area, including the enforceable commitment for the Post-99 ROP submission, as meeting the requirements of section 182(c)(2)(A) of the CAA. In today's action on the attainment demonstration, EPA is not proposing approval of Delaware's commitment to submit the required Post-99 ROP plans as having satisfied the requirements of section 182(c)(2)(B) of the CAA. EPA will take separate action on whether Delaware's commitment to submit its Post-99 ROP plans and the plans themselves meet the requirements of section 182(c)(2)(B).

2. NO_X Reductions Affecting Boundary Conditions

A crucial element of the attainment demonstration for the Philadelphia area is the adoption and implementation of NO_X controls consistent with the modeling demonstration. Delaware modeled NO_X controls consistent with the NO_X SIP call, therefore, as discussed in section I.C.1., Delaware must adopt NO_X SIP call level controls within the modeling domain in order to have an approvable attainment demonstration.

3. Motor Vehicle Emissions Budget

EPA has found that the motor vehicle emissions budget in the attainment demonstration submitted by the Delaware portion of the Philadelphia area is inadequate for conformity purposes. On October 26, 1999, Judith M. Katz, Director, Air Protection Division, EPA, Region III, sent a letter to Mr. Darryl Tyler, Environmental Program Administrator, Air Quality Management Section, Delaware Department of Natural Resources and Environmental Control, indicating that the motor vehicle emissions budgets in their demonstration SIP were not adequate for conformity purposes. The motor vehicle emission budgets in the demonstration for the Philadelphia area were not found adequate because they did not meet all the requirements in 40 CFR Part 93, section 93.118(e). EPA made this determination because the States' plans require additional measures to further reduce emissions to support the attainment test. The following paragraphs provide a summary of each of these findings, of the corrective action required and of EPA's proposed action.

Additional measures to further reduce emissions to support the attainment test: The motor vehicle emissions budgets, when considered together with all other emissions sources are not consistent with applicable requirements for attainment as detailed in section 93.118(e)(4)(iv) of the Conformity Rule. The attainment plan identifies motor vehicle emissions budgets for 2005. But the budgets do not meet this requirement because the WOE support for the attainment demonstration will be acceptable only if Delaware provides a reaffirmation by letter that its previously submitted enforceable commitment to adopt additional measures to further reduce emissions includes those necessary to support the attainment test as specified in section I.C.5., above. There will be additional mobile source control measures in effect by 2005 that will assist the area in demonstrating attainment in 2005. The budgets did not incorporate all federally promulgated mobile source control measures. For example, neither the National Low Emission Vehicle (NLEV) nor Heavy-duty Diesel Vehicle (HDV) programs have been incorporated into the budgets.

EPA has interpreted the general adequacy criteria with respect to the 1-hour ozone attainment demonstrations to require the motor vehicle emissions budgets to include the effects of all motor vehicle controls, including federal measures and the mobile source control measures assumed in the NO_X SIP call, that will be in place in the attainment year.[15] Table 5 lists these measures that will contribute to attainment in 2005 and that will affect the budget. Therefore, the revised motor vehicle emissions budget presumptively must include all currently promulgated federal measures and state SIP measures shown in Table 5 with the exception of Clean Fuel Fleets (CFF). Delaware has submitted an NLEV SIP revision as a substitute for CFF. For the Delaware component of the motor vehicle emissions budget NLEV must be used as in lieu of CFF.

TABLE 5.—ADDITIONAL MOBILE SOURCE CONTROL MEASURES NEEDED FOR THE 2005 MOTOR VEHICLE EMISSIONS BUDGETS

Control measures available in 2005	Control Measures Contained in the Budgets
Federal Motor Vehicle Control Program (FMVCP):	
Tier 1	Tier 1 FMVCP only.
Tier 2.	
Enhanced I/M w/ clean screen approach (State Adopted).	Enhanced I/M w/ clean screen approach.
Phase II RFG	Phase II RFG.
National Low Emissions Vehicles (NLEV) (State).	Not factored into budget.
On-board vapor recovery (Federal).	On-board vapor recovery.
Stage II vapor recovery.	Stage II vapor recovery.
Heavy Duty Diesel Vehicle (HDV) 2 gm std.	Not factored into budget.

Motor vehicle emissions budget and EPA's proposed action: EPA is proposing to approve the attainment demonstration SIP if Delaware corrects the deficiencies that cause the motor vehicle emissions budget to be inadequate. In the alternative, EPA is proposing to disapprove the attainment demonstration SIP, if by May 31, 2000, EPA has not made a determination that Delaware has an adequate motor vehicle emissions budget for the Delaware portion of the Philadelphia area. Because many States may shortly be submitting revised demonstrations with revised motor vehicle emission budgets, EPA is providing a 60 day comment

[15] 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.

period on this proposed rule. If Delaware submits a revised attainment demonstration, EPA will place the revisions in the docket for this rulemaking and will post a notice on EPA's website at www.epa.gov/oms/traq. By posting notice on the website, EPA will also initiate the adequacy process.

4. Tier 2/Sulfur Program Benefits

As a result of EPA's review of DNREC's SIP submittal, EPA believes that the ozone modeling submitted by the State of Delaware for the Philadelphia area upon which EPA is proposing to approve and to disapprove-in-the-alternative will need the emission reductions from EPA's Tier 2/Sulfur program to attain the 1-hour ozone NAAQS. Further, EPA believes that the Philadelphia area will need additional emission reductions identified by EPA, beyond those from EPA's Tier 2/Sulfur program, to attain the 1-hour ozone NAAQS.

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

To assist the States whose counties comprise the Philadelphia area in the preparation of a new submission which could be approved or conditionally approved, EPA has prepared an estimate of the air quality benefits of EPA's Tier 2/Sulfur program. In our calculation, EPA assumed that all of the Tier 2/Sulfur emissions reductions will contribute to the ability of the Philadelphia area to demonstrate attainment. The EPA has further calculated how much additional emission reduction is needed for the Philadelphia area in order for EPA to approve or conditionally approve a revised and re-submitted attainment demonstration for this area. The EPA suggests that the States include these calculations as part of the WOE analysis accompanying the adjusted attainment demonstration and revised motor vehicle emissions budget for this area. Today EPA is proposing to approve a new attainment demonstration if it meets this description.

However, States can use some of EPA's Tier 2/Sulfur program credit for other purposes. Thus, the States could take credit for all or some of EPA's Tier 2/Sulfur program credit for its attainment demonstration. If the Tier 2/Sulfur program credit the States are assuming for attainment is less than the amount that EPA assumed in calculating the amount of additional emission reductions needed to attain, i.e., the States are applying some or all of the Tier 2/Sulfur program credit for other purposes, the States will have to calculate the new additional emission reductions needed and commit to adopt measures to achieve them. If the States assume all the Tier 2/Sulfur program credit will go toward attainment, then the States will be able to rely on EPA's estimate of the additional emission reductions needed.

Revisions to the Motor Vehicle Emissions Budget and the Attainment Demonstration When EPA Issues the MOBILE6 Model. Delaware has previously committed to adopting additional control measures as necessary to attain the one-hour ozone NAAQS as discussed in the preceding section (II.C.3) of this document. EPA believes for the purposes of determining the motor vehicle emissions budget adequate that Delaware already has a commitment to adopt any needed additional measures, but we need reaffirmation from DNREC that the intent of the existing commitment meets all the conditions as stated in section I.C of this action including revising the mobile vehicle emissions budget when EPA issues the MOBILE6 model. EPA needs to receive this reaffirmation by December 31, 1999 as discussed in section I. above. If Delaware does not reaffirm by December 31, 1999, that its existing commitment to adopt additional measures as necessary to reach attainment is consistent within the framework of this action, then EPA will be unable to determine the area has an adequate conformity budget. 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 July 1, 2000).

5. In Certain Areas, Additional Measures to Further Reduce Emissions to Support the Attainment Test

Based on the results of the local scale modeling along with the additional WOE analyses provided in the attainment demonstration for the Philadelphia area, EPA believes that DNREC has successfully demonstrated attainment of the 1-hour ozone standard for the Philadelphia area by the 2005 statutory date if the State submits reaffirmation of its previous enforceable commitment to adopt additional measures in accordance with the provisions discussed in section I.C.5., above, to support the attainment test. EPA has determined that the Philadelphia area will need additional emission reductions of 0.3% NO_X and 4.5% of VOC to ensure attainment of the ozone NAAQS. These reductions are in addition to the NO_X and VOC emission reductions that will be achieved from the Tier 2 rule.

6. Mid-Course Review

In accordance with the provisions of section I.C.6., above, EPA must receive an enforceable commitment or a reaffirmation of a previous enforceable commitment to include a mid-course review from DNREC for the Philadelphia area by the date specified in Table 3 of this document before the attainment demonstration can be approved.

III. What Are The Consequences of State Failure?

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

A. What Are The CAA's Provisions For Sanctions?

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

sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to a broader area, but is not proposing to take such action today.

B. 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.

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.

IV. Proposed Action

A. Proposed Approval

EPA is proposing to approve Delaware's attainment demonstration SIP revision for the Philadelphia area, including its enforceable commitment to submit adopted ROP plans through the attainment year for the Delaware portion of the Philadelphia area, which was submitted on May 22, 1998 and supplemented on October 8, 1998, if the following actions occur in accordance with the schedules in section I.D, Table 3:

(1) Delaware adopts and submits an adequate motor vehicle emissions budget.

(2) Delaware submits a list of control measures that, when implemented, would be expected to provide sufficient additional emission reductions to attain the standard as discussed in section I.C.5. The State 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.

(3) Delaware adopts and submits a rule(s) for the regional NO_X reductions consistent with the modeling demonstration.

(4) Delaware adopts and submits an enforceable commitment, or reaffirmation of existing enforceable commitment to do the following:

(a) Submit measures by 10/31/01 for additional emission reductions as required in the attainment demonstration test as discussed in section I.C.5. For additional emission reduction measures developed through the regional process, the State must also submit an enforceable commitment for the additional measures and a backstop commitment to adopt and submit intrastate measures for the emission reductions in the event the OTR process does not recommend measures that produce emission reductions.

(b) Submit a revised SIP & motor vehicle emissions budget by 10/31/01 if additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP & motor vehicle emissions budget 1 year after MOBILE6 issued.

(d) Perform a mid-course review.

B. Proposed Disapproval-in-the-Alternative

EPA is also proposing, in the alternative, to disapprove this SIP revision, if any of the actions listed in III.A, above, do not occur in accordance with the schedules in section I.D, Table 3.

EPA is soliciting public comments on the issues discussed in this document or any other relevant issues relating to the attainment demonstration for the Philadelphia area. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** this document. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

V. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action 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.

This final rule is not subject to E.O. 13045 because it does 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not

involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

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

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 Delaware, 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.

Today's action on Delaware's One-Hour Ozone Nonattainment Demonstration for the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area, 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.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–31717 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC039–2019, VA090–5036, MD073–3045; FRL–6502–8]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia; One-Hour Ozone Attainment Demonstration for the Metropolitan Washington D.C. Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plans (SIPs) consisting of the 1-hour ozone attainment demonstration for the Metropolitan Washington D.C. serious nonattainment area (the Washington area) submitted by the District of Columbia's Department of Health on April 24, 1998, and October 27, 1998, by the Maryland Department of the Environment on April 29, 1998 and August 17, 1998, and by the Virginia Department of Environmental Quality on April 29, 1998, and August 18, 1998; we are also proposing to approve a request to extend the area's attainment date from November 15, 1999 to November 15, 2005, because the Washington area is affected by transported pollution from upwind areas. We are also proposing, in the alternative, to disapprove these demonstrations if Maryland, Virginia and the District do not submit an adequate motor vehicle emissions budget consistent with attainment, adopted rules needed to ensure that nonattainment area 2005 emissions levels are less than the modeled 1999 control strategy levels and in the case of the District of Columbia adopt and submit rules for the NO_X reductions consistent with the modeling demonstration and a national low emissions vehicle program. For purposes of an adequate motor vehicle emissions budget, Maryland, Virginia and the District each will need to reaffirm that its previously submitted enforceable commitment to adopt the measures needed for attainment would apply to the additional measures to reduce emissions to demonstrate that nonattainment area 2005 emissions levels are less than the modeled 1999 control strategy levels. Each reaffirmation must also include a commitment to the performance of a mid-course review and to revisions to the SIP and motor vehicle emissions budget after MOBILE6 (the most recent model for estimating mobile source emissions) is released. The Washington area is comprised of the entire District of Columbia (the District), a portion of Maryland (namely, Calvert, Charles, Frederick, Montgomery, and Prince Georges Counties), and a portion of Virginia (namely, Alexandria, Arlington County, Fairfax, Fairfax County, Falls Church, Manassas, Manassas Park, Prince William County, and Stafford County).

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

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; District of Columbia Department of Public Health, Air Quality Division, 51 N Street, N.E., Washington, DC 20002; Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, at the EPA Region III address above, or by e-mail at cripps.christopher@epa.gov.

SUPPLEMENTARY INFORMATION: This document 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 SIPs submitted by the District of Columbia's Department of Health (DoH) on April 24, 1998, and October 27, 1998, by the Maryland Department of the Environment (MDE) on April 29, 1998 and August 17, 1998, and by the Virginia Department of Environmental Quality (VADEQ) on April 29, 1998, and August 18, 1998 for the Washington area. This document addresses the following questions:

What is the Basis for the Attainment Demonstration SIP?

What are the Components of a Modeled Attainment Demonstration?

What is the Frame Work for Proposing Action on the Attainment Demonstration SIPs?

What Does EPA Expect to Happen with Respect to Attainment Demonstrations for the Serious 1–Hour Ozone Nonattainment Areas?

What are the Relevant Policy and Guidance Documents?

How Do the District's, Maryland's, and Virginia's Submittals Satisfy the Frame Work?

I. Background

A. What Is the Basis for the Attainment Demonstration SIP?

1. CAA Requirements

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

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

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas are required to attain the 1-hour standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The Washington area is classified as serious and its attainment date is November 15, 1999.

Under section 182(c)(2) and (d) of the CAA, serious and severe areas were required to submit by November 15, 1994, demonstrations of how they would attain the 1-hour standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year (rate-of-progress or ROP). (In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions.) Today, in this proposed rule, EPA is proposing action on the attainment demonstration SIP submitted by District of Columbia's Department of Health (DoH), the Maryland Department of the Environment (MDE) and the Virginia Department of Environmental Quality (VADEQ) for the Washington area. EPA will take action on the District's, Maryland's and Virginia's ROP plans for the Washington area in separate rulemaking actions. In addition, elsewhere in this **Federal Register**, EPA is today proposing to take action on attainment demonstration and, in some cases, ROP SIPs for nine other serious or severe 1-hour ozone nonattainment areas. The additional nine areas are Greater Connecticut (CT), Springfield (Western Massachusetts) (MA), New York-North New Jersey-Long Island (NY–NJ–CT), Baltimore (MD), Philadelphia-Wilmington-Trenton (PA–NJ–DE–MD), Atlanta (GA), Milwaukee-Racine (WI), Chicago-Gary-Lake County (IL–IN), and Houston-Galveston-Brazoria (TX).

In general, an attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the control measures necessary to achieve those reductions. Another component of the attainment demonstration SIP is a motor vehicle emissions budget for transportation conformity purposes. Transportation conformity is a process for ensuring that States [1] 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.

[1] Under the CAA, the District of Columbia has the same attainment planning authorities and responsibilities as any other of the fifty States.

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 VOC 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.[2] 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) [3] 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; (4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the State submittal.[4] 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.

3. Attainment Date Delays Due to Transport

On July 16, 1998, EPA's then Acting Assistant Administrator, Richard Wilson, issued a guidance memorandum intended to provide further relief to areas affected by ozone transport.[5] The memorandum recognized that many moderate and serious areas are affected by transported pollution from either an upwind area in the same State with a higher classification and later attainment date,

[2] 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 .

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

[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] Memorandum, ''Extension of Attainment Dates for Downwind Transport Areas,'' issued July 16, 1998. This memorandum is applicable to both moderate and serious ozone nonattainment areas. A copy of this policy may be found on EPA's web site at http://www.epa.gov/ttn/oarpg/t1pgm.html.

and/or from an upwind area in another State that is significantly contributing to the downwind area's nonattainment problem. The policy recognized that some downwind areas may be unable to meet their own attainment dates, despite doing all that was required in their local area, because an upwind area may not have adopted and implemented all of the controls that would benefit the downwind area through control of transported ozone before the downwind area's attainment date. Thus, the policy provided that upon a successful demonstration that an upwind area has interfered with attainment and that the downwind area is adopting all measures required for its local area [6] for attainment but for this interference, EPA may grant an extension of the downwind area's attainment date.[7] Once an area receives an extension of its attainment date based on transport, the area would no longer be subject to reclassification to a higher classification and subject to additional requirements for failure to attain by its original attainment date provided it was doing all that was necessary locally.

A request from the State of Maryland, the Commonwealth of Virginia and the District of Columbia for such an extension of the attainment date for the Washington nonattainment area and EPA's proposed response is discussed in this action.

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

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

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

Depending upon 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 on the part of the State.

The CAA provides for EPA to approve, disapprove, partially approve or conditionally approve a State's plan submission. CAA § 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. CAA § 110(k).

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 upon a modeled attainment demonstration supplemented with additional evidence to demonstrate attainment.[8] In order to have a complete modeling demonstration submission, States should have submitted the required modeling analysis and identified any additional evidence that EPA should consider in evaluating whether the area will attain the standard.

1. Modeling Requirements

For purposes of demonstrating attainment, the CAA requires serious and severe areas to use photochemical grid modeling or an analytical method EPA determines to be as effective. The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to

[6] Local area measures would include all of the measures within the local modeling domain that were relied on for purposes of the modeled attainment demonstration.

[7] The policy provides that the area must meet four criteria to receive an attainment date extension. In summary, the area must: (1) Be identified as a downwind area affected by transport from either an upwind area in the same State with a later attainment date or an upwind area in another State that significantly contributes to downwind nonattainment; (2) submit an approvable attainment demonstration with any necessary, adopted local measures and with an attainment date that reflects when the upwind reductions will occur; (3) adopt all local measures required under the area's current classification and any additional measures necessary to demonstrate attainment; and (4) provide that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

[8] 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, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''UAMREG''). See also U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''O3TEST'').

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[9] to the attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

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

The acceptable upper limit above 0.124 ppm is determined by examining the size of exceedances at monitoring sites which meet the 1-hour NAAQS. For example, a monitoring site for which the four highest 1-hour average concentrations over a three-year period are 0.136 ppm, 0.130 ppm, 0.128 ppm and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration observed at a location on a single day and it would be the only reading above the standard that would be expected to occur no more than an average of once a year over a three-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

2. Additional Analyses Where Modeling Fails to Show Attainment

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

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

The EPA's 1996 modeling guidance also recognizes a need to perform a mid-

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

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 Consistent With the Modeling Demonstration

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

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

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

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

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 more 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 information in Table 1 is a summary of the CAA requirements that need to be met for each serious 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 this table. 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).

TABLE 1.—CAA REQUIREMENTS FOR SERIOUS AREAS

—NSR for VOC and NO_X [1], 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 [1].
—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 a substitute.
—Enhanced Monitoring—Photochemical Assessment Monitoring Stations (PAMS).
—Stage II vapor recovery.

[1] Unless the area has in effect a NO_X waiver under section 182(f). The Washington area is not such an area.

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

Emission reductions that will be achieved through EPA's NO_X SIP Call will reduce the levels of ozone and ozone precursors entering nonattainment areas at their boundaries. For purposes of developing attainment demonstrations, States define local modeling domains that include both the nonattainment area and nearby surrounding areas. The ozone levels at the boundary of the local modeling domain are reflected in modeled attainment demonstrations and are referred to as boundary conditions. With the exception of Houston, the 1-hour attainment demonstrations on which EPA is proposing action have relied, in part, on the NO_X SIP Call reductions for purposes of determining the boundary conditions of the modeling domain. Emission reductions assumed in the attainment demonstrations are modeled

to occur both within the State and in upwind States; thus, intrastate reductions as well as reductions in other States impact the boundary conditions. Although the court has indefinitely stayed the SIP submission deadline, the NO_X SIP Call rule remains in effect. Therefore, EPA believes it is appropriate to allow States to continue to assume the reductions from the NO_X SIP Call in areas outside the local 1-hour modeling domains. If States assume control levels and emission reductions other than those of the NO_X SIP Call within their State but outside of the modeling domain, States must also adopt control measures to achieve those reductions in order to have an approvable plan.

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

As provided in section 1 above, any controls assumed by the State inside the local modeling domain [10] 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, in the alternative, 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.[11] 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.[12] 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 (NPRM) proposing a major, comprehensive program designed to significantly reduce emissions from passenger cars and light trucks (including sport-utility vehicles, minivans, and pickup trucks) and to reduce sulfur in gasoline. Under the proposed program, automakers would produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners would provide that cleaner gasoline nationwide. The EPA subsequently issued two supplemental notices. 64 FR 35112 (June 30, 1999); 64 FR 57827 (October 27, 1999).

These two supplemental 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 Washington area whose attainment demonstration EPA is proposing to approve today is included on that list.

The EPA issued a memorandum that provides estimates of the emissions reductions associated with the Tier 2/Sulfur program proposal.[13] The memorandum provides the tonnage benefits for the Tier 2/Sulfur program in 2007 on a county-by-county basis for all counties within the 10 serious and severe nonattainment areas for which EPA is proposing to take action today and the 2005 tonnage benefits for the 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.[14] This memorandum explains that conformity analyses in serious and severe ozone nonattainment areas can begin

[10] 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 x 5 km or finer. The domain is large enough to ensure that emissions occurring at 8 am in the domain's center are still within the domain at 8 pm the same day. If recirculation of the nonattainment area's previous day's emissions is believed to contribute to an observed problem, the domain is large enough to characterize this.

[11] 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.

[12] A final budget is preferred; but, if the State public hearing process is not yet complete, then the 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.

[13] 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.

[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.

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 Atlanta, New York-North New Jersey-Long Island, Baltimore, Philadelphia-Wilmington-Trenton, and Houston nonattainment areas, the EPA is proposing to determine that additional emission reduction beyond those provided by the SIP submission are necessary for attainment. With the exception of the Atlanta nonattainment area, a portion of that reduction will be achieved by EPA's Tier 2/Sulfur program, which EPA expects to finalize shortly. States that need to rely in whole or in part on the Tier 2 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 reduction beyond those provided by the SIP submission are necessary for attainment will be taking a partial credit for Tier 2 if 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.

If the motor vehicle emissions budget reflects Tier 2/sulfur reductions, then 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 if 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 motor vehicle emissions budgets include the effects of the Tier 2/Sulfur program. 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 if the budgets include the effects of the Tier 2/Sulfur program within one year after EPA's release of MOBILE6. This commitment should be submitted to EPA along with the other commitments discussed elsewhere in this document, or alternatively, as part of the SIP revision that modifies the motor vehicle emission inventories and budgets to include the Tier 2/Sulfur program benefits needed in order for EPA to approve the SIP submittal.[15]

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, 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. Thus, for each of these areas, EPA has identified specific tons per day emissions of NO_X and/or VOC that must be reduced through additional control measures in order to demonstrate attainment and to enable EPA to approve the demonstration. The need for additional emission reductions is generally based on a lack of sufficient compelling evidence that the demonstration shows attainment at the current level of adopted or planned emission controls.

For the Washington area, EPA has not determined that emission reductions are needed. However, in order for EPA to approve the attainment demonstration for the Washington area, Maryland, the District of Columbia and Virginia will need to demonstrate that emissions in 2005 will not exceed the projected emissions for 1999. To do so, the Washington area may need to adopt additional measures to offset any growth.

For purposes of conformity, if the states 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 states will need to amend its commitment by letter to provide two things concerning the additional measures.

[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 revision of the budget after the release of MOBILE6.

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 [16].) 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 a serious area, such as the Washington area, the State will need to submit adopted rules to achieve the additional reductions, as well as rules for measures relied on in their demonstration but not yet adopted, to EPA as a SIP revision to their attainment demonstration no later than July 1, 2000 in order to allow EPA to promulgate its approval of the revision by November 2000.

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 addition, EPA has posted a copy of the report on its web site at www.epa.gov/ttn/oarpg/t1main.html.

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

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

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

The EPA report lists the various sources EPA used to develop the lists of additional measures. These sources include an EPA draft control measure data base, State and Territorial Air Pollution Administrators and the Association of Local Air Pollution Control 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. Thatis 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

[16] 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.

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 emission 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 by 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 Washington area, EPA believes that the State of Maryland, the Commonwealth of Virginia and the District must submit an enforceable commitment to perform a MCR as described here.[17]

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.

For serious areas requesting an attainment date extension to 2005, the States and the District must have an enforceable commitment to perform the MCR following the 2003 ozone season and to submit the results to EPA by the end of the review year (e.g., December 31, 2003). EPA believes that an analysis in 2003 would be most robust since some or all of the regional NO_X emission reductions should be achieved by that date. EPA would then review the results and determine whether any States need to adopt and submit additional control measures for purposes of attainment. The EPA is not requesting that States commit now to adopt new control measures as a result of this process. It would be impracticable for the States to make a commitment that is specific enough to be considered enforceable. Moreover, the MCR could indicate that upwind States may need to adopt some or all of the additional controls needed to ensure an area attains the standard. Therefore, if EPA determines additional control measures are needed for attainment, EPA would determine whether additional emission reductions as necessary from States in which the nonattainment area is located or upwind States, or both. The EPA would require the affected State or States to adopt and submit the new measures within a period specified at the time. The EPA anticipates that these findings would be made as calls for SIP revisions under section 110(k)(5) and, therefore, the period for submission of the measures would be no longer than 18 months after the EPA finding. A draft guidance document regarding the MCR process is located in the docket for this proposal and may also be found on EPA's web site at http://www.epa.gov/ttn/scram/.

D. In Summary, What Does EPA Expect to Happen With Respect to Attainment Demonstrations for the Metropolitan Washington D.C. 1-Hour Ozone Nonattainment Area?

The following table shows a summary of information on what EPA expects from Maryland, Virginia, and the District of Columbia to allow EPA to approve the 1-hour ozone attainment demonstration SIPs.

TABLE 2.—SUMMARY SCHEDULE OF FUTURE ACTIONS RELATED TO ATTAINMENT DEMONSTRATION FOR THE WASHINGTON SERIOUS NONATTAINMENT AREA IN MARYLAND, VIRGINIA AND THE DISTRICT OF COLUMBIA

Req'd no later than	Action
12/31/99	States submit the following to EPA: —motor vehicle emissions budget.[1] —Commitments[2] or reaffirmation of a previous commitment to do the following: —Submit in July 2000 measures for additional emission reductions if required in 2005.[3] —Submit revised SIP & motor vehicle emissions budget by July 2000 if additional measures (due by July 2000) affect the motor vehicle emissions inventory. —Submit revised SIP & motor vehicle emissions budget 1 year after MOBILE6 issued.[4] —Perform a mid-course review.

[17] 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.

TABLE 2.—SUMMARY SCHEDULE OF FUTURE ACTIONS RELATED TO ATTAINMENT DEMONSTRATION FOR THE WASHINGTON SERIOUS NONATTAINMENT AREA IN MARYLAND, VIRGINIA AND THE DISTRICT OF COLUMBIA—Continued

Req'd no later than	Action
	—A list of potential control measures that could provide additional emission reductions if needed in 2005.[5]
4/15/00	States submit in final any submissions made in draft by 12/31/99.
Before EPA final rulemaking	States submit enforceable commitments for any above-mentioned commitments that may not yet have been subjected to public hearing.
7/1/00	—States submit final rules for additional measures for emission reductions as required in the attainment demonstration test.
	—State revises & submits SIP & motor vehicle emissions budget if the additional measures are for motor vehicle emissions category.
	—States revise & submit SIP & motor vehicle emissions budget to account for Tier 2 reductions as needed.[6]
Within 1 yr after release of MOBILE6 model	States submit revised SIP & motor vehicle emissions budget based on MOBILE6.
12/31/03	States submit 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.''

[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.

[3] Only if additional rules (except Tier 2) beyond current control strategy are needed in 2005.

[4] 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 7/1/00).

[5] 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.

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

E. What Are the Relevant Policy and Guidance Documents?

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

Recent Documents

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

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

3. Memorandum, ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstrations,'' from Merrylin Zaw-Mon, Office of Mobile Sources, to Air Division Directors, Regions I-VI. November 3, 1999. Web site: http://www.epa.gov/oms/transp/traqconf.htm.

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

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

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

Previous Documents

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

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

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

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

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

II. EPA's Review and Analysis of the District's, Maryland's and Virginia's Submittals

This section provides a review of Maryland's, Virginia's and the District's submittals and an analysis of how these submittals satisfy the frame work discussed in Section I. of this document.

A. Analysis of the Local Modeling and Weight-of-Evidence

The following is a summary of our analysis of the local modeling. A more detailed description of the District's and the state submittals and EPA's evaluation are included in a Technical Support Document (TSD) prepared in

support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the Addresses section of this document.

1. Analysis of the Modeling for the Local Modeling Domain

The CAA requires that serious areas and above perform photochemical grid modeling to help determine the emission reductions of VOC and (NO_X) necessary to achieve the attainment of the 1-hour ozone standard. Maryland, Virginia and the District of Columbia fulfilled this requirement through the VADEQ's application of the Urban Airshed Model, Version 4 (UAM–IV) for the Washington area and through the use of the modeling results from the OTAG application of the Urban Airshed Model, Version 5 (UAM–V).

The ozone attainment demonstration for the Washington area contains local scale modeling that, other than the number of episodes modeled, fulfills EPA recommended modeling procedures. Maryland, Virginia and the District modeled two episodes rather than the three recommended by EPA. EPA modeling guidance requires that a total of three episodes be modeled from at least two meteorological regimes. Given the severe nature of the episodes modeled, even if one more episode was modeled, the two episodes that were modeled (July 15–16, 1991 & July 18–20, 1991), due to their severity, would most likely be the controlling episodes in the determination of the emission reductions needed in the Washington area for attainment. The two episodes that were modeled also represent the most frequently occurring meteorological conditions conducive to high ozone in the Washington area. It should be pointed out, however, that three episodes were analyzed in the design value rollback analysis performed using the modeling results from EPA's NO_X SIP Call Supplemental Notice of Proposed Rulemaking (SNPR) (63 FR 25901, May 11, 1998).

When the 1999 emission inventory with the control strategy is modeled, peak ozone concentration is reduced by approximately 22 ppb from the modeled peak concentrations in the 1988 and 1991 base cases. When the average modeled ozone reduction is applied to the peak measured concentration for July 16 (137 ppb) and July 19 (132 ppb), the resulting concentrations are 115 ppb and 110 ppb, respectively. This indicates attainment for these days. However, when the modeled ozone reduction is applied to the peak monitored level on July 20 (178 ppb), the resulting concentration is 156 ppb. Because the ozone forming potential rank is very high for July 20, 1991 (13th most severe day out of approximately the last 50 years with an average reoccurrence of once every 4–5 years) this type of day is not likely to occur often enough to be a major causative factor for nonattainment, especially since the emission controls modeled in this attainment demonstration should eliminate ozone exceedances for all but the most meteorologically severe days.

The local modeling for the Washington area over-predicts ozone concentrations. The local 1991 base case modeling predicts peak concentrations in the Washington area of 167–198 ppb while ozone monitors in the same area during the same time period show peak concentrations ranging from 132 ppb to 178 ppb. This indicates that the model is over-predicting the actual ozone concentrations by an average of 19%. When model over-prediction (approximately 19%) is accounted for in both of the July 1991 episodes, the local scale modeled peak concentrations become 120 ppb for July 16th, 111 ppb for July 19th and 142 ppb for July 20th. The adjusted peak concentration for two out of the three primary episode days indicates attainment. The adjusted concentration for July 20th does not indicate attainment at 142 ppb. However, a concentration of 142 ppb on July 20, 1991 is only 5 ppb greater than the concentration that would be consistent with attainment (137 ppb) according to EPA's alternative attainment test guidance.[18] Furthermore, when the area's design value in the base modeling period (1991) is adjusted for the air quality improvement predicted in the attainment year by the local-scale modeling according to the screening test described in EPA's guidance entitled ''Draft Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8–Hour Ozone NAAQS'', the result is a 1999 projected design value of 119 ppb. These local-scale modeling results are close enough to attainment to warrant the consideration of weight-of-evidence arguments that support the demonstration of attainment.

2. Weight of Evidence (WOE) Analyses

A WOE determination is a diverse set of technical analyses performed to assess the confidence one has in the modeled results and to help assess the adequacy of a proposed strategy when the outcome of local scale modeling is close to attainment.

The District, Maryland and Virginia provided WOE arguments in the attainment demonstration to further corroborate that it is likely their attainment demonstrations contained sufficient local measures for the Washington area to attain the 1-hour ozone standard by the statutory date of 1999 but for transport.

The States and the District used EPA-developed design value adjustment factors based on regional scale modeling performed for the NO_X SIP Call SNPR. These adjustment factors were used to adjust the 1996 area design values. The analysis showed all area adjusted design values below the level needed for attainment (124 ppb). To provide additional information, the EPA's design value adjustment factors were applied to the 1997 and 1998 area design values, again resulting in all area design values below 124 ppb.

Because the local modeling for the Washington area showed some peak concentrations above levels deemed consistent with attainment, we conducted an analysis to determine what additional local emission reductions, if any, would be needed to support ozone attainment in the Washington area. Our analysis determined that the Washington area would not need any additional emission reductions beyond those contained the area attainment demonstration to ensure attainment of the ozone NAAQS.

3. Attainment Delay Due to Transport

Boundary condition sensitivity modeling was performed for the Washington area using OTAG Base 1C and Run I boundary conditions. OTAG Base 1C boundary conditions reflect the boundary conditions that will result from the implementation of all Clean Air Act mandated controls. OTAG Run I boundary conditions closely approximate the boundary conditions that will result from CAA measures and the additional emission reductions anticipated from the NO_X SIP Call. The Washington area model runs with OTAG Base 1C boundary conditions were compared to the runs with OTAG Run I boundary conditions. The model run with OTAG Run I boundary conditions show a 5 to 10 ppb reduction in peak ozone concentrations in areas with modeled peak concentrations above 124 ppb.

A 5 to 10 ppb increase in ozone concentrations would increase projected design values based upon local modeling over 124 ppb and would increase future predicted exceedances well beyond the range consistent with attainment. The District's, Maryland's and Virginia's submittals for the

[18] Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996)

Washington area only demonstrate attainment of the 1-hour ozone standard by including in their analysis the reduction of ozone and ozone precursor transport that will result from regional NO_X controls.

The local modeling for the Washington area showed that emission levels in Baltimore affect peak ozone concentrations in the Washington area during two of three most severe episode days modeled . The Baltimore area has an attainment date of 2005.

B. Analysis of Submittal Against EPA's Frame Work for Proposing Action on the Attainment Demonstration SIPs

1. CAA Measures and Measures Relied on in the Current SIP Submission

Tables 3 through 6 contain a summary of the CAA required ozone SIP elements and of any additional measures included in the attainment demonstration. Table 3 is a listing of the measures or CAA requirements that are common to all three Washington area jurisdictions. Tables 4, 5 and 6 provide a summary of additional control measures that are not common to all three jurisdictions. These Tables indicate if a control measure was part of the modeling demonstration and a summary of the approval or promulgation status.

TABLE 3.—COMMON CONTROL MEASURES IN THE 1-HOUR OZONE ATTAINMENT PLANS FOR THE WASHINGTON NONATTAINMENT AREA

Name of control measure	Type of measure	Included in local modeling	Approval status
On-board Refueling Vapor Recovery	Federal rule	Yes	Promulgated at 40 CFR 86.
Federal Motor Vehicle Control program	Federal rule	Yes	Promulgated at 40 CFR 86.
Federal Non-road Gasoline Engines	Federal rule	Yes	Promulgated at 40 CFR 90.
Federal Non-road Heavy Duty diesel engines	Federal rule	Yes	Promulgated at 40 CFR 89.
AIM Surface Coatings	Federal rule	Yes	Promulgated at 40 CFR 59 subpart D.
Consumer & commercial products	Federal rule	Yes	Promulgated at 40 CFR 59 subpart C.
Enhanced Inspection & Maintenance	CAA SIP Requirement.	Yes	SIP approved—Virginia & the District. SIP approval pending—Maryland
NO_X RACT	CAA SIP Requirement.	Yes	SIP approval pending—Maryland, Virginia, & the District.
VOC RACT to 50 tpy	CAA SIP Requirement.	Yes	SIP approved—Virginia. SIP approval pending—Maryland & the District.
Stage II Vapor Recovery	CAA SIP Requirement.	Yes	SIP approved—Maryland & Virginia. SIP approval pending—the District.
Stage I Vapor Recovery	CAA SIP Requirement.	Yes	SIP approved—Maryland & Virginia. SIP approval pending—the District.
Reformulated Gasoline	State Opt-in to federal program.	Yes	State opt-ins approved under 40 CFR 80 subpart D.
Clean Fuel Fleets (CFF) or substitute	CAA SIP Requirement.	No	NLEV SIP submitted as a CFF substitute—Maryland & Virginia. CFF SIP approval pending—the District.
National Low Emission Vehicle (NLEV)	State opt-in	No	Federal program promulgated at 40 CFR 86 subpart R. State opt-in SIP approval pending—Maryland & Virginia; the District will submit by 2/15/2000.
New Source Review	CAA SIP Requirement.	N/A	SIP approved—Virginia & the District. SIP approval pending—Maryland.
Base Year Emissions Inventory	CAA SIP Requirement.	N/A [1]	SIP approved—Maryland, Virginia & the District.
15% VOC Reduction Plan	CAA SIP Requirement.	Yes [2]	SIP approved—the District. SIP approval pending—Maryland & Virginia.
9% rate of progress plan	CAA SIP Requirement.	Yes [2]	SIP approval pending—Maryland, Virginia & the District.
Emissions Statements	CAA SIP Requirement.	N/A	SIP approved—Maryland, Virginia & the District.
Photochemical Assessment Monitoring System (PAMS).	CAA Requirement	N/A	SIP approved—Maryland, Virginia & the District.

[1] Does not produce emission reductions.
[2] The measures used to demonstrate rate of progress were modeled.

TABLE 4.—MARYLAND CONTROL MEASURES IN THE 1-HOUR OZONE ATTAINMENT PLAN FOR THE WASHINGTON NONATTAINMENT AREA

Name of control measure	Type of measure	Included in local modeling	Approval status
Autobody refinishing	State Rule	Yes	SIP approved.
Extend State VOC Point Source Regulations to 25 tons/year sources.	State Rule	Yes	SIP approval pending.
Surface Cleaning/Degreasing	State Rule	Yes	SIP approved.
Municipal Landfills	State Rule	Yes	State plan approved.
Open Burning Ban	State Rule	Yes	SIP approved.
TCMs	State Rule	Yes	SIP approval pending.
Graphic Arts	State Rule	Yes	SIP approved.

TABLE 4.—MARYLAND CONTROL MEASURES IN THE 1-HOUR OZONE ATTAINMENT PLAN FOR THE WASHINGTON NONATTAINMENT AREA—Continued

Name of control measure	Type of measure	Included in local modeling	Approval status
Beyond RACT reductions from large point sources of NO_X.	State initiative	Yes	OTC NO_X MOU Phase II—SIP approval pending.

TABLE 5.—VIRGINIA CONTROL MEASURES IN THE 1-HOUR OZONE ATTAINMENT PLAN FOR THE WASHINGTON NONATTAINMENT AREA

Name of control measure	Type of measure	Included in local modeling	Approval status
Extend State VOC Point Source Regulations to 25 tons/year sources.	State Rule	Yes	SIP approval pending.
Surface Cleaning/Degreasing	State Rule	Yes	SIP approval pending.
Municipal Landfills	Federal Plan	Yes	Federal plan promulgated at 40 CFR Part 62.
Open Burning Ban	State Rule	Yes	SIP approved.
TCMs	State Rule	Yes	SIP approval pending.
Graphic Arts	State Rule	Yes	SIP approved.
Autobody refinishing	Federal rule	Yes	Promulgated at 40 CFR 59 subpart B.

TABLE 6.—DISTRICT OF COLUMBIA CONTROL MEASURES IN THE 1-HOUR OZONE ATTAINMENT PLAN FOR THE WASHINGTON NONATTAINMENT AREA

Name of control measure	Type of measure	Included in local modeling	Approval status
Name of Control Measure or SIP Element	Type of Measure ...	Included in Local Modeling.	Adoption and Approval Status.
Surface Cleaning/Degreasing	State Rule	Yes	SIP approval pending.
Graphic Arts	State Rule	Yes	SIP approval pending.
Autobody refinishing	Federal rule	Yes	Promulgated at 40 CFR 59 subpart B.
Beyond RACT Reductions at large point source of NO_X.	State initiative	Yes	State rule not submitted.

The MDE, VADEQ and DoH have submitted all CAA mandated measures. Many, but not all, of these measures have been approved to date. EPA is proposing approval of the attainment demonstrations for the Washington area contingent upon SIP approval of all CAA required measures and other attainment measures before final approval is issued for the attainment demonstration.

The District has not submitted an adopted rule for the 1.8 TPD of NO_X reduction from major stationary sources of NO_X reduction beyond RACT which was relied upon in the modeling demonstration. However, Maryland and Virginia have submitted SIP revisions for an opt-in to the NLEV program which was not included in the local modeling. Maryland and Virginia have quantified that this measure will provide 1.8 TPD of NO_X (plus 1.9 TPD of VOC) reductions in the Washington area by 1999. Therefore, the three Washington area States have provided adopted rules for all the reductions modeled in the attainment demonstration. EPA believes it is reasonable to propose to approve the attainment demonstrations and attainment date extension requests for the Washington area provided that the States adopt and submit sufficient measures to demonstrate that 2005 emissions considering growth will be less than or equal to the 1999 control strategy levels. Commitments to these measures and submission of adopted rules will have to conform to the schedule discussed in section I.D and Table 2 above.

The Virginia attainment demonstration included a commitment to 23.0 TPD of NO_X reductions beyond RACT and beyond that contained in the local modeling. The schedule for this measure provided in Commonwealth's attainment demonstration SIP is past, and thus, EPA can not propose approval of this commitment as part of this action. However, because this measure was not included in the local modeling, under the framework for approval discussed in section I.C above, EPA believes that the lack of an adopted rule for this measure does not preclude proposing approval of the Virginia and other States' attainment demonstrations for the Washington area.

EPA is proposing to approve the attainment demonstrations and attainment date extension requests for the Washington area provided that: Virginia can demonstrate that a rule for NO_X reductions beyond RACT is not required to demonstrate that 2005 emissions will be less than or equal to the 1999 control strategy levels (a demonstration that the rule is not required must accompany an adequate conformity budget which is discussed in section II.B3. below), or, Virginia must submit a revised commitment and adopted rule by July 2000 in accordance to the schedules discussed in section I. and Table 2 above.

2. NO_X Reductions Consistent with the Modeling Demonstration

Inside the Baltimore-Washington modeling domain, the States modeled only the measures indicated in Tables 3 through 6 above. The only NO_X measures beyond CAA requirements was additional level of control beyond RACT at large stationary sources of NO_X in the District's and Maryland's portion of the Washington area. The status of all

measures was discussed in the preceding section of this document.

3. Motor Vehicle Emissions Budget

The EPA has found that the motor vehicle emissions budgets in the attainment demonstrations for the Washington area submitted by the MDE, the DoH, and the VADEQ are inadequate for conformity purposes.

On October 26, 1999, Judith M. Katz, Director, Air Protection Division, EPA, Region III, sent a letter to Ms. Ann Marie DeBiase, Director, Air and Radiation Management Administration, Maryland Department of the Environment; Mr. Donald Wambsgans, Program Manager, District of Columbia Department of Health, Air Quality Division and Mr. John Daniel, Director, Air Program Coordination, Virginia Department of Environmental Quality indicating that the motor vehicle emissions budgets in their attainment demonstrations were not adequate for conformity purposes.

The motor vehicle emission budgets in the demonstrations for the Washington area were not found adequate because they did not meet all the adequacy requirements in the conformity rule. See 40 CFR 93.118(e)(4). EPA made this determination for the following reasons: the budget was inconsistently identified; the budget was based upon outdated enhanced I/M control parameters; and there is no budget for the requested extension year of 2005. The following paragraphs provide a summary of each of these findings, of the corrective action required and of EPA's proposed action.

Inconsistent identification: The motor vehicle emissions budget are not clearly identified and precisely quantified as required by 40 CFR 93.118(e)(4)(iii). One portion of the attainment demonstration SIP submission shows the area's 1999 budget in total tons per day is: 196.8 tons per day for VOC and 123.5 tons per day for NO_X. However in another portion of the attainment demonstration SIP, the motor vehicle emissions budget is identified as 199.2 tons per day for VOC and 123.3 tons per day for NO_X.

Outdated enhanced I/M program parameters: The current motor vehicle emissions budget is inadequate because the budget was set assuming parameters inconsistent with the current enhanced I/M programs and thus is not consistent with the control measures in the submitted SIP revisions as required by 40 CFR 93.118(e)(4)(iv).

No budget for 2005: The motor vehicle emissions budget when considered together with all other emissions sources are not consistent with applicable requirements for attainment by 2005 as required by 40 CFR 93.118(e)(4)(iv). EPA is proposing in today's action that the attainment demonstrations for the Washington area contains sufficient local reductions to achieve attainment by 1999 and to extend the attainment date to 2005 due to transport. However, the attainment demonstrations for the Washington area do not contain an adequate motor vehicle emissions budget for 2005.

Before EPA can fully approve the attainment demonstration and attainment date extension to 2005, Maryland, Virginia and the District must submit SIP revisions to amend the attainment demonstrations for the Washington area that contain adequate motor vehicle emissions budget for 2005. In addition, EPA is proposing, in the alternative, to disapprove the attainment demonstration SIPs for those nine areas if Maryland, Virginia and the District do not submit motor vehicle emissions budget for the Washington area that EPA can find adequate by May 31, 2000.

As discussed in section I.C.3 above, a motor vehicle emissions budget is the estimate of motor vehicle emissions in the attainment year that when considered with emissions from all other sources is consistent with attainment. The attainment demonstrations for the Washington area contain levels of modeled emissions that EPA concludes demonstrate attainment once transport from upwind areas is addressed. The basis for this conclusion will not be altered if the Washington area States can demonstrate that the level of nonattainment area emissions in 2005 is equal to or less than the 1999 control strategy levels contained in the attainment demonstrations considering growth. Thus, Maryland, Virginia and the District can demonstrate that revised motor vehicle emissions budgets for 2005 in an amendment to their attainment demonstrations for the Washington area are adequate by showing that overall emissions including the revised motor vehicle emissions budget when considered with emissions from all other sources are less than the 1999 control strategy levels.

Emissions generating activities generally grow over time. However, emissions levels from mobile source categories may actually decrease between 1999 and 2005 due to the effects of replacement of vehicles with older engines with new vehicles and due to the new control programs listed in Tables 7 and 8 below. Tables 7 and 8 list measures that will not and will, respectively, affect the motor vehicle emissions budget. Table 7 includes measures that were not part of the attainment demonstrations because the implementation dates are after 1999 and will contribute to attainment in 2005. Table 8 lists the measures that will contribute to attainment in 2005 and that will affect the budget and indicates if each measure was included in the 1999 motor vehicle emissions budget or in the local scale modeling. (Several of these measures could not be included in the 1999 budget because the implementation dates are after 1999.) EPA has interpreted the general adequacy criteria with respect to the 1-hour ozone attainment demonstrations to require the motor vehicle emissions budgets to include the effects of all motor vehicle controls, including federal measures and the mobile source control measures assumed in the NOx SIP Call, that will be in place in the attainment year, or in the case of a serious area requesting an attainment date extension, in place during the requested extension year.[19] Therefore, the revised motor vehicle emissions budgets presumptively must include all currently promulgated federal measures and state SIP measures and opt-ins shown in Table 8 with the exception of Clean Fuel Fleets (CFF). See section II.B.4 below for discussion concerning the incorporation of the proposed Tier 2 standards into the motor vehicle emissions budgets.

Virginia and Maryland each have submitted an NLEV SIP revision as a substitute for CFF. For the Maryland and Virginia components of the motor vehicle emissions budget NLEV must be used as in lieu of CFF. The District has submitted an adopted CFF SIP, but in a December 16, 1998 letter, requested the use of NLEV as a substitute for CFF. EPA has not acted on the December 16, 1998 request because EPA has not received an NLEV SIP from the District. The motor vehicle emissions budget must include NLEV in the District's component of the revised motor vehicle emissions budget, but need not include CFF if the District submits an adopted NLEV SIP revision with the revised motor vehicle emissions budget in accordance with the schedule specified in sections I.C. and I.D; otherwise, the District must include CFF as well as NLEV in the District's component of the revised motor vehicle emissions budget. Because CFF is a required SIP element for serious areas, the District must

[19] 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.

provide a SIP revision consisting of an adopted NLEV program in order to replace a required SIP element.

TABLE 7.—ADDITIONAL NONROAD MOBILE SOURCE CONTROL MEASURES CONTRIBUTING TO ATTAINMENT OF THE 1-HOUR OZONE NAAQS IN THE WASHINGTON NONATTAINMENT AREA IN 2005

Name of control measure	Type of measure	Included in local modeling	Adoption and approval status
Marine Engine Standards	Federal	No	Promulgated at 40 CFR 91.
Railroad Engine Standards	Federal	No	Promulgated at 40 CFR 92.

TABLE 8.—ON-ROAD MOBILE SOURCE CONTROL MEASURES CONTRIBUTING TO ATTAINMENT OF THE 1-HOUR OZONE NAAQS IN THE WASHINGTON NONATTAINMENT AREA IN 2005

Control measure	Implementation year	In local modeling demonstration?	In the 1999 motor vehicle emissions budget
Federal Motor Vehicle Control Program (FMVCP)			
Tier 1	1994	Tier 1 FMVCP only	Tier 1 FMVCP only.
Tier 2	2004.		
High enhanced I/M (CAA Mandate)	1997	Yes	Yes.
Reformulated Gasoline (State Opt-in)			
Phase I	1995	Phase I only	Phase I only.
Phase II	2000.		
Clean Fuel Fleets (CAA Mandate)	1998	No	No.
National Low Emissions Vehicles (NLEV)	1999	No	No.
Federal Heavy-duty Diesel Vehicle (HDV) 2 gm std.	2004	No	No.

If additional emission reductions beyond those in the attainment demonstration or those listed in Tables 7 and 8 are required in 2005 then Maryland, Virginia and the District will need to submit a commitment for the purposes of determining the motor vehicle emissions budget adequate and rules for these measures. Any such adopted measures must provide for implementation as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

Commitment to measures needed to attain the 1-hour ozone NAAQS. Maryland, Virginia and the District each has previously committed to adopting additional control measures as necessary to attain the one-hour ozone NAAQS as discussed. The District, Maryland, Virginia made these commitments as part of SIP revisions that were submitted on November 3, 1997, December 24, 1997 and December 19, 1997, respectively. EPA believes for the purposes of determining the motor vehicle emissions budget adequate that Maryland, Virginia and the District each already has a commitment to adopt any needed additional measures, but we need reaffirmation by letter from DoH, MDE and VADEQ that the intent of the existing commitment meets all the conditions as stated in section I.C., above. EPA needs to receive this reaffirmation letter by December 31, 1999. If Maryland, Virginia or the District does not reaffirm by December 31, 1999, that its existing commitment to adopt additional measures as necessary to reach attainment is consistent within the framework of this action, then EPA will be unable to determine the area has an adequate conformity budget. Final adopted rules for these additional control measures must be submitted by July 1, 2000 in order to allow EPA to promulgate its approval of the revision by November 2000.

Motor vehicle emissions budget and EPA's proposed action: The EPA is proposing to approve the attainment demonstration SIP revisions for the Washington area if the State of Maryland, Commonwealth of Virginia and the District of Columbia correct the deficiencies that cause the motor vehicle emissions budget to be inadequate. In the alternative, EPA is proposing to disapprove the attainment demonstration if by May 31, 2000, EPA has not made a determination that the attainment demonstration SIP revisions for the Washington area contains an adequate motor vehicle emissions budget. Because many States may shortly be submitting revised demonstrations with revised motor vehicle emission budgets, EPA is providing a 60 day comment period on this proposed rule. If the State of Maryland, Commonwealth of Virginia and the District of Columbia submit a revised attainment demonstration with a corrected motor vehicle emissions budget for 2005, EPA will place the revisions in the docket for this rulemaking action and will post a notice on EPA's website at www.epa.gov/oms/traq. By posting notice on the website, EPA will also initiate the adequacy process.

4. Tier 2/Sulfur Program Benefits

EPA concludes that based on the modeling and WOE that the Washington area would not need any additional emission reductions beyond those contained the area attainment demonstration to ensure attainment of the ozone NAAQS by 1999, but for transport. EPA also concludes that the attainment demonstrations for the Washington area collectively have sufficient local measures to have demonstrated attainment by 1999, but that the area could not attain due to transport from other areas.

However, as discussed in section II.B.3 above, Maryland, Virginia and the District must amend the attainment demonstrations to include an adequate conformity budget for 2005.

Like other areas that rely, in part or in full, on Tier 2 reductions in order to demonstrate attainment, the Washington area attainment demonstration may have to be revised by July 1, 2000, to estimate the effects of Tier 2 according to our policy. It must be revised if some or all of the Tier 2 reductions are used to demonstrate that nonattainment area emissions in 2005 are equal to or less than the 1999 control strategy levels contained in the attainment

demonstrations or are used to set the motor vehicle emissions budget.

However, the Washington area may use some of EPA's Tier 2/Sulfur program credit for other purposes. The States and the District must calculate the amount of the Tier 2/Sulfur credit that the Washington area needs to show the overall 2005 emissions levels are less than the 1999 control strategy levels. If they choose to use less Tier 2/Sulfur credit than indicated by this calculation, then these States and the District will have to adopt additional measures to ensure the necessary reductions are achieved. The States and the District would need to submit adopted rules for this amount of additional emission reduction by no later than July 1, 2000, in order to allow EPA to promulgate its approval of the revision by November 2000.

Revisions to the motor vehicle emissions budget and the attainment demonstration when EPA issues the MOBILE6 model. Maryland, Virginia and the District each has previously committed to adopting additional control measures as necessary to attain the one-hour ozone NAAQS as discussed in the preceding section II.C.3 of this document. EPA believes for the purposes of determining the motor vehicle emissions budget adequate that Maryland, Virginia and the District each already has a commitment to adopt any needed additional measures, but we need reaffirmation from DoH, MDE and VADEQ that the intent of the existing commitment meets all the conditions as stated in section I.C of this action including revising the mobile vehicle emissions budget when EPA issues the MOBILE6 model. EPA needs to receive this reaffirmation by December 31, 1999 as discussed in section I.C. above. If Maryland, Virginia or the District does not reaffirm by December 31, 1999, that its existing commitment to adopt additional measures as necessary to reach attainment is consistent within the framework of this action, then EPA will be unable to determine the area has an adequate conformity budget. 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 July 1, 2000).

5. Additional Measures To Further Reduce Emissions To Support the Attainment Test

EPA has concluded that the attainment demonstrations for the Washington area collectively have sufficient local measures to have demonstrated attainment by 1999 but did not attain due to transport from other areas. The area may need measures beyond those in the plan in order to show that 2005 emissions are less the 1999 control strategy level as discussed in section II.B.3 above. EPA believes that for the purposes of additional measures and determining the motor vehicle emissions budget adequate, Maryland, Virginia and the District have each already submitted a commitment to adopt any needed additional measures. However, we need reaffirmation from DoH, MDE and VADEQ that the intent of their existing commitments meet all of the requirements discussed in section I.C.5 of this document. If Maryland, Virginia or the District does not reaffirm by December 31, 1999, that its existing commitment to adopt additional measures is consistent within the framework of this action, then EPA will be unable to determine that the area has an adequate conformity budget.

6. Mid-Course Review

In accordance with the provisions of section I.C.6., above, EPA must receive an enforceable commitment or a reaffirmation of a previous enforceable commitment to include a mid-course review from each of the three Washington area States before their attainment demonstrations can be approved.

As discussed in section II.C.3 of this document, EPA believes for the purposes of the MCR and determining the motor vehicle emissions budget adequate that Maryland, Virginia and the District each already has a commitment to adopt any needed additional measures to attain the 1-hour ozone NAAQS, but we need reaffirmation from DoH, MDE and VADEQ that the intent of the existing commitment meets all the conditions as stated in section I.C of this action including amending the commitment to include the MCR. If Maryland, Virginia or the District does not reaffirm by December 31, 1999, that its existing commitment is consistent within the framework of this action, then EPA will be unable to determine the area has an adequate conformity budget.

7. Attainment Date Delays Due to Transport

The Washington area has been identified as a downwind area affected by transport from upwind areas in other States that significantly contribute to nonattainment in the Washington area and, in the case of Maryland's portion of the Washington area, from upwind area, Baltimore, in the same State with a later attainment date of 2005.

Maryland, Virginia and the District have adopted all local measures required under the area's current classification.

The Washington area attainment demonstration and attainment date extension request will be approvable once:

(1) Maryland, Virginia and the District adopt and submit adequate conformity budgets for 2005 as discussed in section II.C.3 and II.C.4 above; and

(2) Maryland, Virginia and the District submit and EPA approves adopted additional local measures needed, if any, to demonstrate that emissions in 2005 will not exceed the projected emissions for 1999 (these measures must be implemented as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved); and

(3) Maryland, Virginia and the District adopt and submit the enforceable commitments or reaffirmation of an existing enforceable commitment in accordance with the schedules in Table 2 of section I.D of this document.

III. What Are the Consequences of State Failure?

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

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

If EPA disapproves a required SIP, such as the attainment demonstration SIPs, section 179(a) provides for the imposition of two sanctions. The first sanction would apply 18 months after EPA disapproves the SIP if the State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new

source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to a broader area, but is not proposing to take such action today.

B. 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 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.

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.

IV. Proposed Action

A. The District of Columbia

1. Proposed Approval

EPA is proposing to approve the District of Columbia's attainment demonstration SIP revision for the Washington area which was submitted on April 24, 1998 and supplemented on October 27, 1998, and to approve a request for an attainment date extension from November 15, 1999 to November 15, 2005, for the Washington area, if the following actions occur in accordance with the schedules in section I.D, Table 2:

(1) The District adopts and submits an adequate motor vehicle emissions budget.

(2) The District submits a list of control measures that, when implemented, would be expected to provide sufficient additional emission reductions to ensure nonattainment area emissions in 2005 are equal to or less than the 1999 control strategy levels contained in the attainment demonstrations considering growth as discussed in II.B.3. The District need not commit to adopt any specific measures on its list at this time, but if it does not do so, it must identify sufficient additional emission reductions to ensure nonattainment area emissions in 2005 are equal to or less than the 1999 control strategy levels 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.

(3) The District adopts and submits a rule(s) for the NO_X reductions consistent with the modeling demonstration; NLEV; and additional emission reductions needed, if any, to ensure nonattainment area emissions in 2005 are equal to or less than the 1999 control strategy levels.

(4) The District adopts and submits an enforceable commitment, or reaffirmation of existing enforceable commitment to do the following:

(a) Submit measures by July 1, 2000 for additional emission reductions, if any, as required to ensure nonattainment area emissions in 2005 are equal to or less than the 1999 control strategy levels as discussed in section II.B.3.

(b) Submit a revised SIP and motor vehicle emissions budget by July 1, 2000 if additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP and motor vehicle emissions budget 1 year after MOBILE6 issued.

(d) Perform a mid-course review.

2. Proposed Disapproval-in-the-Alternative

EPA is also proposing, in the alternative, to disapprove this SIP revision, if any of the actions listed in IV.A.1, above, do not occur in accordance with the schedules in section I.D, Table 2.

B. State of Maryland

1. Proposed Approval

EPA is proposing to approve the State of Maryland's attainment demonstration SIP revision for the Washington area which was submitted on April 29, 1998 and supplemented on August 17, 1998, and to approve a request for an attainment date extension from November 15, 1999 to November 15, 2005, for the Washington area, if the following actions occur in accordance with the schedules in section I.D, Table 2:

(1) Maryland adopts and submits an adequate motor vehicle emissions budget.

(2) Maryland submits a list of control measures that, when implemented, would be expected to provide sufficient additional emission reductions to ensure nonattainment area emissions in 2005 are equal to or less than the 1999 control strategy levels contained in the attainment demonstrations considering growth as discussed in II.B.3. The State need not commit to adopt any specific measures on its list at this time, but if it does not do so, it must identify sufficient additional emission reductions ensure nonattainment area emissions in 2005 are equal to or less than the 1999 control strategy levels 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.

(3) Maryland adopts and submits a rule(s) for additional emission reductions needed, if any, to ensure nonattainment area emissions in 2005 are equal to or less than the 1999 control strategy levels.

(4) Maryland adopts and submits an enforceable commitment, or reaffirmation of existing enforceable commitment to do the following:

(a) Submit measures by July 1, 2000 for additional emission reductions, if any, as required to ensure nonattainment area emissions in 2005 are equal to or less than the 1999 control strategy levels as discussed in section II.B.3.

(b) Submit a revised SIP and motor vehicle emissions budget by July 1, 2000 if additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP and motor vehicle emissions budget 1 year after MOBILE6 issued.

(d) Perform a mid-course review.

2. Proposed Disapproval-in-the-Alternative

EPA is also proposing, in the alternative, to disapprove this SIP revision, if any of the actions listed in IV.B.1, above, do not occur in accordance with the schedules in section I.D, Table 2.

C. Commonwealth of Virginia

1. Proposed Approval

EPA is proposing to approve the Commonwealth of Virginia's attainment demonstration SIP revision for the Washington area which was submitted on April 29, 1998 and supplemented on August 18, 1998, and to approve a request for an attainment date extension for the Washington area from November 15, 1999 to November 15, 2005, if the following actions occur in accordance with the schedules in section I.D, Table 2:

(1) Virginia adopts and submits an adequate motor vehicle emissions budget.

(2) Virginia submits a list of control measures that, when implemented, would be expected to provide sufficient additional emission reductions to ensure nonattainment area emissions in 2005 are equal to or less than the 1999 control strategy levels contained in the attainment demonstrations considering growth as discussed in II.B.3. The Commonwealth need not commit to adopt any specific measures on its list at this time, but if it does not do so, it must identify sufficient additional emission reductions to ensure nonattainment area emissions in 2005 are equal to or less than the 1999 control strategy levels 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.

(3) Virginia adopts and submits a rule(s) for additional emission reductions needed, if any, to ensure nonattainment area emissions in 2005 are equal to or less than the 1999 control strategy levels.

(4) Virginia adopts and submits an enforceable commitment, or reaffirmation of existing enforceable commitment to do the following:

(a) Submit measures by July 1, 2000 for additional emission reductions, if any, as required to ensure nonattainment area emissions in 2005 are equal to or less than the 1999 control strategy levels as discussed in section II.B.3.

(b) Submit a revised SIP and motor vehicle emissions budget by July 1, 2000 if additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP and motor vehicle emissions budget 1 year after MOBILE6 issued.

(d) Perform a mid-course review.

2. Proposed Disapproval-in-the-Alternative

EPA is also proposing, in the alternative, to disapprove this SIP revision, if any of the actions listed in IV.C.1, above, do not occur in accordance with the schedules in section I.D, Table 2.

EPA is soliciting public comments on the issues discussed in this document and any other relevant issues regarding the attainment demonstration for the Washington area. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** this document. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

V. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health and safety risks.

C. Executive Order 13084

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

D. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with

State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

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

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 Maryland, the Commonwealth of Virginia or the District of Columbia each of 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 on the One-Hour Ozone attainment demonstration SIP revisions submitted by Maryland, Virginia and the District does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

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

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

Dated: November 30, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–31718 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–47–200002; FRL–6502–9]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the Georgia State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the ground-level 1-hour ozone attainment demonstration State implementation plan (SIP) for the Atlanta nonattainment area submitted by the Georgia Environmental Protection Division (GAEPD) on October 28, 1999, and supplemented on November 23, 1999, provided the State follows through on certain commitments discussed in this notice. The November 23 supplemental information includes a clarification of the commitments discussed in this notice and an updated shortfall calculation. The discussion in this notice with respect to the shortfall is based on the supplemental information. The November 22 submittal meets the completeness criteria for parallel processing therefore EPA is proposing approval based on this information as well as the October 28 submittal. We are also proposing, in the alternative, to approve in part and disapprove in part this demonstration, if EPA concludes that the motor vehicle emissions budget submitted by the State is not consistent with attainment and therefore inadequate, or the State does not fulfill commitments to submit the rules to

achieve additional emission reductions, establish enforceable requirements for nitrogen oxides (NO_X) and volatile organic compound (VOC) reasonably available control technology (RACT) on major sources outside the nonattainment area, and revise Georgia's low sulfur fuel rule to address the enforcement and waiver issues in accordance with EPA guidance. EPA is also proposing to approve revisions Georgia's Rules for Air Quality and to extend the attainment date.

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

ADDRESSES: All comments should be addressed to: Scott M. Martin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363–7000.

FOR FURTHER INFORMATION CONTACT: Scott Martin at (404) 562–9036.

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 Atlanta nonattainment area.

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I. Background Information

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

1. CAA Requirements

The Clean Air Act as amended in 1990 (CAA) requires EPA to establish national ambient air quality standards (NAAQS or standards) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. CAA sections 108 and 109. In 1979, EPA promulgated the 1-hour 0.12 parts per million (ppm) ground-level ozone standard. 44 FR 8202 (Feb. 8, 1979). Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone.

An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.124 ppm. An area is violating the standard if, over a consecutive three-year period, more than three exceedances are expected to occur at any one monitor. The CAA, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the three-year period from 1987–1989. CAA section 107(d)(4); 56 FR 56694 (Nov. 6, 1991). The CAA further classified these areas, based on the area's design value, as marginal, moderate, serious, severe or extreme. CAA section 181(a). Marginal areas were suffering the least significant air pollution problems while the areas classified as severe and extreme had the most significant air pollution problems. The design value is the 4th highest ozone value over the relevant 3 year period at the violating monitor with the highest ozone levels.

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas were required to attain the 1-hour standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The Atlanta ozone nonattainment area is classified as serious and its attainment date was November 15, 1999. The area does not have three years of air quality data with three or less expected exceedances at every monitor. The State has requested an attainment date extension pursuant to the EPA policy discussed in section I.A.3.

Under section 182(c)(2) and (d) of the CAA, serious and severe areas were required to submit by November 15, 1994 demonstrations of how they would attain the 1-hour standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year (rate-of-progress or ROP). (In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions.) Today, in this proposed rule, EPA is proposing action on the attainment demonstration SIP submitted by the GAEPD for the Atlanta ozone nonattainment area. EPA has already approved the State's 9 Percent ROP plan for reductions from 1996–1999. In addition, elsewhere in this **Federal Register**, EPA is today proposing to take action on nine other serious or severe 1-hour ozone attainment demonstration and, in some cases, ROP SIPs. The additional nine areas are Greater Connecticut (CT), Springfield (Western Massachusetts) (MA), New-York-North New Jersey-Long Island (NY–NJ–CT), Baltimore (MD), Philadelphia-Wilmington-Trenton (PA–NJ–DE–MD), Metropolitan Washington, DC (DC–MD–VA), Milwaukee-Racine (WI), Chicago-Gary-Lake County (IL–IN), and Houston-Galveston-Brazoria (TX).

In general, an attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the control measures necessary to achieve those reductions. Another component of the attainment demonstration SIP is a motor vehicle emissions budget for transportation conformity purposes. Transportation conformity is a process for ensuring that States consider the effects of emissions associated with new or improved federally-funded or regionally significant 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, programs, 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, the 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 public hearing on the State submittal.[4] 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.

3. Attainment Date Delays Due to Transport

On July 16, 1998, EPA's then Acting Assistant Administrator, Richard Wilson, issued a guidance memorandum intended to provide further relief to areas affected by ozone transport.[5] The memorandum recognized that many moderate and serious nonattainment areas are affected by transported pollution from either an upwind area in the same State with a higher classification and later attainment date, and/or from an upwind area in another State that is significantly contributing to the downwind area's nonattainment problem. The policy recognized that some downwind areas may be unable to meet their own attainment dates, despite doing all that was required in their local area, because an upwind area may not have adopted and implemented all of the controls that would benefit the downwind area through control of transported ozone before the downwind area's attainment date. Thus, the policy provided that upon a successful demonstration that an upwind area has interfered with attainment and that the downwind area is adopting all measures required for its local area[6] for attainment but for this interference, EPA may grant an extension of the downwind area's attainment date.[7] Once an area receives an extension of its attainment date based on transport, the area would no longer be subject to reclassification to a higher classification and subject to additional requirements for failure to attain by its original attainment date provided it was doing all that was necessary locally.

A request from the State of Georgia for such an extension of the attainment date for the Atlanta ozone nonattainment area to 2003 and EPA's proposed response is discussed in this action.

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

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

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

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

[3] [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 [State] has relied on a commitment to submit these measures by December 2000 for the [name] 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.

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

[5] Memorandum, ''Extension of Attainment Dates for Downwind Transport Areas,'' issued July 16, 1998. This memorandum is applicable to both moderate and serious ozone nonattainment areas. A copy of this policy may be found on EPA's web site at *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

[6] Local area measures would include all of the measures within the local modeling domain that were relied on for purposes of the modeled attainment demonstration.

[7] The policy provides that the area must meet four criteria to receive an attainment date extension. In summary, the area must: (1) be identified as a downwind area affected by transport from either an upwind area in the same State with a later attainment date or an upwind area in another State that significantly contributes to downwind nonattainment; (2) submit an approvable attainment demonstration with any necessary, adopted local measures and with an attainment date that reflects when the upwind reductions will occur; (3) adopt all local measures required under the area's current classification and any additional measures necessary to demonstrate attainment; and (4) provide that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

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.

5. 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.[8] In order to have a complete modeling demonstration submission, States should have submitted the required modeling analysis and identified any additional evidence that EPA should consider in evaluating whether the area will attain the standard.

1. Modeling Requirements

For purposes of demonstrating attainment, the CAA requires serious and severe areas to use photochemical grid modeling or an analytical method EPA determines to be as effective. The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values and to predict air quality changes in the attainment year due to the emission changes which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted concentrations inside the modeling domain are at or below the NAAQS or at an acceptable upper limit above the NAAQS permitted under certain conditions by EPA's guidance. When the predicted concentrations are above the NAAQS, an optional weight of evidence determination, which incorporates but is not limited to other analyses such as air quality and emissions trends, may be used to address uncertainty inherent in the application of photochemical grid models.

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

[8] 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, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''UAMREG''). See also U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''O3TEST'').

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 [9] 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 exceedances of the ozone standard at various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration observed at a location on a single day and it would be the only reading above the standard that would be expected to occur no more than an average of once a year over a three-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

2. Additional Analyses Where Modeling Fails To Show Attainment

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

Under a WOE determination, the State can rely on and EPA will consider factors such as other modeled attainment tests, *e.g.*, a rollback analysis; other modeled outputs, *e.g.*, changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value; actual observed air quality trends; estimated emissions trends; analyses of monitored air quality 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 today.

—NOx reductions affecting boundary conditions.

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

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

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

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

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

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

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 State 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 NOx controls within the local modeling domain that were relied on for purposes of the modeled attainment demonstration.

The following table presents a summary of the CAA requirements that need to be met for each serious 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 table. 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). With submittal of the attainment demonstration on October 28, 1999, the State of Georgia has submitted all of the requirements for a serious ozone nonattainment area.

CAA REQUIREMENTS FOR SERIOUS AREAS

—New Source Review (NSR) for VOC and NOx, including an offset ratio of 1.2:1 and a major VOC and NOx source cutoff of 50 tons per year (tpy)
—Reasonable Available Control Technology (RACT) for VOC and NOx [1]
—Enhanced Inspection and Maintenance (I/M) program for vehicles
—15 percent VOC emission reduction plans
—Emissions inventory
—Emission statements rule
—Attainment demonstration
—9 percent ROP plan through 1999
—Clean fuels program or substitute
—Enhanced monitoring Photochemical Assessment Monitoring Stations (PAMS)
—Stage II vapor recovery

[1] Unless the area has in effect a NOx waiver under section 182(f). *Atlanta is not* such an area.

2. NOx Reductions Consistent With the Modeling Demonstration

The EPA completed final rulemaking on the NOx SIP call on October 27, 1998, which required States to address transport of NOx and ozone to other States. To address transport, the NOx SIP call established emissions budgets for NOx that 23 jurisdictions were required to show they would meet through enforceable SIP measures adopted and submitted by September 30, 1999. The NOx 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 NOx SIP call rule requiring States to submit rules by September 30, 1999.

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

Emission reductions that will be achieved through EPA's NOx 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 NOx 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 NOx SIP Call rule remains in effect. Therefore, EPA believes it is appropriate to allow States to continue to assume the reductions from the NOx SIP call in areas outside the local 1-hour modeling domains. If States assume control levels and emission reductions other than those of the NOx 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 NOx SIP call budgets prior to the time that all States are required to comply with the NOx SIP call. If the reductions from the NOx 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 [10] 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 NOx 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

[10] 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 x 5 km or finer. The domain is large enough to ensure that emissions occurring at 8 am in the domain's center are still within the domain at 8 pm the same day. If recirculation of the nonattainment area's previous day's emissions is believed to contribute to an observed problem, the domain is large enough to characterize this.

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.[11] 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.[12] 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.

The EPA is currently reviewing the motor vehicle emissions budgets submitted by the GAEPD on October 28, 1999, for adequacy. Therefore EPA is proposing in the alternative to disapprove in part the attainment demonstration for the Atlanta area by May 31, 1999, if the submitted motor vehicle emissions budgets are found to be inadequate by EPA. To be found adequate, 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

The attainment date GAEPD has requested if before the implementation of Tier 2 and therefore Tier 2 is not assumed for attainment.

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; 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. Thus, for each of these areas, EPA has identified specific tons per day emissions of NO_X and/or VOC that must be reduced through additional control measures in order to demonstrate attainment and to enable EPA to approve the demonstration. The need for additional emission reductions is generally based on a lack of sufficient compelling evidence that the demonstration shows attainment at the current level of adopted or planned emission controls. This is discussed in detail below for the Atlanta ozone nonattainment area. The method used by EPA to calculate the amount of additional reductions is described in a technical support document located in the record for this proposed rule. Briefly, the method makes use of the relationship between ozone and its precursors (VOC and NO_X) to identify additional reductions that, at a minimum, would bring the model predicted future ozone concentration to a level at or below the standard. The relationship is derived by comparing changes in either (1) the model predicted ozone to changes in modeled emissions or (2) observed air quality to changes in actual emissions.

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

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

First, the State will need to identify a list of potential control measures (from which a set of measures could be selected) that when implemented, would be expected to provide sufficient additional emission reductions to meet the level of reductions that EPA has identified as necessary for attainment. States need not commit to adopt any specific measures on their list at this time, but if they do not do so, they must 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[13].) 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,

[11] 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.

[12] A final budget is preferred; but, if the State public hearing process is not yet complete, then the 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.

[13] 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.

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. For Atlanta, Georgia will need to submit their adopted rules to achieve the additional reductions, as well as rules for measures relied on in their demonstration but not yet adopted, to EPA as a SIP revision to their attainment demonstration no later than July 31, 2000 in order to allow EPA to promulgate its approval of the revision by November 2000.

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 ozone precursor emissions of NO_X and VOCs. This inventory data gives an indication of where the major emissions are coming from in a particular geographic area and may indicate where it will be profitable to look for further reductions. Second, the report contains information on control measures for emission sources of NO_X and VOC (including stationary, area and mobile source measures) for which controls may not have been adopted by many jurisdictions. This would include many measures listed among the control measures EPA considered when developing the Regulatory Impact Analysis (RIA) for promulgation of the 8-hour ozone NAAQS. Third, the report includes information on standards EPA has issued for the NSPS and MACT programs as well as information on alternative control techniques (ACT) documents. This may be useful to States who may already specify RACT levels emission limits on existing source categories to which NSPS and MACT for new sources apply, but where the current RACT level of control for these existing sources do 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 other 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. Consider in evaluating where to require additional emission reductions.

The 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. The 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 emission 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 (EIP) guidance 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 for 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, without a specific commitment to the measure and associated revision to the motor vehicle emissions budget.

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 serious areas requesting an attainment date extension to a year prior to 2005, a review that occurs at a midpoint prior to the attainment date would be impractical in terms of timing. Therefore, for these areas, the State's commitment to an MCR would be a commitment to perform an early attainment assessment to be submitted by the end of the attainment year (e.g., 2003). Therefore, the GAEPD has submitted a commitment to make such an assessment for the Atlanta area.

D. In Summary, What Does EPA Expect To Happen With Respect to Attainment Demonstrations for the Atlanta 1–Hour Ozone Nonattainment Area?

The following table shows a summary of information describing what EPA expects from States to allow EPA to approve the 1-hour ozone attainment demonstration SIPs for Serious areas.

SUMMARY SCHEDULE OF FUTURE ACTIONS RELATED TO ATTAINMENT DEMONSTRATION FOR THE ATLANTA SERIOUS NONATTAINMENT AREA IN GEORGIA

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 in July 2000 measures for additional emission reductions as required in the attainment demonstration test. —Submit revised SIP & motor vehicle emissions budget by July 2000 if additional measures (due by July 2000) affect the motor vehicle emissions inventory —Perform an early attainment assessment by November 15, 2003. A list of potential control measures that could provide additional emission reductions needed to attain the standard [3]
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.
7/31/00	—State submits final rules for additional measures for emission reductions as required in the attainment demonstration test. —State revises & submits SIP & motor vehicle emissions budget if the additional measures are for motor vehicle emissions category
11/15/03	State submits early attainment assessment (for attainment date of 2003 or earlier) or mid-course review (for attainment date after 2003)

[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.''

[2] If the public hearing 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.

[3] State is not required to commit to adopt the specific measures identified in the list. However, the list cannot include any measures that place limits on highway construction unless a specific commitment to those measures are made and the motor vehicle emission budget reflects those measures.

E. What Are the Relevant Policy and Guidance Documents?

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

Recent Documents

1. ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: http://www.epa.gov/ttn/scram/. See file ADDWOE1H.

2. ''Serious and Severe Ozone Nonattainment Areas: Information on

Emissions, Control Measures Adopted or Planned and Other Available Control Measures.'' Draft Report. November 3, 1999. Ozone Policy and Strategies Group. U.S. EPA, RTP, NC.

3. Memorandum ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstrations,'' from Merrylin Zaw-Mon, Office of Mobile Sources, to Air Division Directors, Regions I–VI. November 3, 1999. Web site: http://www.epa.gov/oms/transp/traqconf.htm.

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

5. Draft Memorandum, ''1-Hour Ozone NAAQS—Mid-Course Review Guidance.'' From John Seitz, Director, Office of Air Quality Planning and Standards. Web site: *http://www.epa.gov/ttn/scram/.* See file DR6MCR.

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. Atlanta Serious 1-hour Ozone Nonattainment Area.

1. Background for Atlanta

a. Atlanta Nonattainment Status. The nonattainment classification status of Atlanta was based on ambient air sampling measurements for ozone made during 1987–1989. The ambient ozone sampling network from which these measurements were gathered consisted of five (5) sites in the Atlanta area. From these three years of data collected from five monitors, it was determined that Atlanta should be classified as a serious ozone nonattainment area based on an ozone design value of 0.162 ppm. This concentration falls in the design value range of 0.160–0.180 ppm for serious nonattainment areas.

The CAA specified that the boundaries for ozone nonattainment areas classified as serious or above would be automatically revised to encompass the entire Metropolitan Statistical Area (MSA) unless the State could demonstrate that such action would not be appropriate. The MSA for Atlanta consisted of eighteen counties at the time designations were made pursuant to the CAA.

In establishing the final boundaries for the nonattainment area, three main criteria were used to determine if certain counties should be included or excluded for nonattainment purposes. These criteria included: (1) Population density, urbanization, commuting patterns, population increases, etc., (2) the ozone precursor emission density of stationary sources and the density of mobile sources expressed as vehicle miles traveled (VMT), and (3) meteorological factors, biogenic vs. anthropogenic ozone precursor emissions and physical boundaries that may influence movement of precursor pollutants. In addition to evaluating these criteria, the State of Georgia also completed an analysis of the Atlanta area using the Urban Airshed Model. Based on the analysis, the State recommended that five counties in the MSA, Barrow, Walton, Newton, Butts, and Spalding, be removed from the nonattainment area. The EPA concurred with the recommendation from the State (see 56 FR 56694).

b. Nonattainment Boundaries. The remaining 13 counties in the MSA were designated as a serious ozone nonattainment area. The Atlanta ozone nonattainment area consists of the following counties: Cherokee, Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale. (See 40 CFR 81.311).

The Atlanta MSA currently consists of the counties listed above, as well as the following seven counties: Barrow, Bartow, Carroll, Newton, Pickens, Spalding, and Walton.

The October 28, 1999, submittal included a modeled attainment demonstration, a weight of evidence analysis, a request to extend the attainment date, a list of control measures previously approved, regulations to implement control measures modeled but not previously submitted, and commitments to achieve additional reductions needed for attainment and to correct deficient regulations.

2. Description of Controls

The following controls are being implemented to satisfy requirements of the CAA for serious areas and to achieve the emission reductions modeled in the attainment strategy.

a. Controls that were in place by May 1, 1999:

—All specific control programs required for serious areas including VOC and NO_X RACT and enhanced I/M have been implemented.

—All elements of the 15 Percent Rate of Progress (ROP) plan, which achieved 117.06 tons per day of VOC reduction by 1996 from the 1990 base. The controls implemented to achieve this reduction included, among other things, the enhanced vehicle inspection and maintenance program (I/M), low reid vapor pressure (RVP) gasoline, Stage II gasoline vapor recovery, a ban on open/slash/prescribed burning, and reliance on Federal rules for architectural and industrial maintenance coatings, auto body repair shops and new vehicle emissions. For further information please see the **Federal Register** Notice taking final approval action on the 15 percent ROP plan which was published on April 26, 1999, (64 FR 20186).

—All elements of the Post-1996 (9 percent) ROP plan, which achieved 50.10 tons per day of NO_X reductions by 1999. The central measures implemented to achieve these reductions included, among other things, NO_X RACT on major sources, and the enhanced vehicle I/M program. For further information please see the **Federal Register** Notice taking final approval action on the 9 percent ROP plan which was published on March 18, 1999, (64 FR 13348).

—A rule lowering the sulfur content of gasoline sold in a 25-county area in

and around metro-Atlanta during the ozone control season (May 1–September 30). Gasoline sold in the 25-county area was regulated by Phase 1 of the regulations beginning in 1999. The area subject to this Georgia gasoline regulation in 1999 consists of the following 25 counties: Barrow, Bartow, Butts, Carroll, Cobb, Coweta, Clayton, Cherokee, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Haralson, Henry, Jackson, Newton, Paulding, Pickens, Rockdale, Spalding and Walton. Emissions of NO_X and VOC were reduced by 11.7 and 17.8 tons per day, respectively, in 1999. To achieve these emission reductions, the volume-weighted average sulfur content of the Phase 1 gasoline is limited to 150 ppm during the ozone control season.

—Modifications at Georgia Power Plants Yates and McDonough (both located within the 13-county nonattainment area), for seasonal application of natural gas technologies, reducing NO_X emissions by an average of 25.90 tons per day in 1999.

—A Partnership For A Smog-Free Georgia (PSG) Program has been put in place to obtain voluntary actions from local businesses, governments, schools, universities and the general public which reduce VOC and NO_X emissions by at least 13.0 and 8.6 tons per day, respectively, during the summer season when ozone concentrations are the highest.

b. Controls that are to be implemented by May 1, 2003: The following control measures have been submitted for approval into the SIP. These measures were included in the attainment modeling. EPA is proposing to approve these regulations. Approval of the fuel and RACT regulations is dependent upon GAEPD following through on the submitted commitments to correct deficiencies in these rules. If not, EPA would, in the alternative, disapprove the regulations.

—A rule further lowering the sulfur content of gasoline sold in a 45-county area in and around metro-Atlanta during the ozone season. Additional (Phase 2) regulation of Georgia gasoline to produce even greater NO_X reductions will require refinery modifications which can not be completed to produce delivery of such gasoline by 1999. Therefore, Phase 2 requirements set to achieve additional reductions in gasoline-powered vehicle exhaust will go into effect in 2003. To achieve the emission reductions, the volume-weighted average sulfur content of this gasoline will be limited to 30 ppm by weight with a 150 ppm per gallon maximum level established. This fuel will be required year-round and is consistent with the recent EPA proposal for a national fuel sulfur control program. The area subject to this Phase 2 Georgia gasoline regulation in 2003 will consist of the 25 counties listed above and the following additional 20 counties: Banks, Chattooga, Clarke, Floyd, Gordon, Heard, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Morgan, Oconee, Pike, Polk, Putnam, Troup, and Upson. The expected NO_X and VOC reductions from Phase 2 of the gasoline rule will be 23.99 and 30.50 tons per day, respectively, in the 45-county area in 2003.

—Modifications at point sources with large electric utility steam generating units, located in and near the nonattainment area and the area of significant impact, reducing NO_X emissions by about 183.45 tons per episode day in 2003.

—Modifications at three point sources with large NO_X emitting units other than electric utility steam generating units, located in the 13 county area, reducing NO_X emissions by 10.12 tons per day in 2003.

—Revised enhanced I/M requirements for the 13 county nonattainment area providing additional NO_X and VOC emission reductions of 11.34 and 13.17 tons per day, respectively, in 2003. To further reduce mobile source emissions to attain and maintain the ozone standard, GAEPD is revising the enhanced I/M program by implementing the following changes: (1.) Annual rather than biennial testing for covered vehicles; (2.) conversion of the Acceleration Simulation Mode (ASM) test to a more stringent 2-mode ASM 2525/5015 test for older vehicles; and (3.) The addition of an On Board Diagnostic (OBD) test for newer vehicles. In addition, older vehicles are redefined as model years 1975 through 1995; newer vehicles are redefined as model years 1996 and newer. Also, new vehicles up to three years old are exempted from testing.

—New source permitting requirements for sources emitting greater than or equal to 100 tons/year of NO_X and VOC are expanded to applicable point sources located in a 32 county area outside the designated nonattainment area, providing NO_X and VOC emissions reductions of 12.4 and 0.2 tons per day, respectively, in 2003.

—RACT requirements are expanded to applicable point sources located in a 32 county area outside the nonattainment area, providing NO_X and VOC reductions of 55.8 and 14.3 tons per day, respectively, in 2003.

—A new rule to regulate NO_X emissions from medium-sized new boilers and other fuel-burning equipment in the Atlanta ozone nonattainment area and the 32 county area outside the nonattainment area, providing NO_X emission reductions of 0.7 tons per day in 2003.

—A new rule to regulate NO_X emissions from new and existing stationary engines and new stationary gas turbines used to generate electricity (including peaking power). This regulation applies to such facilities located in the Atlanta ozone nonattainment area and the 32 county area outside the designated nonattainment area and provides a NO_X reduction of at least 30 tons per day, within the 45-county area, in 2003.

—National VOC and NO_X control measures on on-road mobile, off-road mobile, and area sources, including the national low emission vehicle (NLEV) program, locomotive engine standards, phase 2 requirements for VOC consumer and commercial products, marine engine standards, and phase 2 and 3 non-road diesel engine standards.

3. Conformity Budget

Based on projected VMT growth and additional control measures identified for the 13-county Atlanta nonattainment area and used in the attainment demonstration, the State submitted motor vehicle emission budgets for 2003 of 224.13 and 132.21 tons per typical summer day NO_X and VOC, respectively.

These mobile budgets of 224.13 tons per day NO_X and 132.12 tons per day VOC were derived from the most accurate model available for predicting 2003 motor vehicle emissions. They represent 2003 VMT growth data projected from a state-of-the-art travel demand model for the 13 counties and emission factors from EPA's MOBILE5b emission factor model. The control measures identified and modeled for mobile emissions used to establish these budgets, along with all other control measures adopted or committed to in this plan, will result in attainment of the 1-hour ozone air quality standard by 2003. The revised conformity budget for NO_X is 10 tons greater than the budget contained in the 9 percent plan. The VOC budget is more stringent than the one contained in the 15 percent plan. The change is due to a model change from MOBILE5A to MOBILE5B

providing more accurate mobile source emissions.

The GAEPD has provided a clearly identified conformity budget for which the Region has initiated a 90 day adequacy review process. The public comment period began on November 3, 1999; however requests for copies of the submittal were received and copies provided to the requestor by November 18. As such, the comment period will continue for 30 days until December 17, 1999. (Memorandum, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision,'' from Gay MacGregor, Director, Regional and State Programs Division, Office of Mobile Sources, issued May 14, 1999, to Regional Air Division Directors.)

In accordance with EPA policy, because the attainment demonstration identifies additional emission reductions needed for attainment, as described below, the Region cannot find the motor vehicle emissions budgets adequate for conformity purposes unless the State commits to adopt measures that will achieve the necessary additional reductions, and identifies a menu of possible measures (e.g., busses, clean fuels, vehicle inspection and maintenance, stationary source controls) that could achieve the emission reductions without requiring additional limits on highway construction. The GAEPD has stated that if the additional short term reductions necessary for attainment include reductions from onroad mobile source categories, these emission reductions will be achieved without requiring additional limits on highway construction. EPA preliminarily concludes that these budgets are adequate. However, a final decision on adequacy will be made after the close of the public comment period on adequacy.

4. Reductions

The emission reductions assumed in the modeling analysis for the Atlanta nonattainment area are summarized in the following table.

OZONE ATTAINMENT DEMONSTRATION SIP REDUCTIONS

Control measure	1999 NO_X reduction (TPD)	1999 VOC reduction (TPD)	2003 NO_X reduction (TPD)	2003 VOC reduction (TPD)
Georgia gasoline	11.7	17.8	23.54	30.50
Large electric utility steam generators [1]	25.9	0	201.48	0
Partnership for a Smog Free Georgia	0	0	8.56	13.02
Large NO_X units in 13 Co. NAA	0	0	18.83	0
Changes in Enhanced I/M in 13 Co. nonattainment area	.....	.....	11.34	13.17
Expanded new source review rule	0	0	22.67	0.2
Expanded RACT rules	0	0	100.13	14.3
New boilers & fuel burning equip	0	0	0.67	0
Stationary engines & gas turbines	0	0	30.00	0
0.15 lb/MMBtu NO_X SIP Call limit	0	0	195.75	0
National LEV program	0	0	12.73	8.66
Locomotive engine standards	0	0	4.88	0.03
Consumer/commercial products II	0	0	0	13.82
Marine engine standards	0	0	0	1.25
Nonroad diesel eng. stand. II & III	0	0	7.13	12.97
Total	37.6	17.8	637.71	107.92

[1] Reduction estimates are in terms of episode day instead of typical ozone season day emissions.

5. Description of Modeling

The CAA requires that serious and above ozone nonattainment areas perform photochemical grid modeling to help determine the level of emission reductions of VOC and NO_X necessary to attain the 1-hour ozone standard. The GAEPD fulfilled this requirement primarily through the application of the Urban Airshed Model, Variable Grid Version (UAM–V). The UAM–V model is suitable for evaluating the air quality effects of emission control scenarios because it accounts for the spacial and temporal variations in emissions and emission reactivity. The UAM–V model, used in the modeling demonstration for the Atlanta area, is approved for use in the attainment demonstration by the EPA and was applied to the Atlanta area consistent with EPA modeling guidance. Approval for the use of the UAM–V model was granted after GAEPD successfully performed a model comparison of the UAM–IV model, the EPA regulatory model, with UAM–V.

The modeling domain for the attainment demonstration consists of two nested grids. The inner grid, or fine grid, is a 40 by 40 grid with each grid being 4 by 4 km. This grid includes approximately 43 counties in the northern part of the State of Georgia. The vertical structure of this domain consists of five layers. The top of the modeling domain is 2200 m agl (above ground level). The outer portion of the nested grids is much larger than the fine grid, and extends approximately 80km in all directions beyond the fine grid into Alabama, Tennessee, and North and South Carolina. Each coarse grid cell size is 8 by 8 km. The overall domain size is approximately 320 x 320 km. By including these additional grid cells, boundary condition information for the nested, urban grid is simulated in the coarse grid rather than estimated by the user. The top of the coarse grid modeling domain is the same as the top of the fine grid modeling domain (2200 m agl).

The GAEPD modeled three ozone episode days, July 31, 1987, August 1, 1987, and July 8, 1988. These episodes were chosen to: (1) Represent the meteorological regimes that were most conducive to the formation of ozone in the Atlanta area, and (2) exhibit pervasive exceedances of the ozone standard in the ozone monitoring network. The three episodes included two days with the highest exceedances that have been monitored in the Atlanta nonattainment area. The modeling inputs were developed in a technically and scientifically sound manner such that acceptable model performance was achieved within prescribed statistical levels recommended by EPA. The same base year meteorological inputs for each episode day were combined with 2003 attainment year projected emission inventories to simulate the benefits of various emission control scenarios to bring the area within the local modeling domain into attainment.

The boundary conditions for the coarse grid domain for the 2003 attainment simulation of the July 1988 episode were derived from OTAG modeling for the Run 5 sensitivity simulation. Run 5 emissions most closely represent the emission budgets in the original NO_X SIP Call final rule. A comparison of ozone concentrations predicted by Run 5 and those predicted using the EPA default values of 40 ppb ozone for all boundary grids produced peak concentrations that differed by only one ppb. Thus, the OTAG Run 5 boundary conditions yield about the same effect as EPA default boundary conditions. Since the 1987 episode is a stagnant episode, the differences in boundary conditions are considered less critical than for the 1988 episode. Therefore, EPA default boundary conditions are used in the control strategy modeling for the 1987 episode. The GAEPD further reduced emissions in the coarse grid by applying emission limits consistent with the NO_X SIP Call to specific power plants.

The 2003 Atlanta control strategy contains regulations that will be implemented both inside the 13-county nonattainment area and in the remaining counties of the fine grid. The UAM–V simulation of the control strategy predicts modeled ozone peaks (ppb) of 164.3 (8/31/87), 132.9 (8/1/87), and 154.2 (7/8/88), each of which exceeds the model exceedance test of 124 ppb. The GAEPD applied the statistical attainment test per the EPA guidance, ''On Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS (EPA, 1996).'' This test is also not passed. Of the three benchmarks comprising the statistical test, only benchmark three is passed. Benchmark one is failed because more than one exceedance of 124 ppb occurs in a subregion of the fine grid. Benchmark two is failed because the predicted (modeled) daily maximum ozone concentrations for the three episode days exceed the maximum exceedance limit allowed by the statistical test. On July 31, 1987, the allowed maximum exceedance is 130 ppb, which is 34.3 ppb lower than the modeled peak concentration for this day. The two remaining episodes have exceedance limits of 124 ppb. The third benchmark is passed since the combined reduction in grid-cell hours for the three episodes of 85% exceeds the 80% benchmark limit. Since the two attainment tests are failed, a WOE analysis can be used to determine whether the area will, in fact, attain.

The 2003 control strategy simulations indicate that ozone levels in the Atlanta area will be significantly reduced if all currently proposed controls are implemented. Even though the statistical attainment test and the modeling exceedance test are not satisfied, there are several reasons to believe that Atlanta will attain the standard in 2003 through a Weight of Evidence (WOE) analysis. The WOE for the Atlanta SIP includes: (a) An estimate of additional reductions needed for attainment, calculated without the use of additional photochemical grid modeling, (b) EPA's modeling of the NO_X SIP Call reductions; (c) estimates of the future design value using the Relative Reduction Factor (RRF) analysis, and (d) consideration of the additional NO_X reductions from sources or programs that were not modeled in the 2003 control strategy but are either subject to an emission reduction regulation or a voluntary program.

The first WOE analysis involves the use of information from the photochemical grid modeling and ambient air quality monitoring to estimate additional levels of emission reductions needed for attainment of the 1-hour NAAQS for ozone. GAEPD used EPA's Method 1 technique to identify the additional percentage reduction in NO_X and VOC from the 1996 emissions, needed for attainment. This analysis strengthens the weight of evidence and accounts for high modeled peaks by estimating the additional measures that at a minimum bring the model estimated future ozone design value to 124 ppb or below. The method is based on the assumption that the relationship between ozone and its precursors (VOC and NO_X) can be calculated. A detailed discussion of the steps used in Method 1 to calculate the additional emission reductions needed for attainment is provided in the technical support document (TSD) which can be obtained from the Regional Office staff contact. GAEPD's application of this procedure estimates that additional reductions of 3.71 percent NO_X and 3.71 percent VOC are needed. Per EPA guidance, the State has the flexibility to substitute NO_X reductions for VOC and VOC for NO_X. Adequate supporting documentation for the basis of any substitution must be submitted to EPA along with the adopted regulation.

Where modeling demonstrates substantial improvements in model predicted ozone peaks when emission reductions are applied in counties adjacent to the nonattainment area, the area for control may be extended to include these adjacent counties. However, if controls on source emissions from adjacent counties are used to meet the shortfall, the source's emissions must be included in the total emissions for the base case and the percentage emission reductions of NO_X and VOC (i.e., shortfall) need to be recalculated. Before EPA can grant final approval of this SIP and extend the attainment date for the 1-hour ozone NAAQS, the GAEPD must: (1) Provide revised calculations for the shortfall calculations if sources outside of the nonattainment area are being controlled as well as documentation for any substitution, and (2) submit as a revision to the SIP, fully adopted regulations for controlling those sources necessary to achieve the additional emission reductions. The GAEPD has committed to identify and adopt regulations for the sources that will be controlled to address the additional tonnage of NO_X and VOC emission reductions that are needed for attainment estimated in this WOE and to implement these control measures by May 1, 2003. The additional reductions identified by this method, considered along with other weight of evidence presented in the technical analyses for the attainment demonstration, indicate the area will attain the 1-hour ozone standard by 2003. GAEPD submitted a menu of options that include, but is not limited to, expansion of enhanced I/M, open burning, NSR and RACT; on-road mobile controls such as heavy duty I/M, diesel controls, and market based incentives; off-road mobile controls including diesel fuels, locomotive I/M, airport controls, construction equipment and lawn and garden equipment; area sources, and point sources including additional utility controls.

The second WOE analysis involves the use of a regional rollback design value analysis developed by EPA. In July of 1998, EPA recommended the use of a methodology that uses the results from modeling performed to support EPA's NO_X SIP Call Supplemental Notice of Proposed Rulemaking (SNPR). This methodology uses the SNPR modeling results in a manner that better replicates the monitored attainment test. The monitored attainment test requires that the ozone design value recorded at each monitor in the nonattainment area be less than 125 ppb. The design value for a monitor is the fourth highest 1-hour ozone average concentration measured over a period of three years. The highest design value for all of the monitors in a network becomes the design value for the nonattainment area. The SNPR modeling was used by EPA to estimate the amount of ozone reduction achieved after regional NO_X controls are in place. The ozone reduction estimate was determined by examining modeled ozone

concentrations from three episodes (1991, 1993 and 1995) in the 1995–1996 base year period and the 2007 control case and then constructing county-specific reduction factors. Reduction factors were then applied to county-specific design values for the 1994–1996 time period. The resulting ozone concentrations were then compared to the current 1-hour ozone standard (124 ppb) to determine the likelihood of a particular county reaching attainment after the NO_X SIP call controls are in place. Results from this exercise and a summary document containing the adjusted design values resulting from EPA's analysis for all of the counties with ozone monitors in the 22 state area affected by the NO_X SIP Call and a complete description of this procedure can be found in the Region 4 TSD. The results of EPA's rollback analysis indicate attainment of the 1-hour ozone NAAQS for all counties in the Atlanta nonattainment area.

The third WOE analysis uses air quality modeling results to estimate a design value in 2003 at each ozone monitor and EPA's draft 8-hour ozone modeling guidance (''Use of Models and Other Analyses In Attainment Demonstrations for the 8–Hour Ozone NAAQS, EPA–454/R–99–004 (1999)'') to develop a local relative reduction factor (RRF). If the future design value at or below 124 ppb is predicted using this local rollback test, then the results provide further WOE that the Atlanta area will achieve the 1-hour ozone NAAQS by the end of 2003. A 2003 ozone design value that is less than 124 ppb is estimated at every monitor in the Atlanta nonattainment area except the Confederate Avenue monitor and for the design value that is predicted using the daily maximum concentration in the domain, which is 127 ppb. Although progress will be made towards attainment according to this test, the two design values that remain above the standard indicate that additional emission reduction measures are required as indicated in the first WOE analysis.

The fourth WOE analysis involves consideration of the additional NO_X reductions from sources or programs that were not modeled in the 2003 control strategy but are either subject to an emission reduction regulation or a voluntary program. Specifically, a rule has been adopted and submitted to EPA that regulates the use of stationary gas turbines and stationary engines for electricity generation. The rule significantly curtails the use of such units. These sources were not specifically modeled because their emissions are episodic. The emissions from these units occur during the summer when the potential for ozone formation is high. The NO_X reductions from this rule are expected to be 30 tpd. A sensitivity analysis of these low-level source emissions indicates that NO_X reductions of 30 tpd will reduce ozone concentrations by approximately 10 ppb.

A voluntary program that was not fully modeled is the Partnership for a Smog-Free Georgia (PSG) which is a proactive and innovative approach to reducing ozone in the metro-Atlanta area. It is specifically aimed at reducing the number of days when ozone levels are high, thus reducing the health and environmental risks associated with such high levels. PSG focuses on collective and individual actions to change or reduce emissions from the mobile and area source categories. These include changes in vehicle volumes and traffic patterns by promoting alternative commuting options, and other actions that involve operational and maintenance activities. The model assumed the reductions from the PSG program to be only 3 percent of the baseline emissions reductions needed for attainment in the 13 county nonattainment area as allowed by EPA guidance. Pursuant to that guidance, SIPs may not include for emission reduction credit more than 3 percent of the baseline reductions from voluntary measures. However, GAEPD expects larger emission reductions. GAEPD estimates that as much as a 20 percent reduction in vehicle miles traveled can be achieved through the program, which would result in a 35 tons/day decrease in on-road mobile source NO_X emissions in the 13 county nonattainment area. Based on results from sensitivity runs on mobile sources in the 13 counties, a NO_X reduction of 11.6 tons/day results in a 4 ppb decrease in the peak ozone concentration for the July 31, 1987 episode. Assuming a linear relationship, the 29.75 tons/day (85 percent of the 35 tpd, since 3 percent of the reduction in VMT has already been modeled) mobile source decrease from the PSG program would result in a 10.3 ppm decrease in ozone. Since this emission reduction would be achieved throughout the 13 county area, it is expected that both the Confederate Avenue monitoring Site and the Peak Area would be at or below the ozone standard with the highest being the Confederate Avenue Site with a design value of 124 ppb ozone. Finally, the benefit of the PSG does not occur only within the 13 county ozone nonattainment area boundaries. The effect of the program will be to reduce VMT for motorists outside the area through car pooling and other alternate means of travel and work practices. Therefore, this program will achieve emission reductions that will reduce ozone concentrations beyond that predicted by the modeled 2003 control scenario. However, these additional reductions may not receive emission reduction credit towards demonstrating attainment in the SIP.

6. Rule Revisions

a. Description of Major Revisions to Rules for Air Quality: The October 28, 1999, attainment demonstration submittal included several regulations that will reduce emissions of NO_X and VOC in the Atlanta modeling domain. EPA is proposing to approve the revisions to Georgia's Rules for Air Quality Control Chapter 391–3–1 described below:

Rule 391–3–1–.01 subsection (nnnn), relating to the definition of ''Procedures For Testing and Monitoring Sources of Air Pollutants'' is being amended.

As of August 1, 1999, the definition of the GAEPD's Procedures For Testing and Monitoring Sources of Air Pollutants has been updated to incorporate certain changes and additions. Procedures for testing and for certain monitoring relating to new rules for NO_X from fuel burning equipment and for gas turbines and engines have been added to the manual. Other revisions include the addition of procedures for determining compliance with Rule 391–3–1.02(2)(kkk) relating to VOC emissions from aerospace manufacturing and rework facilities, changes to rules for gasoline marketing relating to testing and reporting procedures to clarify the time frames for certain requirements, addition of the requirements under the Federal New Source Performance Standards for Boilers and Industrial Furnaces (40 CFR 60, subpart Db) pertaining to reporting and record keeping, and typographical corrections. Additionally, appendix H is added to provide procedures for calculating VOC emissions from fiber-reinforced plastics manufacturing processes.

Rule 391–3–1–.02, subparagraph (2)(ii) relating to ''VOC Emissions from Surface Coating of Miscellaneous Metal Parts and Products'' is being amended. This rule is amended to exempt aerospace manufacturing and rework facilities from the rule. The rule is also being modified in order to keep Rule (ii) consistent with the most current Architectural Aluminum Manufacture's Association (AAMA) standard in place.

The current rule only exempts the surface coating of airplane exteriors.

Rule (ii) is no longer applicable to aerospace sources because the State has previously submitted a new rule limiting VOC emissions from aerospace manufacturing and rework facilities that meets EPA requirements. In order to keep Rule (ii) consistent with the current AAMA standard, subparagraph 5.(xiii) has been modified to state that the coatings must satisfy the requirements of the most recent AAMA publication (number AAMA 605.2). This will prevent the standard that is stated in Rule (ii) from becoming out dated.

Rule 391–3–1–.02 subsection (2)(tt), relating to ''VOC Emissions from Major Sources,'' is being amended. The coverage of the rule is being expanded beyond the existing 13 counties to include affected VOC sources located in the additional counties of Banks, Barrow, Bartow, Butts, Carroll, Chattooga, Clarke, Dawson, Floyd, Gordon, Hall, Haralson, Heard, Jackson, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Morgan, Newton, Oconee, Pickens, Pike, Polk, Putnam, Spalding, Troup, Upson, and Walton (additional 32 counties). Emissions from these counties have been determined to affect ozone formation in the metro-Atlanta area.

By May 1, 2003, RACT will be required on all VOC sources with VOC emissions in excess of 100 tons per year, that are located in the 32 additional counties. Sources in these counties that were in operation on or before October 1, 1999, will be required to submit a demonstration of appropriate RACT for controlling their VOC emissions. The GAEPD has committed to revise the rule to meet all EPA requirements prior to final approval. See discussion under commitments for full approval below.

Rule 391–3–1–.02 subsection (2)(vv), relating to ''Volatile Organic Liquid Handling and Storage'' is being amended to expand the coverage of the rule to include affected VOC sources located in the 32 additional counties because the emissions from these counties have been determined to affect ozone formation in the metro-Atlanta area.

By May 1, 2003, the RACT under this regulation will be required on all volatile organic liquid handling and storage facilities with VOC emissions in excess of 100 tons per year, that are located in the additional 32 counties. Sources in these counties that were in operation on or before October 1, 1999, will be required to comply by May 1, 2003 and sources that began operation after October 1, 1999, will be required to comply upon startup.

Rule 391–3–1–.02 subsection (2)(yy) relating to ''Nitrogen Oxide Emissions from Major Sources'' is being amended. The coverage of the rule is being expanded to include affected sources of NO_X located in the 32 additional counties because the emissions from these counties have been determined to affect ozone formation in the metro-Atlanta area.

By May 1, 2003, RACT will be required on all NO_X sources with emissions in excess of 100 tons per year, that are located in the 32 additional counties. Sources in these counties that were in operation on or before October 1, 1999, will be required to submit a demonstration of appropriate RACT for controlling their NO_X emissions. The GAEPD has committed to revise the rule to meet all EPA requirements prior to EPA's final approval of the attainment demonstration. See discussion under commitments for full approval below.

Rule 391–3–1–.02 subsection (2)(bbb) relating to Gasoline Marketing is being amended to make several changes which include addition, clarification, and deletion. Product documentation must clearly indicate gasoline which complies with the requirements of the fuel rule. Effective April 1, 2003, twenty counties (Banks, Chattooga, Clarke, Floyd, Gordon, Heard, Jasper, Jones, Lamar, Lumpkin, Madison, Meriwether, Monroe, Morgan, Oconee, Pike, Polk, Putnam, Troup, and Upson) will be added to the area covered by the fuel rule. Subsection 2.(iii), covering the 1998 RVP period, is deleted in its entirety because the rule is revised to clarify that calendar year pool averaging for sulfur content is for the RVP period, i.e., June 1 to September 15 of each year. Beginning April 1, 2003, the 30 ppm sulfur standard is applied year-round with a 150 ppm sulfur per gallon cap; for purposes of compliance with this annual averaging requirement, the program year is April 1 through March 31. The limits on olefins and aromatic hydrocarbons are deleted because for compliance purposes, importers will report based on the sampling and testing conducted at the refinery level only. Clarification is provided to carriers regarding the area of coverage. Subsection 9 relating to future rule evaluation and recommendations is deleted due to the completion of the required evaluation and recommendations.

Rule 391–3–1–.02 subsection (2)(ccc) relating to ''VOC Emissions from Bulk Mixing Tanks'' is being amended to expand the coverage of the rule to the additional 32 counties because the emissions from these counties have been determined to affect ozone formation in the metro-Atlanta area.

By May 1, 2003, Reasonably Available Control Technology (RACT) will be required on all VOC facilities with VOC emissions in excess of 100 tons per year from bulk mixing tanks located in the additional 32 counties. This rule change sets the level for RACT for bulk mixing tanks at facilities in these additional counties at the same level as for the existing nonattainment counties. Sources in these counties that were in operation on or before October 1, 1999, will be required to comply by May 1, 2003 and sources that began operation after October 1, 1999, will be required to comply upon startup.

Rule 391–3–1–.02 subsection (2)(ddd) relating to ''VOC Emissions from Offset Lithography'' is being amended to expand the coverage of the rule to include affected VOC sources located in the additional 32 counties because the emissions from these counties have been determined to affect ozone formation in the metro-Atlanta area.

By May 1, 2003, RACT will be required on all offset lithography operations with VOC emissions in excess of 100 tons per year, that are located in the additional 32 counties. This rule revision sets the level for RACT for offset lithography operations at facilities in these additional counties at the same level as for the existing nonattainment counties. Sources in these counties that were in operation on or before October 1, 1999, will be required to comply by May 1, 2003 and sources that began operation after October 1, 1999, will be required to comply upon startup.

Rule 391–3–1–.02 subsection (2)(eee) relating to ''VOC Emissions from Expanded Polystyrene Products Manufacturing'' is being amended to expand the coverage of the rule to include affected VOC sources located in the additional 32 counties because the emissions from these counties have been determined to affect ozone formation in the metro-Atlanta area.

By May 1, 2003, RACT will be required on all expanded polystyrene products manufacturing facilities with VOC emissions in excess of 100 tons per year, that are located in the additional 32 counties. This rule change sets the level for RACT for expanded polystyrene products manufacturing operations at facilities in these additional counties at the same level as for the existing nonattainment counties. Sources in these counties that were in operation on or before October 1, 1999, will be required to comply by May 1, 2003 and sources that began operation

after October 1, 1999, will be required to comply upon startup.

Rule 391–3–1–.02 subsection (2)(hhh) relating to ''Wood Furniture Finishing and Cleaning Operations'' is being amended to expand the coverage of the rule to include affected VOC sources located in the additional 32 counties because the emissions from these counties have been determined to affect ozone formation in the metro-Atlanta area.

By May 1, 2003, RACT will be required on all wood furniture finishing and cleaning operations with VOC emissions in excess of 100 tons per year, that are located in the 32 additional counties listed above. This rule change sets the level for RACT for wood finishing and cleaning operations at facilities in these additional counties at the same level as for the existing nonattainment counties. Sources in these counties that were in operation on or before October 1, 1999, will be required to comply by May 1, 2003 and sources that began operation after October 1, 1999, will be required to comply upon startup.

Rule 391–3–1–.02 subsection (2)(jjj) relating to ''NO_X Emissions from Electric Utility Steam Generating Units'' is being amended to expand the coverage of the rule to include affected coal-fired electric utility steam generating units in the counties of Bartow, Heard and Floyd and to include a lower average NO_X emissions limit for all affected units. The emissions from these sources have been determined to affect ozone formation in the metro-Atlanta area.

Effective May 1, 2003, the NO_X emissions from all affected units will be limited to the equivalent of 0.15 lb/million Btu. Compliance with this emission level will be determined in the following manner. Each source has been assigned a specific emission limit. If the actual emission rate from each source is less than its limit, then all affected sources will be deemed in compliance. If the actual emission rate from any source is greater than its limit, then compliance would be demonstrated by showing that the actual Btu-weighted average emission rate for all affected sources is less than the limit in subsection 3(ii) of the rule. The unit specific emission limits have been determined such that their potential Btu-weighted average does not exceed the limit in subsection 3(ii). The compliance period will be based on a 30-day rolling average beginning May 1 and ending September 30 of each year.

Rule 391–3–1–.02, subparagraph (2)(kkk) relating to the ''VOC Emissions from Aerospace Manufacturing and Rework Facilities'' is being added to be consistent with federal requirements that will limit VOC emissions from aerospace manufacturing and rework facilities. This rule is based on the Aerospace Control Techniques Guidelines (CTG) Document which was published by the US EPA on March 24, 1998. This CTG is intended to supersede potential applicability of the Miscellaneous Metal Parts CTG RACT requirements for manufacturing and rework operations of aerospace vehicles and components.

This rule establishes separate VOC limitations for primers, topcoats, various specialty coatings, type I maskants, and type II maskants. The rule also requires that all affected aerospace facilities utilize coating application techniques and work practice standards that will lower VOC emissions. This rule will apply to all aerospace manufacturing and rework facilities that have potential VOC emissions greater than 25 tons per year, that are in the metro-Atlanta nonattainment area, and 100 tons per year, that are in the additional 32 counties.

Rule 391–3–1–.02 is being amended by adding a new subsection (2)(lll) relating to ''NO_X Emissions from Fuel-burning Equipment.'' This rule will regulate NO_X emissions from new boilers and other fuel-burning equipment whose heat input capacity is equal to or greater than 10 million Btu/hr and less than or equal to 250 million Btu/hr in a 45 county area in and around Atlanta including the 13 county ozone nonattainment area and the additional 32 counties. This rule is effective in all 45 counties because these emissions have been determined to affect ozone formation in the metro-Atlanta area.

NO_X emissions from affected boilers installed or modified in the 45 county area on and after May 1, 1999 will be limited to 30 parts per million at 3 percent oxygen. The limit will apply during the period from May 1 through September 30 of each year. The compliance date for this rule is May 1, 2000.

Rule 391–3–1–.02 is being amended by adding a new subsection (2)(mmm) relating to ''NO_X Emissions from Stationary Gas Turbines and Stationary Engines used to Generate Electricity.'' This rule will regulate NO_X emissions from new stationary gas turbines and new and existing stationary engines that are located in a 45 county area in and around Atlanta, including the 13 county ozone nonattainment area and the 32 additional counties. This rule is effective in all 45 counties because these emissions have been determined to affect ozone formation in the metro-Atlanta area.

NO_X emissions from affected stationary gas turbines installed or modified in the 45 county area on or after January 1, 1999 and before October 1, 1999 will be limited to 42 parts per million at 15 percent oxygen, with a compliance date of May 1, 2000. NO_X emissions from affected stationary gas turbines installed or modified in the 45 county area on or after October 1, 1999 will be limited to 30 parts per million at 15 percent oxygen, with compliance required upon startup. NO_X emissions from affected stationary engines installed or modified in the 45 county area on or after April 1, 2000 will be limited to 80 parts per million at 15 percent oxygen and compliance will be required upon startup. Affected stationary engines in the 45 county area that are in operation before April 1, 2000 will have to comply with a NO_X emissions limit of 160 parts per million at 15 percent oxygen by no later than May 1, 2003. The limits in this rule will apply during the period from May 1 through September 30 of each year.

Rule 391–3–1–.02 subsection (6) relating to ''Specific Monitoring'' is being amended by adding a new subsection (a)2.(xii) which requires affected sources to install and operate continuous emissions monitoring systems for NO_X and for oxygen or an approved alternative. The affected sources are those subject to the new rules for boilers (rule 391–3–1.02(2)(III)).

A requirement to install and operate monitors in order to determine initial compliance and track on going compliance with the above rule for boilers with a maximum design heat input capacity equal to or greater than 100 million BTU has been added. The rule allows, as an alternative, the use of predictive emissions monitoring systems for certain fuels.

Rule 391–3–1–.03 subsection (6)(b)11 relating to ''Stationary Engines'' is being amended to narrow the group of stationary engines that are not required to obtain air quality permits.

Stationary engines with a rated capacity of 300 kilowatts or greater that are used for emergency and/or peaking power and that are located in a 45 county area in and around Atlanta would no longer be exempt from air quality permitting.

Rule 391–3–1–.03, paragraph (8)(c)(9) relating to ''Permit Requirements'' is being amended to correct a typographical error.

Federal regulation 40 CFR, Part 52, Appendix S is referenced in this

regulation. It was incorrectly listed as Part 51.

Rule 391–3–1–.03, paragraph (8)(c)(13) relating to ''Permit Requirements'' is being amended to remove obsolete requirements.

This paragraph, relating to specific nonattainment New Source Review, contains requirements relating to internal offsets. Internal offsets are only germain to states which have a ''dual source'' definition of stationary source. Georgia has a ''plantwide'' definition of stationary source. Therefore, requirements related to internal offsets have been removed.

Rule 391–3–1–.03, subsection (8)(c) is being amended by adding a new section (14) relating to ''Additional Provisions for Areas Contributing to the Ambient Air Level of Ozone in the Metropolitan Atlanta Ozone Nonattainment Area.'' The purpose of this section is to clarify the specific nonattainment new source review (NSR) requirements that will apply to sources locating in the 32 additional counties.

New ''major'' sources (any source with the potential to emit at least 100 tons per year of VOC or NO_X) or any source undergoing physical change or change in the method of operation which results in a net increase of 40 tons or more of VOC or NO_X (major modification) and located in one of the 32 additional counties is subject to modified nonattainment NSR requirements. Sources subject to these provisions in the 32 additional counties are required to meet control requirements consistent with Best Available Control Technology (BACT) instead of Lowest Achievable Emission Rate (LAER) which is required in the 13 county nonattainment area. The installation of air pollution control equipment or other emission reduction technologies are not considered modifications if they are determined to be environmentally beneficial and do not increase capacity, and a 1 to 1 emission offset is obtained. Projects outside the nonattainment for which complete applications were received prior to the proposal of the NSR program area are exempt from the NSR provisions.

Rule 391–3–1–.03 subsection (8)(e) relating to ''Permit Requirements'' is being amended to require those sources in the additional 32 counties to comply with new source permitting requirements because the emissions from these counties have been determined to affect ozone formation in the metro-Atlanta area.

This rule identifies the 32 additional counties where the rule will apply and requires new or modified stationary sources in the counties to comply with the requirements of section (c). This rule will apply to new or modified stationary sources emitting 100 tons per year or more of volatile organic compounds or nitrogen oxides.

b. Description of Major Revisions to the Inspection and Maintenance Rules. The EPA is proposing to approve the revisions to Georgia's Rules for Enhanced Inspection and Maintenance Chapter 391–3–20 described below:

Rule 391–3–20–.01 relating to ''Definitions'' is being amended to change or delete definitions related to biennial testing, to modify the definition of ASM to include a dual-mode ASM test for older vehicles, to update the reference to the Federal I/M regulations, to define the term ''Waiver,'' and to renumber the definitions.

The ASM test requirement is modified to require a dual-mode ASM 2525/5015 test, effective January 1, 2002. The definitions of ''Off-Year Inspection'' and ''Regular Inspection'' are deleted since they are not relevant after the change to an annual program. The term ''Waiver'' is defined. The Federal I/M regulations, as of July 1, 1999, are referenced. Other clarifications are made.

Rule 391–3–20–.03 paragraph (4) relating to ''Covered Vehicles; Exemptions'' is being amended to extend the exemption period for new vehicles.

Effective January 1, 2001, new vehicles are exempt from testing until the test year three years following the model year of the vehicle.

7. Commitments for Full Approval

The GAEPD has submitted the following commitments which must be met in order for final action to be taken to approve the attainment demonstration and grant the attainment date extension request.

a. NO_X and VOC RACT. The GAEPD has committed to submit rules requiring the implementation of NO_X and VOC RACT in the 32 additional counties for sources with emissions in excess of 100 tons per year. The GAEPD commits that it will address all EPA concerns regarding NO_X and VOC RACT on a time frame consistent with final SIP approval by November 2000.

b. Early Assessment. The GAEPD has committed to complete an early assessment as discussed under Midcourse Review, item 6 above.

c. Georgia Fuel Rule. EPA's Office of Enforcement and Compliance Assurance (OECA) has raised numerous enforceability issues regarding the current Georgia Fuel Rule. The GAEPD has committed to revise its rule, as necessary, to satisfactorily address the monitoring and enforceability issues prior to the calendar year 2000 ozone season but not later than May 1, 2000.

d. Additional Reductions. The GAEPD has committed to identify and adopt regulations for sources that will be controlled to achieve the additional tonnage of NO_X and VOC emission reductions that are needed for attainment. Georgia has committed to submit these control measures to EPA before July 2000, and to implement them by May 1, 2003. The GAEPD and EPA have used EPA's Method 1 to calculate the level of additional reductions needed for attainment as discussed in the description of modeling (above).

8. Attainment Date Extension Request

The GAEPD October 28, 1999, submittal includes a request to extend the attainment date for the Atlanta ozone nonattainment area pursuant to guidance issued by EPA on March 23, 1999. The State is requesting that the attainment date be extended to 2003. For EPA to grant such an extension the GAEPD must meet the criteria as describe in Section I.A.3. Attainment Date Delays due to Transport of this notice. The GAEPD will have satisfied all these requirements once they have met all the commitments outlined above. Therefore, the EPA is proposing to extend the attainment date for the Atlanta nonattainment area to November 15, 2003, on the condition that all the commitments are met.

9. What Are the Consequences of State Failure?

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

a. What are the CAA's provisions for sanctions? If EPA disapproves a required SIP, such as the attainment demonstration SIPs, section 179(a)

provides for the imposition of two sanctions. The first sanction would apply 18 months after EPA disapproves the SIP if the State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to a broader area, but is not proposing to take such action today.

b. 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.

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 12866

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

B. Executive Order 13045

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

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

C. Executive Order 13084

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

D. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of

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

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

The EPA's alternative proposed disapproval of the State request under section 110 and subchapter I, part D of the Act would not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements would remain in place after this disapproval. Federal disapproval of the State submittal 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 Georgia, which is not a small government.

G. National Technology Transfer and Advancement Act

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

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

List of Subjects in 40 CFR Part 52

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

Dated: November 29, 1999.

John H. Hankinson, Jr.,

Regional Administrator, Region 4.

[FR Doc. 99–31719 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL70–1; FRL–6503–1]

Approval and Promulgation of Implementation Plans; Illinois; Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve the 1-hour ozone attainment demonstration State Implementation Plan (SIP or plan) for the Chicago-Gary-Lake County severe ozone nonattainment area submitted by the Illinois Environmental Protection Agency (IEPA) on April 30, 1998. This proposed conditional approval is based on the submitted modeling analysis and on the State's commitments to adopt and submit a final ozone attainment demonstration SIP and a post-1999 Rate of Progress (ROP) plan, including the necessary State air pollution control regulations to complete the attainment demonstration and ROP plans, by December 31, 2000. The EPA is also proposing, in the alternative, to disapprove this attainment demonstration plan if, by December 31, 1999, the State does not select a control strategy associated with its submitted modeling analysis and submits adequate motor vehicle emissions budgets for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) for the ozone nonattainment area that comply with EPA's conformity regulations and that are derived from the selected emissions control strategy that supports attainment of the 1-hour ozone standard. In addition, the State must, by December 31, 1999, submit an enforceable commitment to conduct a mid-course review of the ozone attainment plan in 2003.

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

ADDRESSES: Written comments should be sent to: Jay Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Mark Palermo at (312)

886–6082 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–6057, E-Mail Address doty.edward@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This section provides background information on attainment demonstration SIPs for the 1-hour ozone National Ambient Air Quality Standard (NAAQS or standard) and an analysis of Illinois' 1-hour ozone attainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area.

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I. Background Information

A. Basis for the State's Attainment Demonstration SIP

What Are the Relevant Clean Air Act Requirements?

The Clean Air Act requires the EPA to establish national ambient air quality standards for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. Clean Air Act sections 108 and 109. In 1979, EPA promulgated the 1-hour 0.12 parts per million (ppm) ground-level ozone standard. 44 FR 8202 (Feb. 8, 1979). Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC 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 on any day. An area violates the standard if, over a consecutive 3-year period, more than 3 daily exceedances are expected to occur at any monitor in the area or in its immediate downwind environs. The highest of the fourth-highest daily peak ozone concentrations over the 3 year period at any one monitoring site in the area is called the design value for the area. The Clean Air Act, 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 3-year period from 1987 through 1989. Clean Air Act section 107(d)(4); 56 FR 56694 (Nov. 6, 1991). The Clean Air Act further classified these areas, based on the areas' design values, as marginal, moderate, serious, severe or extreme. Clean Air Act section 181(a). Marginal areas were suffering the least significant air quality problems while the areas classified as severe and extreme had the most significant air quality problems.

The control requirements and date by which attainment needs to be achieved vary with an area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas are required to attain the 1-hour standard by November 15, 1999, and severe areas are required to attain by November 15, 2005 or November 15, 2007, depending on the areas' ozone design values. The Chicago-Gary-Lake County ozone nonattainment area is classified as severe-17 and its attainment date is November 15, 2007. The Chicago-Gary-Lake County ozone nonattainment area is defined (40 CFR Parts 81.314 and 81.315) to contain Cook, DuPage, Grundy (Aux Sable and Goose Lake Townships only), Kane, Kendall (Oswego Township only), Lake, McHenry, and Will Counties in Illinois, and Lake and Porter Counties in Indiana. This proposed rulemaking focuses on the Illinois portion of this nonattainment area. A separate proposed rulemaking in today's **Federal Register** deals with the Indiana portion of this nonattainment area.

Under section 182(c)(2) and (d) of the Clean Air Act, 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 ROP reductions in VOC emissions of 9 percent for each 3-year period until the attainment. (In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions to achieve ROP.) Today, in this proposed rule, EPA is proposing action on the attainment demonstration SIP submitted by Illinois for the Chicago-Gary-Lake County ozone nonattainment area and its associated ozone modeling domain and on the State's commitment to complete the attainment demonstration SIP for this ozone nonattainment area by December 2000. EPA is also proposing action on the State's commitment to submit ROP target calculations and the adopted measures to achieve ROP by December 2000. In addition, elsewhere in this **Federal Register**, EPA is today proposing to take action on ozone attainment demonstraion SIPs, and, in some cases ROP SIPs, for other serious or severe 1-hour ozone nonattainment areas. The additional ozone attainment demonstration and ROP SIPs addressed elsewhere in this **Federal Register** cover the ozone nonattainment areas of Greater Connecticut (CT), Springfield (Western Massachusetts) (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), Chicago-Gary-Lake County (IL–IN) (Indiana portion of this area), and Houston-Galveston-Brazoria (TX).

In general, an attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the emission control measures necessary to achieve attainment. 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) of the Clean Air Act, 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.

What is the History and Time Frame for the State Attainment Demonstration SIP and How Is It Related to the NO_X SIP call?

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 VOC 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 Clean Air Act 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 the control measures necessary for attainment and the 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 public hearing on the State submittal.[4] This submission is sometimes referred to as the Phase II submission. Motor vehicle emission 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 each 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.

What is the Time Frame for Taking Action on the Attainment Demonstration SIPs for the Serious and Severe Nonattainment Areas?

The States generally submitted the SIPs between April and October of 1998; some States are still submitting additional revisions. Under the Clean Air Act, EPA is required to approve or disapprove a State's submission no later than 18 months following submission. (The statute provides up to 6 months for a completeness determination and an additional 12 months for approval or disapproval.) The EPA believes that it is 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 serious and severe 1-hour ozone attainment demonstration SIPs 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.

What Are the Options for Action on the State Attainment Demonstration SIPs?

Depending on the circumstances unique to each of the 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 actions that will be necessary from the State.

The Clean Air Act provides for EPA to approve, disapprove, partially approve or conditionally approve a State's plan submission. The EPA must fully approve the submission if it meets the attainment demonstration requirement of the Clean Air Act. 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 State's 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 Clean Air Act. 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 final 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 after the deadline for the correction of the deficiency. 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

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

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

[3] 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 Clean Air Act, 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 Illinois has relied on a commitment to submit these measures by December 2000, EPA is proposing a conditional approval of the attainment demonstration. Some States with severe nonattainment areas submitted the actual adopted control measures and are not relying on a commitment.

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

[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.

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. 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.[5] 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.

What Are the Modeling Requirements for the Attainment Demonstration?

For purposes of demonstrating attainment, the Clean Air Act requires serious and severe areas to use photochemical grid modeling or an analytical method EPA determines to be as effective. The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values. Following validation of the modeling system for a base year, emissions are projected to an attainment year 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 high ozone concentrations exceeding the standard, 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 modeling domain size. The domain should be larger than the designated nonattainment area to reduce uncertainty in the boundary conditions and should include any 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 and emissions that describe atmospheric conditions and emissions inputs reflective of the selected high ozone days. Finally, the State needs to verify that the modeling system is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests (generally referred to as model validation). 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 peak ozone concentration above 0.124 ppm indicates that the area is expected to exceed the standard in the attainment year. 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[6] 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 3-year period, the area has an average of 1 or fewer exceedances per year at any monitoring site, the area is not violating the standard. Thus, if the State models a very extreme day (considering meteorological conditions that are very conducive to high ozone levels and that should lead to fewer than 1 exceedance per year at any location in the nonattainment area and modeling domain over a 3 year period), 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 3 days with peak 1-hour ozone concentrations above the standard over a 3-year period at any monitoring site before an area is considered to be in violation of the NAAQS.)

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 3-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

[5] 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, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013 (July 1991). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''UAMREG''). See also U.S. EPA (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007 (June 1996). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''O3TEST'').

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

of various concentrations is equated to 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 3-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.

What Are the Additional Analyses That May Be Considered When the 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 exhaustive 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 a WOE determination 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 below.

C. Framework for Proposing Action on the Attainment Demonstration SIPs

Besides the Modeled Attainment Demonstration, What Other Issues Must Be Addressed in 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 the 1-hour attainment demonstration SIPs. These elements are listed below and then described in detail.

Clean Air Act measures, and other measures relied on in the modeled attainment demonstration SIP. This includes adopted and submitted rules for all previously required Clean Air Act 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 today.

NO_X Reductions Affecting Boundary Conditions

Motor vehicle emissions budget. This must be a motor vehicle emissions budget which can be determined by EPA to be adequate for conformity purposes.

Mid-course review. An enforceable commitment to conduct a mid-course review and evaluation based on air quality and emission trends must be included in the attainment demonstration SIP before it can be approved by the EPA. 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. Clean Air Act Measures and Measures Relied on in the Modeled Attainment Demonstration SIP

The States should have adopted the control measures already required under the Clean Air Act 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 Clean Air Act 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 Clean Air Act. (For serious areas, these should have already been identified and adopted, whereas severe areas have until December 2000 to submit measures 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 table presents a summary of the Clean Air Act requirements that need to be met for each severe nonattainment area for the 1-hour ozone NAAQS. These requirements are specified in section 182 of the Clean Air Act. Information on more measures that States may have adopted or relied on in their current SIP submissions is not shown in the table.

CAA Requirements for Severe Areas

—NSR for VOC and NO_X, including an offset ratio of 1.3:1 and a major VOC and NO_X source cutoff of 25 tons per year (tpy)
—Reasonable Available Control Technology (RACT) for VOC and NO_X
—Enhanced Inspection and Maintenance (I/M) program
—15% VOC plans for ROP through 1996
—Emissions inventory
—Emission statements
—Attainment demonstration
—9% ROP plan through 1999
—Clean fuels program
—Enhanced monitoring (PAMS)
—Stage II vapor recovery
—Reformulated gasoline
—9% ROP plan through attainment year (post-1999)
—Measures to offset Vehicle Miles Travelled (VMT) growth
—Requirements 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 22 jurisdictions were required to 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 SIP submission requirement portion of the NO_X SIP call rule requiring States to submit rules by September 30, 1999.

The NO_X SIP call rule establishes budgets for the States in which 9 of the nonattainment areas for which EPA is proposing action today are located. The 9 areas are: Greater Connecticut, Springfield MA, New York/North New Jersey/Long Island (NY–NJ–Ct), Baltimore MD, Philadelphia/Wilmington/Trenton (PA–NJ–DE–MD), Metropolitan Washington DC (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 States but outside of the modeling domains, the 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 State inside the local modeling domain [7] must be adopted as part of the State's 1-hour attainment demonstration SIP. It is only for NO_X emission reductions occurring outside of the local modeling domain that States may assume implementation of the NO_X SIP call measures and the resulting boundary conditions without actually being required at this time to adopt regulations to implement the NO_X emission reductions required by the NO_X SIP call.

3. Motor Vehicle Emissions Budget

The EPA believes that an attainment demonstration SIP must necessarily estimate the motor vehicle emissions that will be produced in the attainment year and must 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 Clean Air Act 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 an appropriately identified motor vehicle emissions budget is 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 the 9 other nonattainment areas covered in today's proposals are inadequate or missing from the attainment demonstrations. Therefore, EPA is proposing to disapprove the attainment demonstration SIPs for those 9 areas if the States do not submit motor vehicle emissions budgets that EPA can find adequate by May 31, 2000.[8] In order for EPA to complete the adequacy process by the end of May, States should submit an emissions budget no later than December 31, 1999.[9] 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 of 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. Mid-Course Review

A mid-course review (MCR) is a reassessment of modeling analyses and more recent monitoring and emissions 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 attainment dates.

The EPA believes that a commitment to perform a MCR is a critical element of the WOE determination for the attainment demonstration on which EPA is proposing to take action today. In order to approve the Illinois attainment demonstration SIP for the Chicago-Gary-Lake County area, EPA believes that Illinois must submit an

[7] For the purposes of this notice, ''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.

[8] 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.

[9] A final budget is preferred; but, if the State public process is not yet complete, then a draft budget 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.

enforceable commitment to perform a MCR as described here.[10]

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.

For severe areas, such as the Chicago-Gary-Lake County ozone nonattainment area, the States must submit an enforceable commitment to perform the MCR immediately following the 2003 ozone season and to submit the results to EPA by December 31, 2003. EPA believes that an analysis in 2003 would be most robust since some or all of the regional NO_X emission reductions should be achieved by that date. EPA would then review the results and determine whether any States need to adopt and submit additional control measures for purposes of attainment. The EPA is not requesting that States commit now to adopt new control measures as a result of this process. It would be impracticable for the States to make a commitment that is specific enough to be considered enforceable. Moreover, the MCR could indicate that upwind States may need to adopt some or all of the additional controls needed to ensure that an area attains the standard. Therefore, if EPA determines that additional control measures are needed for attainment, EPA would determine whether additional emission reductions are needed in the States in which the nonattainment areas are located or in upwind States, or in both. The EPA would require the affected State or States to adopt and submit new measures within a period specified at that 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. Additional Background Considerations for This Proposed Rulemaking

What Information Does the EPA Expect to Receive From the States to Allow an Approval of the 1-hour Ozone Attainment Demonstration SIPs?

The following table shows a summary of information on what EPA expects from Illinois to allow EPA to approve the severe area 1-hour ozone attainment demonstration SIP for the Chicago-Gary-Lake County nonattainment area.

SUMMARY SCHEDULE OF FUTURE STATE ACTIONS—SEVERE NONATTAINMENT AREAS THAT WILL SUBMIT ALL MEASURES NEEDED FOR ATTAINMENT BY 12/31/00

Required no later than:	Action
12/31/99	State submits the following to EPA: —Motor vehicle emissions budget.[1] —Enforceable commitment to perform a mid-course review.
4/15/00	State submits— —The final motor vehicle emissions budget (only if draft submitted earlier).[2] —Enforceable commitment (only if draft submitted earlier) to perform a mid-course review (only if draft submitted earlier).
12/31/00	State submits a revised/final modeling analysis. —State submits adopted rules that reflect measures relied on in modeled attainment demonstration and that support ROP requirements. —State revises and submits SIP and motor vehicle emissions budget if adopted measures are for motor vehicle category.
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 may be submitted at this time. Note that the budget can reflect estimated Tier 2 emission reductions—see memorandum from Lydia Wegman and Merrylin Zaw-Mon, ''1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking.''

[2] 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.

What Are the Relevant Policy and Guidance Documents?

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

Recent Documents

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

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

3. Memorandum, ''Guidance on Motor Vehicle Emissions Budgets in 1-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, ''1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur/Sulfur Rulemaking,'' from Lydia Wegman and Merrylin Zaw-Mon to the Air Division Directors, Regions I–VI, November 8, 1999. Web site: http://www.epa.gov/oms/transp/traqconf.htm.

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

[10] For purposes of conformity, the State needs a commitment that has been subject to a 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.

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 PM_{10} NAAQS.'' Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

II. Technical Review of the Submittal

A. Summary of State Submittals

1. General Information

When Was the Attainment Demonstration Addressed in Public Hearings, and When Was the Attainment Demonstration Submitted by the State of Illinois?

The State held a public hearing on the ozone attainment demonstration on March 25, 1998 and submitted to it EPA on April 30, 1998.

What Are the Basic Components of the Submittal?

Since Illinois, along with Indiana, Michigan, and Wisconsin, participated in the Lake Michigan Ozone Study and the Lake Michigan Ozone Control Program, and since these ozone modeling studies form the technical basis for the ozone attainment demonstration, Illinois, Indiana, and Wisconsin centered their ozone attainment demonstrations around a single technical support document (April 1998) produced by the four States in the Lake Michigan Air Directors Consortium (LADCO). This technical support document is entitled ''Modeling Analysis for 1-Hour Ozone NAAQS in the Lake Michigan Area.'' Each State has also included a state-specific cover letter and state-specific synopsis of the ozone attainment demonstration. It should be noted that the specifics of the emission control strategies considered varied by State. The specific emission categories or emission controls considered by Illinois are summarized below.

2. Modeling Procedures and Basic Input Data

What Modeling Approach Was Used in the Analyses?

All three States, as members of LADCO and as participants in the Lake Michigan Ozone Study and Lake Michigan Ozone Control Program, used the same ozone modeling approach. The modeling approach is documented in an April 1998 technical support document, entitled ''Modeling Analysis For 1-Hour Ozone NAAQS In The Lake Michigan Area.'' Since the April 1998 technical support document failed to document all of the modeling approaches and bases for the development and selection of model input data, this review also relies on an older, December 1995, technical support document submitted by the LADCO States, which does a more thorough job of documenting the system and input data.

The heart of the modeling system and approach is the Urban Airshed Model—Version V (UAM–V) developed originally for application in the Lake Michigan area. This photochemical model was used to model ozone and ozone precursors in a multiple, nested grid system. In the horizontal dimension, three nested grids were used. Grid A, the largest of the three grids, is a 35 cell by 50 cell grid (560 kilometers east-west by 800 kilometers north-south) generally centered on the lower two-thirds of Lake Michigan with a horizontal resolution of 16 kilometers per cell. Grid B is a 34 cell by 60 cell grid (272 kilometers east-west by 480 kilometers north-south) centered on the lower three-quarters of Lake Michigan with a horizontal resolution of 8 kilometers per cell. Grid B covers all of the 1-hour ozone nonattainment areas of interest in the analysis. Grid C is a 20 cell by 80 cell grid (80 kilometers east-west by 320 kilometers north-south) approximately centered on the western shoreline of lower Lake Michigan with a horizontal resolution of 4 kilometers per cell. The model covered 8 vertical layers over the entire horizontal modeling domain. Mixing heights used in the modeling system were determined from regional upper-air monitoring station data.

Besides being able to model ozone and other pollutants in nested horizontal grids, UAM–V can also model individual elevated source plumes within the modeling grid (plume-in-grid or PiG). Gaussian dispersion models are used to grow plumes until the plumes essentially filled grid cells. At these points, the numerical dispersion and advection components of UAM take over to address further downwind dispersion and advection.

The UAM–V modeling system is also used to assess the impacts of clouds on certain high ozone episode days. Observed cloud data are used to modify chemical photolysis rates and other meteorological input data.

The following input data systems and analyses were also used as part of the combined modeling system for the Lake Michigan area:

a. *Emissions.* UAM–V requires the input of gridded, hourly estimates of CO, NO_X, and speciated VOC emissions (speciated based on carbon bond types). The States provided emission inventories, which were processed through the Emissions Modeling System—1995 version (EMS–95) to prepare UAM–V input data files. Emission data files were generated for Grid A and Grid B.

For Grid B, the States supplied point source (individually identified stationary sources) and area source (sources too small and numerous to be identified and recorded as individual sources) emissions for a typical summer weekday. These emissions were based on the States' 1990 base year emissions inventories for the ozone nonattainment areas and were adjusted to 1991 levels to be compatible with the high ozone periods modeled. The base emissions were adjusted for some source categories to reflect typical ''hot summer days.'' Day-specific emissions data were supplied by over 200 facilities in the modeling domain. Mobile source emissions were calculated by EMS–95 using MOBILE5a (a mobile source emissions model supplied by the EPA) emission factors (using day-specific temperatures) and local vehicle-miles-traveled data generally supplied by local metropolitan planning agencies and based on transportation models. Finally, the biogenic emission rates used in Grid B were calculated based on BIOME, which is the biogenics emissions model contained within EMS–95.

For Grid A, point and area anthropogenic emissions rates were derived from EPA's 1990 Interim Regional Inventory, except for Wisconsin, which supplied state-specific data. Mobile source emissions were based on MOBILE5a emission factors (derived for a representative hot summer day) and vehicle miles traveled data derived using the 1990 Highway Performance Monitoring System. Biogenic emission rates were calculated

using the Biogenics Emissions Inventory System (BEIS) assuming temperatures for a representative, hot summer day. This version of BEIS includes soil NO_X emissions and land use data from the United States Geological Survey

Grid B emissions data superceded Grid A data within Grid B. Grid C emissions data were not specifically derived—Grid B emissions data were used within Grid C.

All emission estimates were speciated by compound or carbon bond type and spatially, and temporally resolved into UAM–V input data files by the use of EMS–95.

b. *Meteorology.* Meteorological input data by grid cell and hour were generated by use of a prognostic meteorological model (model output data derived from equations which describe how meteorological variables, such as wind speed/direction, temperature, and water vapor change over time) known as CALRAMS. CALRAMS was run with varying horizontal resolution depending on location. Over Grids B and C, CALRAMS was run with 4 kilometer resolution. Over Grid A, a resolution of 16 kilometers was used. Over the remainder of the continental United States, a resolution of 80 kilometers was used. The model's vertical structure used 31 layers in Grid A and over the remainder of the continental United States outside of the UAM–V modeling domain and 26 layers over Grids B and C.

Four-dimensional data assimilation using observed meteorological data values was used to ensure that the model estimates did not deviate significantly from observed meteorological data. Preprocessor programs were used to map the model's output data into the UAM–V grid system and to derive other necessary model inputs.

Some adjustments were made to CALRAMS results where the model produced near-calm wind speeds and where observed wind speeds were significantly higher than modeled wind speeds during one modeled ozone episode.

c. *Chemistry.* Atmospheric chemistry within the modeling grid system and UAM–V was simulated using the Carbon Bond-Version IV model developed by the Environmental Protection Agency and used in Version IV of UAM.

d. *Boundary and Initial Conditions.* Initial sensitivity analyses of the modeling system's response to modeling domain boundary conditions (incoming ozone and ozone precursor levels at the outer edges of the modeling domain) showed that the system was very sensitive to these boundary conditions. LADCO used all available upwind data, and especially those collected during the 1991 intensive field study, to derive boundary conditions. In addition, the contractor, SAI, Incorporated, used output data from the use of the Regional Oxidant Model (ROM) to derive initial concentrations in the modeling domain for the first day of each modeled ozone episode. Data from this first day, along with other model input data, were used to model ozone and precursor concentrations for the next 1 to 2 days, to be used as inputs into the main part of the modeled ozone episode. The first 1 to 2 days modeled were treated as ''ramp-up days'' for the main part of each modeled ozone episode. This process produced more stable input data for the modeling of high ozone days.

What High Ozone Periods Were Modeled?

Four high ozone episodes in 1991 were considered. These episodes were:
June 18–21, 1991;
June 24–28, 1991;
July 15–19, 1991; and
August 22–26, 1991.

The 1991 ozone episodes were selected as the focus of the modeling analyses because the summer of 1991 was a relatively conducive period for ozone formation, and, most importantly, because LADCO conducted an intensive field study during that summer to collect data needed to support the modeling study.

What Procedures and Sources of Projection Data Were Used to Project the Emissions to Future Years?

The future year emission inventories used in the Lake Michigan OzoneControl Program and ozone attainment demonstration were derived from the Lake Michigan Ozone Study base year regional inventory (discussed above). Three adjustments were made to the base year emissions inventory to generate the future year emission inventories. First, a baseline inventory was prepared by replacing the day-specific emissions with typical hot summer day emissions for point sources. Emissions for other source categories were simply carried over to the baseline inventory. Second, the baseline emissions inventory was projected to 2007 (the attainment year for severe ozone nonattainment areas) by applying scalar growth factors. Finally, the projected baseline emission inventories were reduced to reflect the implementation of various emission control measures expected or required to occur by those years.

The growth factors used in the projection of emissions for each source sector are as follows:

a. Point Sources

i. For electric utilities—company-specific data were provided by each State;

ii. For certain individual point sources—a growth factor of ''0'' was used to reflect the shutdown of these sources;

iii. For all remaining point source emission categories—growth factors based on the EPA Economic Growth Analysis System (EGAS) were used;

b. Area Sources

i. For baseline emission estimates based on population—projected populations were used to recalculate emissions;

ii. For gasoline marketing source categories—projected emissions were based on projected gasoline sales;

iii. For other area source emission categories—projections were based on EGAS estimates (some EGAS estimates were judged to be inappropriate and alternative surrogates were used to estimate future emissions);

c. Mobile Sources

Vehicle miles traveled projections were based on transportation modeling for northeast Illinois, northwest Indiana, and southeast Wisconsin, and on State-supplied growth factors for the rest of the ozone modeling domain; and

d. Biogenic Sources

No growth was assumed.

To account for emission changes resulting from various emission controls (these emission controls also affect projected emissions), the States tested several emission control strategies. Emission reduction scalars were developed to reflect the expected or required emission reduction levels, rule penetration (accounting for the percentage of source category emissions affected by the emission reduction requirements), and rule effectiveness (some source control rules do not fully achieve the emission reductions expected due to control device failure, human error, or other factors). The base component of these control strategies were the emission reductions resulting from the controls mandated by the Clean Air Act and expected to be in place by 2007. These emission controls are further discussed below.

How Were the Emissions, Air Quality, and Meteorological Input Data Quality Assured?

Emissions. The Lake Michigan States' quality assurance of the emissions data

focused on the comprehensiveness and reasonableness of the emissions data rather than on precision and accuracy of the data. During the initial development of the regional emissions inventory, internal quality control activities included the preparation and implementation of quality assurance plans for the derivation of emission estimates by each State and for the development and application of the EMS–95 emissions software. External quality assurance activities included: (1) Audits of the point and area source data inputs; (2) review of the EMS–95 output; and (3) independent testing of the EMS–95 model source code. The State emission estimates were compared against each other to assess their completeness, consistency, and reasonableness.

Several approaches were used to compare the emission estimates against ambient measurements. These included: (1) Comparisons of ambient to emissions-based ratios of non-methane organic compounds to oxides of nitrogen; (2) comparisons of ambient to emissions-based ratios of carbon monoxide to oxides of nitrogen; (3) receptor modeling (determining individual source shares of monitored pollutant concentrations based on source-specific emission profiles and temporal and spatial statistical analyses of monitored pollutant species); and (4) comparisons of ambient to model-based ratios of non-methane organic compounds to oxides of nitrogen. The comparison of the measurement-based pollutant ratios with the emissions inventory-based pollutant ratios showed good agreement between the emissions inventory and the ambient data. The receptor modeling results also generally supported the validity of the emissions inventory.

Air Quality and Meteorological Data. Validation of the 1991 Lake Michigan Ozone Study field data (the data used as input to the meteorological and photochemical dispersion models and used to validate the models' outputs) was performed by the Lake Michigan Ozone Study Data Management and Data Analysis Contractors. The data were validated using a number of statistical analyses. Three levels of validation were used, depending on the intended use of the data. The three levels of data validation were:

a. Level 1

This validation was performed by the group collecting the data. This group: flagged suspect data values; verified the data contained in computer data files against input data sheets; eliminated invalid measurements; replaced suspect data with data from back-up data acquisition systems; and adjusted measurement values to eliminate quantifiable calibration and interference biases;

b. Level 2

This validation was performed on data assembled in a master data base. The level of data validation involved various consistency checks between data values within the data base, including: comparison of data from closely located sites collected at approximately the same time; comparison of data from co-located sampling systems; comparisons based on physical relationships; and special statistical analyses of the VOC and carbonyl data; and

c. Level 3

This validation was performed by the Lake Michigan Ozone Study Data Analysis Contractor and was performed as part of the data interpretation process. This validation included identification of unusual data values (e.g. extreme values, values which fail to track the values of other associated data in a time series, or those values which did not appear to fit the general and spatial or temporal overall pattern).

As a result of the data validation, several changes were made to the meteorological and air quality input data. Volume III (December 1995) of the Lake Michigan Ozone Study/Lake Michigan Ozone Control Program Project Report documents all of the data changes resulting from the data validation efforts.

3. Modeling Results

How Did the States Validate the Photochemical Modeling Results?

A protocol document outlining the operational and scientific evaluation of the modeling system was prepared by LADCO, and was approved by the Environmental Protection Agency on March 6, 1992.

The evaluation of the photochemical model consisted of seven steps:

a. Evaluation of the scientific formulation of the model by the Photochemical Modeling Contractor;

b. Assessment of the fidelity of the computer codes to scientific-formulation, governing equations, and numerical solution procedures performed by an independent contractor (independent of the Photochemical Modeling Contractor);

c. Evaluation of the predictive performance of the individual modeling process modules and preprocessor modules to identify possible flaws or systematic biases;

d. Evaluation of the full model's predictive performance against statistical performance tests and performance criteria specified by the EPA (see discussion of the model's performance for specific days modeled below);

e. Performance of sensitivity tests to assure conformance of the model with known or expected model behavior;

f. Performance of comparative modeling analyses, comparing the results from the use of UAM–V with similar results from the use of UAM–IV (the photochemical model generally recommended by the Environmental Protection Agency); and

g. Implementation of quality control and quality assurance activities, including: (i) Benchmark modeling; (ii) pre-established file structuring; (iii) duplicative modeling; (iv) modeling procedure and results documentation; and (v) external review of modeling results.

Numerous modeling runs and overall system evaluations were conducted to carry out these validation procedures.

What Were the Results of the Model Performance Evaluations for the Modeling System Used in the Attainment Demonstration?

The following highlights the results of the operational and scientific evaluation of the modeling system. These results are discussed in detail in many documents generated by LADCO and supplied to the Environmental Protection Agency:

a. Many modeling runs and evaluations of output data were made to derive statistical results indicative of the modeling system's overall performance. Statistical data, such as: observed peak ozone concentrations versus peak predicted concentrations; unpaired peak concentration accuracy; bias in peak concentrations and overall system bias; and gross system error, were compared to acceptable system criteria specified by the EPA (*Guideline for Regulatory Application of the Airshed Model,* EPA–450/4–91–013, July 1991). The statistical accuracy results for the modeling system comply with the EPA performance criteria;

b. The spatial and temporal representation of the surface ozone concentrations are reasonable both region-wide and in the areas of high concentrations. Broad areas of high ozone concentrations were reproduced successfully and magnitude and times of peak ozone concentrations reasonably matched those observed;

c. Model performance across the full modeling domain was consistent with model performance in individual

subregions. This further supports the credibility of the modeling system;

d. Predicted aloft downwind ozone concentrations compare favorably with airborne/aircraft monitored ozone concentrations. This supports the three-dimensional validity of the modeling system; and

e. Model performance for ozone precursors, especially for NO_X, was very good. This further supports the validity of the use of the model to evaluate the impacts on ozone due to changes in precursor emissions and the testing of the emission control strategy scenarios.

Based on the model performance evaluation results, the EPA approved the validity of the modeling system and its use for control strategy evaluations on December 15, 1994 (letter from John Seitz, Director of the Office of Air Quality Planning and Standards to Lake Michigan Air Directors Consortium).

What Were the Ozone Modeling Results for the Base Period and for the Future Attainment Period?

Many modeling runs were conducted, producing millions of model output data. What is summarized in Tables 1 and 2 are the observed and modeled peak ozone concentrations for the selected ozone episode days for two considered emission control strategies. Please note that the ozone control strategy covered by each table is further discussed below.

The ozone modeling system was run to simulate ozone concentrations on selected high ozone days for the base year and future year (2007). The future year simulations covered five boundary condition scenarios, corresponding to base year boundary conditions, and to the reduction of peak boundary ozone levels to 85, 80, 70, and 60 parts per billion (ppb), 1-hour average. The future year simulations also covered two emission control strategy sets, Strategy 2 and Strategy 4.

The resulting domain-wide modeled peak ozone concentrations for Strategy 2 are given in Table 1. Similarly, the resulting domain-wide modeled peak ozone concentrations for Strategy 4 are given in Table 2.

TABLE 1.—LAKE MICHIGAN OZONE CONTROL PROGRAM STRATEGY 2 OZONE MODELING RESULTS

[Domain-wide peak ozone concentrations, ppb]

1991 Date	1991 OBS	1991 MOD	2007 BY BC	2007 85 ppb	2007 80 ppb	2007 70 ppb	2007 60 ppb
June 26	175	165	141	134	133	128	122
June 27	118	152	130	123	122	119	114
June 28	138	142	123	118	118	116	109
June 20	152	137	123	121	121	120	120
June 21	134	126	.....	.....	.....	.....	114
July 17	145	148	133	126	124	120	113
July 18	170	162	146	135	135	128	119
July 19	170	161	145	137	137	129	119
Aug 25	148	128	126	121	120	116	109
Aug 26	189	158	142	135	131	124	115

OBS = Observed Peak Ozone Concentration.
MOD = Modeled Base Year Peak Ozone Concentration.
BY BC = Base Year Boundary Conditions.
85 ppb, 80 ppb, 70 ppb, 60 ppb = Future Year Peak Ozone Boundary Concentrations.

TABLE 1.—LAKE MICHIGAN OZONE CONTROL PROGRAM STRATEGY 4 OZONE MODELING RESULTS

[Domain-wide peak ozone concentrations, ppb]

1991 Date	1991 OBS	1991 MOD	2007 BY BC	2007 85 ppb	2007 80 ppb	2007 70 ppb	2007 60 ppb
June 26	175	165	137	130	129	124	117
June 27	118	152	125	117	117	114	109
June 28	138	142	119	114	114	112	104
June 20	152	137	117	117	117	117	116
June 21	134	126	121	118	117	115	110
July 17	145	148	132	123	121	116	110
July 18	170	162	141	131	129	123	115
July 19	170	161	140	131	129	123	114
Aug 25	148	128	125	120	119	115	108
Aug 26	189	158	139	133	129	122	113

OBS = Observed Peak Ozone Concentration.
MOD = Modeled Base Year Peak Ozone Concentration.
BY BC = Base Year Boundary Conditions.
85 ppb, 80 ppb, 70 ppb, 60 ppb = Future Year Peak Ozone Boundary Concentrations.

Do the Modeling Results Demonstrate Attainment of the Ozone Standard?

The modeling of the Strategy 2 and Strategy 4 impacts by themselves (the 2007 BY BC columns in Tables 1 and 2) does not demonstrate attainment. The modeling supports the need for significant reductions in background ozone and ozone precursor concentrations. In addition, the model indicates the potential for ozone exceedances or ozone standard violations under the scenarios of smaller reductions in background ozone levels. Nonetheless, when considered along with a WOE determination, as discussed below, the EPA believes that that the modeling results do support a conclusion that local VOC emission reductions combined with possible transported ozone reductions can lead to attainment of the 1-hour ozone standard in the Chicago-Gary-Lake

County ozone nonattainment area and its downwind environs.

Does the Attainment Demonstration Depend on Future Reductions of Regional Emissions?

As noted in the tables summarizing the peak modeled ozone concentrations above and in the discussion elsewhere in this proposed rulemaking, the States considered emission control strategies which by themselves would not achieve attainment of the 1-hour ozone standard. The States, however, also show that, with a significant reduction in background ozone concentrations expected to result from the implementation of regional NO_X emission controls under the NO_X state implementation plan call, attainment of the standard can be achieved using the control strategies considered. Strategy 2 can lead to attainment of the ozone standard with a future reduction in peak ozone background concentrations down to 70 ppb. Strategy 4 can lead to attainment if peak background ozone concentrations are reduced to 80 ppb. LADCO documents that these future ozone background concentration levels may be obtained through the implementation of the NO_X SIP call.

It should be noted that LADCO not only considered lowered background ozone concentrations resulting from regional upwind emission controls, they also considered reductions in background ozone precursor concentrations. The States used various analyses to estimate the reductions in background ozone precursor concentrations associated with the assumed reductions in background ozone concentrations. This was primarily accomplished by considering available modeling data from OTAG.

The following two step process was used to determine which of the tested boundary conditions correspond best to the boundary conditions that would be expected under the EPA NO_X SIP call:

a. The NO_X emissions of the OTAG modeling domain were compared to the regional NO_X emissions expected under the NO_X SIP call. Several emission control strategies considered in the OTAG process were assessed. It is noted that the attainment demonstration's NO_X emissions fall between OTAG emission control strategy runs C and H; and

b. The boundary ozone concentration changes resulting from the selected OTAG strategy runs were then compared to the ozone boundary changes considered in the Lake Michigan Ozone Control Program modeling runs. The reduction of peak background ozone levels down to 70 ppb in the Lake Michigan Ozone Control Program was found to correspond best with the expected ozone changes considered under the selected OTAG emission control strategy runs C through H.

Based on this approach, it is assumed that the NO_X SIP call would reduce peak background ozone levels to 70 ppb.

4. Application of Attainment Test and the Attainment Demonstration

What Approach was Used to Demonstrate Attainment of the Ozone Standard?

To assess attainment of the 1-hour ozone standard, LADCO applied 2 approaches to review the results of emission control strategy modeling, supplementing them with modeling results from the OTAG process. First, the States considered the modeling results through the use of a deterministic approach, and. Second, the States considered a statistical approach.

a. Deterministic Approach. The deterministic approach to ozone attainment demonstrations, as defined in the *Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS* (June 1996), requires the daily peak 1-hour ozone concentrations modeled for every grid cell (in the surface level) to be at or below the ozone standard for all days modeled. If there are modeled ozone standard exceedances in only a few grid cells on a limited number of days, this approach can still be used to demonstrate attainment of the ozone standard through the use of weight of evidence determinations.

The States note that the deterministic test is passed for:

i. Strategy 2 with future (2007) ozone boundary concentrations capped at 60 ppb; or

ii. Strategy 4 with future ozone boundary concentrations capped at 70 ppb.

Note that Strategy 2 with a future ozone boundary concentration of 70 ppb or Strategy 4 with a future ozone boundary concentration of 80 ppb produces peak ozone concentrations that may demonstrate attainment given the supporting weight of evidence analysis. The modeling results for other Strategy 2 and Strategy 4 scenarios with higher ozone boundary concentrations, however, do not appear to be close enough to the standard to warrant the consideration of weight of evidence.

b. Statistical Approach. The States note that the statistical approach permits occasional ozone standard exceedances and reflects an approach comparable to the form of the 1-hour ozone standard. Therefore, the States have also given this approach some attention.

Under the statistical approach, there are three benchmarks related to the frequency and magnitude of allowed exceedances and the minimum level of air quality improvement after emission controls are applied. All three benchmarks must be passed in the statistical approach, or if one or more of the benchmarks are failed, the attainment demonstration must be supported by a weight of evidence analysis.

i. Limits on the Number of Modeled Exceedance Days

This benchmark is passed when the number of modeled exceedances days in each subregion is less than or equal to 3 or N–1 (N is the number of severe days), whichever is less. To determine the number of severe days, the States concluded that a day is severe if there are at least two nonattainment areas within the modeling domain with observed 1-hour peak ozone concentrations greater than the corresponding ozone design value (generally the fourth highest daily peak 1-hour ozone concentration at a monitor during a three year period) during the 1990 through 1992 period. The States conclude that only two modeled days, June 26 and August 26, 1991, are severe ozone days. Therefore, N is 2.

Based on a review of the modeled daily peak ozone concentrations, the States conclude that Strategy 2 with a maximum background ozone concentration of 60 ppb and Strategy 4 with a maximum background ozone concentration of 70 ppb would clearly pass this benchmark test. They also conclude that Strategy 2 with a future maximum background ozone concentration of 70 ppb and Strategy 4 with a maximum background ozone concentration of 80 ppb would also pass the benchmark based on an additional WOE analysis. The WOE analysis is based on the following evidence:

A. Factors Providing Confidence in Modeled Results

Evaluation of the modeling system's performance shows that:

◆ Statistical measures for ozone comply with EPA's model performance criteria;

◆ Spatial and temporal patterns of monitored surface ozone concentrations are reproduced well by the modeling system on most days;

◆ Model performance for ozone across the full domain is consistent with

the model performance in individual subregions;

◆ Aloft ozone predictions compare favorably with aircraft ozone data; and

◆ Model performance for ozone precursors, especially NO_X, is very good.

Confidence in underlying data bases is high. A comprehensive field program was conducted during the summer of 1991. This field program was used to collect a large quantity of air quality and meteorological data to support the photochemical grid modeling.

The modeling results obtained by the LADCO States were corroborated with the results from other modeling studies. As part of the Cooperative Regional Model Evaluation (CReME), the photochemical models UAM–IV, UAM–V, and SAQM were applied in the Lake Michigan region. The supplemental analyses shows that UAM–V produces results directionally consistent with those produced by UAM–IV and SAQM. All three models concurred in showing that VOC emission reductions are generally locally beneficial and that local NO_X emission controls are not beneficial in certain locations, generally within 100 to 200 kilometers downwind of Chicago.

B. Severity of Modeled Episodes

Three of the four ozone episodes modeled reflect meteorological conditions which typically favor high ozone in the Lake Michigan area (when the Lake Michigan area is on the ''back-side'' of a high pressure system with warm temperatures, high humidity, and south-southwesterly winds). The fourth episode is representative of warm temperatures with easterly winds, conditions which generally produce lower peak ozone concentrations and fewer ozone standard exceedances on a per year basis.

The magnitudes of the observed peak ozone concentrations at one or more locations within the modeling domain for the selected ozone episodes exceed the corresponding ozone design values for many locations within the region. This implies that the modeled ozone episodes are conservative and that attaining the ozone standard for these episodes should lead to attainment of the ozone standard in non-modeled episodes and during most future ozone conducive periods.

C. Trends Analyses

Several trends analyses have been considered. First, 10-year trends established by the EPA based on second high daily maximum 1-hour ozone concentrations for each year show no significant changes in Chicago, Grand Rapids, Gary, and Kenosha; and a downward trend in Racine and Milwaukee. Second, 17-year trends based on the number of ozone exceedance days normalized based on the annual number of hot days show that the number of exceedance days is significantly decreasing relative to the number of hot days each year. Third, 15-year trends show downward trends in ozone at monitoring sites.

Examination of limited morning total non-methane hydrocarbon concentration levels in Chicago and Milwaukee over the past 10 years show a significant downward trend. This downward trend is consistent with the calculated downward trend in VOC emissions.

The LADCO States conclude that the weight of evidence demonstration provides additional information which verifies the directionality of the modeling and demonstrates the potential stringency of the modeling results. The States conclude this information is sufficient to support minor exceptions to the benchmark, supporting a demonstration of attainment at the higher background ozone concentrations.

ii. Limits on the Values of Allowed Exceedances

Under this benchmark, the maximum modeled ozone concentration on severe days shall not exceed 130 ppb. The States, based on the modeled peak ozone concentrations, conclude this benchmark is passed for Strategy 2 with a maximum background ozone concentration of 70 ppb and for Strategy 4 with a maximum background ozone concentration of 80 ppb.

iii. Required Minimum Level of Air Quality Improvement

Under this benchmark, the number of grid cells with modeled peak ozone concentrations greater than 124 ppb must be reduced by at least 80 percent on each day with allowed modeled ozone standard exceedances. The States, based on the modeled peak ozone concentrations, conclude that this benchmark is passed for Strategy 2 with a maximum background ozone concentration of 80 ppb and for Strategy 4 with a maximum background ozone concentration of 80 ppb.

From the above, it can be seen that benchmark i. is the most stringent of benchmarks in this case. Based on the statistical approach, coupled with a WOE analysis, the States conclude that Strategy 2 with a maximum background ozone concentration of 70 ppb or Strategy 4 with a maximum background ozone concentration of 80 ppb is sufficient to attain the 1-hour ozone standard by 2007.

The States further conclude, based on both attainment demonstration approaches, that either Strategy 2 or Strategy 4 coupled with future year boundary conditions generally consistent with the impacts of the NO_X SIP call is sufficient to attain the 1-hour ozone standard. The States, however, note that reliance on the impacts of the NO_X SIP call can not be construed as concurrence on the part of the States with the substance of the NO_X SIP call itself. Illinois has not committed to comply with the requirements of the NO_X SIP call.

5. Emission Control Strategies

What Emission Control Strategies Were Considered in the Attainment Demonstrations?

LADCO selected two emission control strategies considered during the Lake Michigan Ozone Control Program for further attainment demonstration modeling (numerous emission control measures were initially examined). The two strategies selected are referred to as Strategy 2 and Strategy 4. These emission control strategies would apply to the ozone nonattainment areas only and are summarized as the following:

a. Strategy 2. Strategy 2 includes all national emission control measures (federal controls) mandated by the 1990 Clean Air Act, as amended in 1990, to be in place by 2007 and the State emission controls mandated to be in place by 1996, including the emission controls needed to comply with the requirements for 15 percent ROP plans. Additional ROP plans and State emission controls for the post-1996 period were not considered, and additional NO_X emission controls, such as NO_X Reasonably Available Control Technology (RACT), were not considered due to the existence of an approved NO_X emission control waiver under section 182(f) of the Clean Air Act. Existing NO_X emission reduction requirements, such as the acid rain control requirements under Title IV of the Clean Air Act, were considered.

b. Strategy 4. Strategy 4 includes all Strategy 2 measures and also includes some additional point, area, and mobile source control measures in the severe ozone nonattainment areas. The additional controls are measures that the State could consider. The State, however, has not evaluated the technical feasibility or cost-effectiveness of these measures. The measures have only been considered regarding their potential to reduce VOC and NO_X emissions by 2007. For the additional

measures considered, please see Table 4.

Table 3 lists the VOC and NO_X emission reductions expected in Grid B and in the severe ozone nonattainment areas. Emissions control strategy components for Illinois considered in the attainment strategy modeling are listed in Table 4. The following acronyms are used:

RACT—Reasonably Available Control Technology

NESHAP—National Emission Standard for Hazardous Air Pollutants

MACT—Maximum Available Control Technology

I/M—Vehicle Inspection and Maintenance.

TABLE 3.—EMISSION CONTROL LEVELS FROM STRATEGIES 2 AND 4 GRID B AND SEVERE OZONE NONATTAINMENT AREAS LAKE MICHIGAN OZONE MODELING DOMAIN

Strategy	Grid B percent emission change		Severe nonattainment area percentage emissions change	
	VOC	NO_X	VOC	NO_X
2	−27	−13	−37	−11
4	−40	−19	−53	−18

TABLE 4.—EMISSION CONTROL MEASURES FOR ILLINOIS

STRATEGY 2—2007 MANDATORY CLEAN AIR ACT MEASURES

POINT SOURCE VOC MEASURES
- Bakery RACT Tightening.
- Coke Oven NESHAP.
- Industrial Wastewater RACT.
- Volatile Petroleum Liquid and Volatile Organic Liquid Storage RACT.
- Metal Can Coating Tightening.
- Metal Furniture Coating Tightening.
- Offset Lithography RACT.
- Plant Shutdown Credits.
- RACT Fix-Ups for Several Source Categories.
- RACT Enhancement (Reduction of source size cutoff to 25 tons/year, potential to emit).
- Synthetic Organic Chemical Manufacturing Industry Oxidation Tightening.
- Solid Waste Toxic Substance Disposal Facility MACT.
- Wood Furniture Coating RACT.
- Batch Processes RACT.
- Fabric Coating Tightening.
- Large Appliance Coating Tightening.
- Marine Vessel Loading.
- Metal Coil Coating Tightening.
- Miscellaneous Metal Parts Coating Tightening.
- Paper Coating Tightening.
- Plastic Parts Coating Tightening.
- RACT Geographic Expansion.
- Reformulated Gasoline for Bulk Terminals and Bulk Plants.
- Synthetic Organic Chemical Manufacturing Industry Reactor Processes.
- Vinyl Coating Tightening.

POINT SOURCE NO_X CONTROLS
- Phase I Acid Rain NO_X Limits.

AREA SOURCE VOC CONTROLS
- Automobile Refinishing.
- Architectural and Industrial Maintenance Coatings.
- Gasoline Tank Truck Leak Reductions (emission reduction due to use of reformulated gasoline).
- Stage II Vehicle Refueling Vapor Recovery.
- Underground Storage Tank Breathing Losses and Leaks (emission reduction due to use of reformulated gasoline and improved valves).
- Stage I Vapor Controls (emission reduction due to use of reformulated gasoline).
- Traffic Marking Coatings.
- Commercial/Consumer Solvent Reformulation or Elimination.
- Off-Road Engine Standards.
- On-Board Vehicle Controls.

MOBILE SOURCE CONTROLS
- Tier I Light-Duty Vehicle Standards.
- Reformulated Gasoline—Phase II (Class C).
- Enhanced I/M (no NO_X cut-points).
- Clean Fuel Fleets.
- Current Transportation Improvement Program/Build Scenario.
- Highway System and Public Transit System (including major new facilities included in the 2010 Plan).
- Conventional Transportation Control Measure.
  - Highway System/Congestion Relief
    - Signal Interconnection
    - Bottleneck Elimination
    - Incident Management Programs
  - Transit System Enhancements
    - Commuter Parking Lots

TABLE 4.—EMISSION CONTROL MEASURES FOR ILLINOIS—Continued

- Subscription Bus Service/Vanpool Programs
- Multi-modal Transit Centers
- System Operational Improvements
- Non-Motorized Transportation
  - Bicycle Facilities
  - Pedestrian Facilities

STRATEGY 4—2007 MANDATORY MEASURES PLUS

All Strategy 2 measures plus:

POINT SOURCE VOC CONTROLS
- Degreasing Controls.
- Improved Rule Effectiveness.
- Phased Emissions Reduction Program (Declining Emission Caps).

AREA SOURCE VOC CONTROLS
- Agricultural Pesticides Application.
- Degreasing Controls.
- Improved Rule Effectiveness.
- Small Engine Buy-Back Program.
- Stage I—Equipment Efficiency Increases.
- State II—Equipment Efficiency Increases.

POINT SOURCE NO_X CONTROLS
- Phase II Acid Rain NO_X Limits.

MOBILE SOURCE CONTROLS
- Californian Low Emission Vehicle Standards.
- Specific Vehicle Inspection/Maintenance in the severe nonattainment areas.
- Reformulated Gasoline—Phase II (Class B) in the severe nonattainment. areas.

Has the State Adopted a Selected Emission Control Strategy?

The State has not selected either emissions control strategy as the official, adopted emissions control strategy of the Phase II ozone attainment demonstration. The State, however, has adopted and developed regulations for many of the emission control measures contained in the two emission control strategies, and particularly for the controls contained in Strategy 2. Some of the emission control measures in Strategy 4, however, have not been adopted. For example, Illinois has not adopted major agricultural pesticide application restrictions and California low emission vehicle standards.

6. Transportation Conformity

Did the State Address Transportation Conformity in the Submittals?

Illinois has not specifically addressed transportation conformity or associated mobile source emission budgets in the attainment demonstration and no such mobile source emission budget has been adopted as part of the Phase II submittal.

7. State Commitments

Are There any State Commitments for Further Analyses and Air Quality Plans Addressing a Final Ozone Attainment Demonstration for the 1-hour Ozone Standard?

Illinois believes that, with the level of NO_X emission reductions consistent with the NO_X SIP call (Illinois itself is not committing at this time to develop a NO_X SIP and implement NO_X emission controls consistent with the NO_X SIP call) and considering the VOC emission reductions from the 15 percent (1996) and 9 percent (post-1996) ROP plans, little or no additional VOC emission reductions are necessary to provide for attainment of the 1-hour ozone standard. Illinois has committed to submit a final plan, including additional modeling and adopted emission control regulations, to achieve attainment of the 1-hour standard and to meet post-1999 ROP requirements, no later than the end of 2000. After the impact of the selected regional NO_X controls is assessed, Illinois will reconsider the need for further VOC emission controls. If additional VOC control measures are needed, Illinois will revise the SIP to include the necessary regulations. Illinois commits to implement the emission control programs on a schedule necessary to meet ROP requirements.

B. Environmental Protection Agency Review of the Submittals

1. Adequacy of the State's Demonstration of Attainment Did the State Adequately Document the Techniques and Data Used to Derive the Modeling Input Data and Modeling Results of the Analyses?

The Phase I submittals from the States thoroughly documented the techniques and data used to derive the modeling input data. The April 1998 submittal adequately summarized the modeling outputs and the conclusions drawn from these model outputs.

Did the Modeling Procedures and Input Data Used Comply With the Clean Air Act and EPA Requirements?

Yes.

Did the States Adequately Demonstrate Attainment of the Ozone Standard?

Illinois, in accordance with EPA's December 1997 guidance, has demonstrated that attainment of the standard is achievable provided sufficient reductions in background ozone concentrations (and background ozone precursor concentrations) occur as a result of the implementation of regional NO_X emission controls under the NO_X state implementation plan call. Illinois, however, has not selected a specific emission control strategy that would achieve attainment of the 1-hour ozone standard. This will not be done until the LADCO States submit a final attainment demonstration in December 2000. By then the States plan to complete an assessment of the ozone impacts of regional NO_X controls and to adopt additional VOC and NO_X emission control measures needed to attain the 1-hour standard.

Does the Weight of Evidence Test Support the States' Conclusions Regarding the Attainment Demonstration?

The documented WOE analyses support the conclusions of the deterministic test and the statistical test. Both the deterministic test and the statistical test lead to similar conclusions regarding the ozone 1-hour standard attainment demonstration. Both the deterministic and the statistical tests, as supplemented by a WOE analysis, show that attainment can be achieved with local emission controls already implemented couple with significant reductions in transported ozone and ozone precursors.

2. Adequacy of the Emissions Control Strategy

Has an Adopted Emissions Control Strategy Been Adequately Documented?

No. The State has not adopted a final emissions control strategy for attainment of the 1-hour ozone standard. The State, however, has demonstrated that significant reductions in transported ozone and NO_X will be necessary to attain the 1-hour standard. These reductions are expected to occur as a result of the implementation of regional NO_X emission reductions. All three of the LADCO States, including Illinois, are expected to implement alternative regional NO_X controls within their States.

Is the Emission Control Strategy Acceptable?

No. The State must select an emissions control strategy that is consistent with attainment in order to establish a motor vehicle emissions budget. The State must do so in sufficient time for EPA to find the motor vehicle emissions budget adequate by May 31, 2000. The State has committed to adopt and submit a final emissions control strategy associated with a revised modeling analysis by December 2000.

3. State Commitments

Are the State Commitments for Future Analyses and Finalization of the Attainment Demonstration Acceptable?

Yes. Illinois' commitments to complete the attainment demonstration and to adopt and submit the post-1999 ROP plan (the post-1996 ROP plan, covering the period of 1997 through 1999, is currently under review by the EPA) by December 2000 are adequate.

4. Relationship to Other Requirements

Will the Future Analyses Adequately Address the Impacts of the EPA NO_X State Implementation Plan Call?

Yes. The LADCO States have made it very clear that the 1-hour ozone standard will be difficult to attain without the regional NO_X emission reductions and that the final demonstration of attainment will incorporate the States' best estimates of the impacts of the NO_X SIP call or of alternative regional NO_X emission controls.

Has the State Specified and Adopted an Acceptable Transportation Conformity Mobile Source Emission Budget?

No. The State has not selected a specific emission control strategy. The State must select a control strategy that is consistent with attainment of the NAAQS. They will need to establish a motor vehicle emissions budget based on the selected strategy and will need to submit the budget in time for EPA to find the budget adequate by May 31, 2000.

C. Summary

Overall, Is Illinois' Ozone Attainment Demonstration Acceptable?

Illinois' commitment to complete the control strategy adoption process is adequate to warrant a conditional approval of the attainment demonstration plan. Illinois has accomplished as much as can be expected at this time and has generally met the requirements of the EPA December 1997 ozone attainment demonstration guidance, with the exception of adopting a final emission control strategy and associated emission control regulations.

What Portions of the Attainment Demonstration Need Additional Work and Consideration in the Final Attainment Demonstration?

The following items need further consideration in the final ozone attainment demonstration:

1. A final modeled demonstration of attainment that considers the impacts of the regional NO_X emission reductions, local control measures, and NO_X emissions control waiver (if maintained);

2. Adoption and submission of CAA measures, including VOC and NO_X (within the modeling domain) measures relied on in the final modeled attainment demonstration;

3. Motor vehicle emissions budget, including both VOC and NO_X emissions.

The EPA has found that the motor vehicle emissions budget in the attainment demonstration submitted for the Chicago-Gary-Lake County ozone nonattainment area is inadequate for conformity purposes. The EPA is proposing to conditionally approve the attainment demonstration SIP if the State corrects the deficiencies that cause the motor vehicle emissions budget to be inadequate and, alternatively, to disapprove it if Illinois does not correct the deficiencies.

III. Proposed Action

The Environmental Protection Agency proposes to issue a conditional approval of the ozone attainment demonstration. The State already committed to do the following in the April 1998 ozone attainment demonstration: (1) Perform and submit a final modeled ozone attainment demonstration by December 2000; (2) adopt and submit a specific emissions control strategy, including adopted control measures, adequate to attain the 1-hour ozone NAAQS in the ozone nonattainment area and throughout the ozone modeling domain by December 2000; (3) adopt and submit control measures necessary to meet ROP from 1999 until the attainment year and the associated target calculations. For EPA to issue a final conditional approval the State will need to take the following steps in sufficient time for EPA to determine by May 31, 2000 that the state has an adequate motor vehicle emissions budget and an adequate commitment for a mid-course review: (1) Select a control strategy consistent with its current modeling analysis; (2) adopt and submit an adequate motor vehicle emissions budget consistent with the selected strategy; and (3) commit to perform a mid-course review in 2003.

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

If the State does not take one or more of the actions listed above in time for EPA to make the May 31, 2000 determinations, EPA will disapprove Illinois' attainment demonstration submission for the Chicago-Gary-Lake County nonattainment area.

If EPA issues a final conditional approval of the State's submission, the conditional approval will convert to a disapproval if the State does not adopt and submit a complete SIP submission with the following elements by December 31, 2000: (1) A final revised modeling analysis that fully assesses the impacts of regional NO_X reductions, models a specific local emissions reduction strategy, and reconsiders the effectiveness of the NO_X waiver; (2) control measures necessary to meet the ROP requirement from 1999 until the attainment year, including target calculations; and (3) VOC and regional (within the modeling domain) NO_X emission control measures sufficient to support the final ozone attainment demonstration.

If the State makes a complete submission with all of the above elements by December 31, 2000, EPA will propose action on the new submissions for the purpose of determining whether to issue a final full approval of the attainment demonstration.

What Are the Consequences of State Failure?

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

What Are the CAA's Provisions for Sanctions?

If EPA disapproves a required SIP, such as the attainment demonstration SIPs, section 179(a) provides for the imposition of two sanctions. The first sanction would apply 18 months after EPA disapproves the SIP if the State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to a broader area, but is not proposing to take such action today.

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.

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.

IV. Administrative Requirements

A. Executive Orders 12866

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

B. Executive Order 13045

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

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

C. Executive Order 13084

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

D. Executive Order 13132

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

that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

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

If the 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 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 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 Illinois, which is not a small government.

G. National Technology Transfer and Advancement Act

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: November 30, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–31720 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN90–1; FRL–6503–2]

Approval and Promulgation of Implementation Plans; Indiana; Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve the 1-hour ozone attainment demonstration State Implementation Plan (SIP or plan) for the Chicago-Gary-Lake County severe ozone nonattainment area submitted by the Indiana Department of Environmental Management (IDEM) on April 30, 1998. This proposed conditional approval is based on the submitted modeling analysis and on the State's commitments to adopt and submit a final ozone attainment demonstration SIP and a post-1999 Rate of Progress (ROP) plan, including the necessary State air pollution control regulations to complete the attainment demonstration and ROP plans, by December 31, 2000. The EPA is also proposing, in the alternative, to disapprove this attainment demonstration plan if, by December 31, 1999, the State does not select a control strategy associated with its submitted modeling analysis and submits adequate motor vehicle emissions budgets for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X) for the ozone nonattainment area that comply with EPA's conformity regulations and that are derived from the selected emissions control strategy that supports attainment of the 1-hour ozone standard. In addition, the State must, by December 31, 1999, submit an enforceable commitment to conduct a mid-course review of the ozone attainment plan in 2003.

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

ADDRESSES: Written comments should be sent to: Jay Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Mark Palermo at (312) 886–6082 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–6057, E-Mail Address doty.edward@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This section provides background information on attainment demonstration SIPs for the 1-hour ozone National Ambient Air Quality Standard (NAAQS or standard) and an analysis of Indiana's 1-hour ozone attainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area.

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I. Background Information

A. Basis for the State's Attainment Demonstration SIP

What Are the Relevant Clean Air Act Requirements?

The Clean Air Act requires the EPA to establish national ambient air quality standards for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. Clean Air Act sections 108 and 109. In 1979, EPA promulgated the 1-hour 0.12 parts per million (ppm) ground-level ozone standard. 44 FR 8202 (Feb. 8, 1979). Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC 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 on any day. An area violates the standard if, over a consecutive 3-year period, more than 3 daily exceedances are expected to occur at any monitor in the area or in its immediate downwind environs. The highest of the fourth-highest daily peak ozone concentrations over the 3 year period at any one monitoring site in the area is called the design value for the area. The Clean Air Act, 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 3-year period from 1987 through 1989. Clean Air Act section 107(d)(4); 56 FR 56694 (Nov. 6, 1991). The Clean Air Act further classified these areas, based on the areas' design values, as marginal, moderate, serious, severe or extreme. Clean Air Act section 181(a). Marginal areas were suffering the least significant air quality problems while the areas classified as severe and extreme had the most significant air quality problems.

The control requirements and date by which attainment needs to be achieved vary with an area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas are required to attain the 1-hour standard by November 15, 1999, and severe areas are required to attain by November 15, 2005 or November 15, 2007, depending on the areas' ozone design values. The Chicago-Gary-Lake County ozone nonattainment area is classified as severe-17 and its attainment date is November 15, 2007. The Chicago-Gary-Lake County ozone nonattainment area is defined (40 CFR 81.314 and 81.315) to contain Cook, DuPage, Grundy (Aux Sable and Goose Lake Townships only), Kane, Kendall (Oswego Township only), Lake, McHenry, and Will Counties in Illinois, and Lake and Porter Counties in Indiana. This proposed rulemaking focuses on the Indiana portion of this nonattainment area. A separate proposed rulemaking in today's **Federal Register** deals with the Illinois portion of this nonattainment area.

Under section 182(c)(2) and (d) of the Clean Air Act, 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 ROP reductions in VOC emissions of 9 percent for each 3-year period until the attainment. (In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions to achieve ROP.) Today, in this proposed rule, EPA is proposing action on the attainment demonstration SIP submitted by Indiana for the Chicago-Gary-Lake County ozone nonattainment area and its associated ozone modeling domain and on the State's commitment to complete the attainment demonstration SIP for this ozone nonattainment area by December 2000. EPA is also proposing action on the State's commitment to submit ROP target calculations and the adopted measures to achieve ROP by December 2000. In addition, elsewhere in this **Federal Register**, EPA is today

proposing to take action on ozone attainment demonstraion SIPs, and, in some cases ROP SIPs, for other serious or severe 1-hour ozone nonattainment areas. The additional ozone attainment demonstration and ROP SIPs addressed elsewhere in this **Federal Register** cover the ozone nonattainment areas of Greater Connecticut (CT), Springfield (Western Massachusetts) (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), Chicago-Gary-Lake County (IL–IN) (Illinois portion of this area), and Houston-Galveston-Brazoria (TX).

In general, an attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the emission control measures necessary to achieve attainment. 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) of the Clean Air Act, 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.

What is the History and Time Frame for the State Attainment Demonstration SIP and How Is It Related to the NO_X SIP Call?

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 VOC 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 Clean Air Act 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 the control measures necessary for attainment and the 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 public hearing on the State submittal.[4] This submission is sometimes referred to as the Phase II submission. Motor vehicle emission 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 each 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.

What Is the Time Frame for Taking Action on the Attainment Demonstration SIPs for the Serious and Severe Nonattainment Areas?

The States generally submitted the SIPs between April and October 1998; some States are still submitting additional revisions. Under the Clean Air Act, EPA is required to approve or disapprove a State's submission no later than 18 months following submission. (The statute provides up to 6 months for a completeness determination and an additional 12 months for approval or disapproval.) The EPA believes that it is 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 serious and severe 1-hour ozone attainment demonstration SIPs and intends to take

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

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

[3] 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 Clean Air Act, 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 Indiana has relied on a commitment to submit these measures by December 2000, EPA is proposing a conditional approval of the attainment demonstration. Some States with severe nonattainment areas submitted the actual adopted control measures and are not relying on a commitment.

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

[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.

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.

What Are the Options for Action on the State Attainment Demonstration SIPs?

Depending on the circumstances unique to each of the 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 inentify additional actions that will be necessary from the State.

The Clean Air Act provides for EPA to approve, disapprove, partially approve or conditionally approve a State's plan submission. The EPA must fully approve the submission if it meets the attainment demonstration requirement of the Clean Air Act. 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 State's 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 Clean Air Act. 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 final 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 after the deadline for the correction of the deficiency. 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. 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.[5] 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.

What Are the Modeling Requirements for the Atteinment Demonstration?

For purposes of demonstrating attainment, the Clean Air Act requires serious and severe areas to use photochemical grid modeling or an analytical method EPA determines to be as effective. The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values. Following validation of the modeling system for a base year, emissions are projected to an attainment year 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 high ozone concentrations exceeding the standard, 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 modeling domain size. The domain should be larger than the designated nonattainment area to reduce uncertainty in the boundary conditions and should include any 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 and emissions that describe atmospheric conditions and emissions inputs reflective of the selected high ozone days. Finally, the State needs to verify that the modeling system is properly

[5] 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, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''UAMREG''). See also U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''O3TEST'').

simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests (generally referred to as model validation). 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 peak ozone concentration above 0.124 ppm indicates that the area is expected to exceed the standard in the attainment year. 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 [6] 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 3-year period, the area has an average of 1 or fewer exceedances per year at any monitoring site, the area is not violating the standard. Thus, if the State models a very extreme day (considering meteorological conditions that are very conducive to high ozone levels and that should lead to fewer than 1 exceedance per year at any location in the nonattainment area and modeling domain over a 3 year period), 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 3 days with peak 1-hour ozone concentrations above the standard over a 3-year period at any monitoring site before an area is considered to be in violation of the NAAQS.)

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 3-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 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 3-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.

What Are the Additional Analyses That May Be Considered When the 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 exhaustive 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 a WOE determination 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 below.

C. Framework for Proposing Action on the Attainment Demonstration SIPs

Besides the Modeled Attainment Demonstration, What Other Issues Must be Addressed in 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 the 1-hour attainment demonstration SIPs. These elements are listed below and then described in detail.

Clean Air Act measures, and other measures relied on in the modeled attainment demonstration SIP. This includes adopted and submitted rules for all previously required Clean Air Act 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 today.

NO_X Reductions Affecting Boundary Conditions.

Motor vehicle emissions budget. This must be a motor vehicle emissions budget which can be determined by EPA to be adequate for conformity purposes.

Mid-course review. An enforceable commitment to conduct a mid-course review and evaluation based on air quality and emission trends must be included in the attainment demonstration SIP before it can be approved by the EPA. 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.

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

1. Clean Air Act Measures and Measures Relied on in the Modeled Attainment Demonstration SIP

The States should have adopted the control measures already required under the Clean Air Act 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 Clean Air Act 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 Clean Air Act. (For serious areas, these should have already been identified and adopted, whereas severe areas have until December 2000 to submit measures 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 table presents a summary of the Clean Air Act requirements that need to be met for each severe nonattainment area for the 1-hour ozone NAAQS. These requirements are specified in section 182 of the Clean Air Act. Information on more measures that States may have adopted or relied on in their current SIP submissions is not shown in the table.

CAA REQUIREMENTS FOR SEVERE AREAS

—NSR for VOC and NO_X, including an offset ratio of 1.3:1 and a major VOC and NO_X source cutoff of 25 tons per year (tpy)
—Reasonable Available Control Technology (RACT) for VOC and NOx
—Enhanced Inspection and Maintenance (I/M) program
—15% VOC plans for ROP through 1996
—Emissions inventory
—Emission statements
—Attainment demonstration
—9% ROP plan through 1999
—Clean fuels program
—Enhanced monitoring (PAMS)
—Stage II vapor recovery
—Reformulated gasoline
—9% ROP plan through attainment year (post-1999)
—Measures to offset Vehicle Miles Travelled (VMT) growth
—Requirements 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 22 jurisdictions were required to 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 SIP submission requirement portion of the NO_X SIP call rule requiring States to submit rules by September 30, 1999.

The NO_X SIP call rule establishes budgets for the States in which 9 of the nonattainment areas for which EPA is proposing action today are located. The 9 areas are: Greater Connecticut, Springfield, MA, New York/North New Jersey/Long Island (NY–NJ–CT), Baltimore, MD, Philadelphia/Wilmington/Trenton (PA–NJ–DE–MD), Metropolitan Washington, DC (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 States but outside of the modeling domains, the 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 State inside the local modeling domain [7] must be adopted as part of the State's 1-hour attainment demonstration SIP. It is only for NO_X emission reductions occurring outside of the local modeling domain that States may assume implementation of the NO_X SIP call measures and the resulting boundary conditions without actually being required at this time to adopt regulations to implement the NO_X emission reductions required by the NO_X SIP call.

3. Motor Vehicle Emissions Budget

The EPA believes that an attainment demonstration SIP must necessarily estimate the motor vehicle emissions that will be produced in the attainment year and must 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 Clean Air Act 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 an appropriately identified motor vehicle emissions budget is a necessary part of an attainment demonstration SIP. A SIP cannot effectively demonstrate

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

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 the 9 other nonattainment areas covered in today's proposals are inadequate or missing from the attainment demonstrations. Therefore, EPA is proposing to disapprove the attainment demonstration SIPs for those 9 areas if the States do not submit motor vehicle emissions budgets that EPA can find adequate by May 31, 2000.[8] In order for EPA to complete the adequacy process by the end of May, States should submit an emissions budget no later than December 31, 1999.[9] 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 of 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. Mid-Course Review

A mid-course review (MCR) is a reassessment of modeling analyses and more recent monitoring and emissions 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 attainment dates.

The EPA believes that a commitment to perform a MCR is a critical element of the WOE determination for the attainment demonstration on which EPA is proposing to take action today. In order to approve the Indiana attainment demonstration SIP for the Chicago-Gary-Lake County area, EPA believes that Indiana must submit an enforceable commitment to perform a MCR as described here.[10]

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.

For severe areas, such as the Chicago-Gary-Lake County ozone nonattainment area, the States must submit an enforceable commitment to perform the MCR immediately following the 2003 ozone season and to submit the results to EPA by December 31, 2003. EPA believes that an analysis in 2003 would be most robust since some or all of the regional NO_X emission reductions should be achieved by that date. EPA would then review the results and determine whether any States need to adopt and submit additional control measures for purposes of attainment. The EPA is not requesting that States commit now to adopt new control measures as a result of this process. It would be impracticable for the States to make a commitment that is specific enough to be considered enforceable. Moreover, the MCR could indicate that upwind States may need to adopt some or all of the additional controls needed to ensure that an area attains the standard. Therefore, if EPA determines that additional control measures are needed for attainment, EPA would determine whether additional emission reductions are needed in the States in which the nonattainment areas are located or in upwind States, or in both. The EPA would require the affected State or States to adopt and submit new measures within a period specified at that 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. Additional Background Considerations for This Proposed Rulemaking

What Information Does the EPA Expect To Receive From the States To Allow an Approval of the 1-hour Ozone Attainment Demonstration SIPs?

The following table shows a summary of information on what EPA expects from Indiana to allow EPA to approve the severe area 1-hour ozone attainment demonstration SIP for the Chicago-Gary-Lake County nonattainment area.

SUMMARY SCHEDULE OF FUTURE STATE ACTIONS—SEVERE NONATTAINMENT AREAS THAT WILL SUBMIT ALL MEASURES NEEDED FOR ATTAINMENT BY 12/31/00

Required no later than:	Action
12/31/99	State submits the following to EPA: —Motor vehicle emissions budget.[1] —Enforceable commitment to perform a mid-course review.
4/15/00	State submits— —The final motor vehicle emissions budget (only if draft submitted earlier).[2] —Enforceable commitment (only if draft submitted earlier) to perform a mid-course review (only if draft submitted earlier).
12/31/00	—State submits a revised/final modeling analysis. —State submits adopted rules that reflect measures relied on in modeled attainment demonstration and that support ROP requirements. —State revises & submits SIP & motor vehicle emissions budget if adopted measures are for motor vehicle category.

[8] 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.

[9] A final budget is preferred; but, if the State public process is not yet complete, then a draft budget 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.

[10] For purposes of conformity, the State needs a commitment that has been subject to a public hearing. If the State has submitted a commitment that has been subject to public hearing and that provides for the adoption of all measures necessary for attainment, the State should submit a letter prior to December 31, 1999, amending the commitment to include the MCR.

SUMMARY SCHEDULE OF FUTURE STATE ACTIONS—SEVERE NONATTAINMENT AREAS THAT WILL SUBMIT ALL MEASURES NEEDED FOR ATTAINMENT BY 12/31/00—Continued

Required no later than:	Action
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 may be submitted at this time. Note that the budget can reflect estimated Tier 2 emission reductions—see memorandum from Lydia Wegman and Merrylin Zaw-Mon, ''1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking.''

[2] 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.

What Are the Relevant Policy and Guidance Documents?

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

Recent Documents

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

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

3. Memorandum, ''Guidance on Motor Vehicle Emissions Budgets in 1-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, ''1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur/Sulfur Rulemaking,'' from Lydia Wegman and Merrylin Zaw-Mon to the Air Division Directors, Regions I–VI, November 8, 1999. Web site: http://www.epa.gov/oms/transp/traqconf.htm.

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

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 PM_{10} NAAQS.'' Web site: http://www.epa.gov/ttn/oarpg/t1pgm.html.

II. Technical Review of the Submittal

A. Summary of State Submittals

1. General Information

When Was the Attainment Demonstration Addressed in Public Hearings, and When was the Attainment Demnstration Submitted by the State of Indiana?

The State held a public hearing on the ozone attainment demonstration on April 6, 1998 and submitted to it EPA on April 30, 1998.

What Are the Basic Components of the Submittal?

Since Indiana, along with Illinois, Michigan, and Wisconsin, participated in the Lake Michigan Ozone Study and the Lake Michigan Ozone Control Program, and since these ozone modeling studies form the technical basis for the ozone attainment demonstration, Illinois, Indiana, and Wisconin centered their ozone attainment demonstrations around a single technical support document (April 1998) produced by the four States in the Lake Michigan Air Directors Consortium (LADCO). This technical support document is entitled ''Modeling Analysis for 1-Hour Ozone NAAQS in the Lake Michigan Area.'' Each State has also included a state-specific cover letter and state-specific synopsis of the ozone attainment demonstration. It should be noted that the specifics of the emission control strategies considered varied by State. The specific emission categories or emission controls considered by Indiana are summarized below.

2. Modeling Procedures and Basic Input Data

What Modeling Approach Was Used in the Analyses?

All three States, as members of LADCO and as participants in the Lake Michigan Ozone Study and Lake Michigan Ozone Control Program, used the same ozone modeling approach. The modeling approach is documented in an April 1998 technical support document, entitled ''Modeling Analysis For 1-Hour Ozone NAAQS In The Lake Michigan Area.'' Since the April 1998 technical support document failed to document all of the modeling approaches and bases for the development and selection of model input data, this review also relies on an older, December 1995, technical support document submitted by the LADCO States, which does a more thorough job of documenting the system and input data.

The heart of the modeling system and approach is the Urban Airshed Model—Version V (UAM–V) developed originally for application in the Lake Michigan area. This photochemical model was used to model ozone and ozone precursors in a multiple, nested grid system. In the horizontal dimension, three nested grids were used. Grid A, the largest of the three grids, is a 35 cell by 50 cell grid (560 kilometers east-west by 800 kilometers north-south) generally centered on the lower two-thirds of Lake Michigan with a horizontal resolution of 16 kilometers per cell. Grid B is a 34 cell by 60 cell

grid (272 kilometers east-west by 480 kilometers north-south) centered on the lower three-quarters of Lake Michigan with a horizontal resolution of 8 kilometers per cell. Grid B covers all of the 1-hour ozone nonattainment areas of interest in the analysis. Grid C is a 20 cell by 80 cell grid (80 kilometers east-west by 320 kilometers north-south) approximately centered on the western shoreline of lower Lake Michigan with a horizontal resolution of 4 kilometers per cell. The model covered 8 vertical layers over the entire horizontal modeling domain. Mixing heights used in the modeling system were determined from regional upper-air monitoring station data.

Besides being able to model ozone and other pollutants in nested horizontal grids, UAM–V can also model individual elevated source plumes within the modeling grid (plume-in-grid or PiG). Gaussian dispersion models are used to grow plumes until the plumes essentially filled grid cells. At these points, the numerical dispersion and advection components of UAM take over to address further downwind dispersion and advection.

The UAM–V modeling system is also used to assess the impacts of clouds on certain high ozone episode days. Observed cloud data are used to modify chemical photolysis rates and other meteorological input data.

The following input data systems and analyses were also used as part of the combined modeling system for the Lake Michigan area:

a. Emissions. UAM–V requires the input of gridded, hourly estimates of CO, NO_X, and speciated VOC emissions (speciated based on carbon bond types). The States provided emission inventories, which were processed through the Emissions Modeling System—1995 version (EMS–95) to prepare UAM–V input data files. Emission data files were generated for Grid A and Grid B.

For Grid B, the States supplied point source (individually identified stationary sources) and area source (sources too small and numerous to be identified and recorded as individual sources) emissions for a typical summer weekday. These emissions were based on the States' 1990 base year emissions inventories for the ozone nonattainment areas and were adjusted to 1991 levels to be compatible with the high ozone periods modeled. The base emissions were adjusted for some source categories to reflect typical ''hot summer days.'' Day-specific emissions data were supplied by over 200 facilities in the modeling domain. Mobile source emissions were calculated by EMS–95 using MOBILE5a (a mobile source emissions model supplied by the EPA) emission factors (using day-specific temperatures) and local vehicle-miles-traveled data generally supplied by local metropolitan planning agencies and based on transportation models. Finally, the biogenic emission rates used in Grid B were calculated based on BIOME, which is the biogenics emissions model contained within EMS–95.

For Grid A, point and area anthropogenic emissions rates were derived from EPA's 1990 Interim Regional Inventory, except for Wisconsin, which supplied state-specific data. Mobile source emissions were based on MOBILE5a emission factors (derived for a representative hot summer day) and vehicle miles traveled data derived using the 1990 Highway Performance Monitoring System. Biogenic emission rates were calculated using the Biogenics Emissions Inventory System (BEIS) assuming temperatures for a representative, hot summer day. This version of BEIS includes soil NO_X emissions and land use data from the United States Geological Survey.

Grid B emissions data superceded Grid A data within Grid B. Grid C emissions data were not specifically derived—Grid B emissions data were used within Grid C.

All emission estimates were speciated by compound or carbon bond type and spatially, and temporally resolved into UAM–V input data files by the use of EMS–95.

b. *Meteorology.* Meteorological input data by grid cell and hour were generated by use of a prognostic meteorological model (model output data derived from equations which describe how meteorological variables, such as wind speed/direction, temperature, and water vapor change over time) known as CALRAMS. CALRAMS was run with varying horizontal resolution depending on location. Over Grids B and C, CALRAMS was run with 4 kilometer resolution. Over Grid A, a resolution of 16 kilometers was used. Over the remainder of the continental United States, a resolution of 80 kilometers was used. The model's vertical structure used 31 layers in Grid A and over the remainder of the continental United States outside of the UAM–V modeling domain and 26 layers over Grids B and C.

Four-dimensional data assimilation using observed meteorological data values was used to ensure that the model estimates did not deviate significantly from observed meteorological data. Preprocessor programs were used to map the model's output data into the UAM–V grid system and to derive other necessary model inputs.

Some adjustments were made to CALRAMS results where the model produced near-calm wind speeds and where observed wind speeds were significantly higher than modeled wind speeds during one modeled ozone episode.

c. *Chemistry.* Atmospheric chemistry within the modeling grid system and UAM–V was simulated using the Carbon Bond-Version IV model developed by the Environmental Protection Agency and used in Version IV of UAM.

d. *Boundary and Initial Conditions.* Initial sensitivity analyses of the modeling system's response to modeling domain boundary conditions (incoming ozone and ozone precursor levels at the outer edges of the modeling domain) showed that the system was very sensitive to these boundary conditions. LADCO used all available upwind data, and especially those collected during the 1991 intensive field study, to derive boundary conditions. In addition, the contractor, SAI, Incorporated, used output data from the use of the Regional Oxidant Model (ROM) to derive initial concentrations in the modeling domain for the first day of each modeled ozone episode. Data from this first day, along with other model input data, were used to model ozone and precursor concentrations for the next 1 to 2 days, to be used as inputs into the main part of the modeled ozone episode. The first 1 to 2 days modeled were treated as ''ramp-up days'' for the main part of each modeled ozone episode. This process produced more stable input data for the modeling of high ozone days.

What High Ozone Periods Were Modeled?

Four high ozone episodes in 1991 were considered. These episodes were:

June 18–21, 1991;

June 24–28, 1991;

July 15–19, 1991; and

August 22–26, 1991.

The 1991 ozone episodes were selected as the focus of the modeling analyses because the summer of 1991 was a relatively conducive period for ozone formation, and, most importantly, because LADCO conducted an intensive field study during that summer to collect data needed to support the modeling study.

What Procedures and Sources of Projection Data Were Used To Project the Emissions to Future Years?

The future year emission inventories used in the Lake Michigan Ozone Control Program and ozone attainment demonstration were derived from the Lake Michigan Ozone Study base year regional inventory (discussed above). Three adjustments were made to the base year emissions inventory to generate the future year emission inventories. First, a baseline inventory was prepared by replacing the day-specific emissions with typical hot summer day emissions for point sources. Emissions for other source categories were simply carried over to the baseline inventory. Second, the baseline emissions inventory was projected to 2007 (the attainment year for severe ozone nonattainment areas) by applying scalar growth factors. Finally, the projected baseline emission inventories were reduced to reflect the implementation of various emission control measures expected or required to occur by those years.

The growth factors used in the projection of emissions for each source sector are as follows:

a. *Point Sources.* i. For electric utilities—company-specific data were provided by each State;

ii. For certain individual point sources—a growth factor of ''0'' was used to reflect the shutdown of these sources;

iii. For all remaining point source emission categories—growth factors based on the EPA Economic Growth Analysis System (EGAS) were used;

b. *Area Sources.* i. For baseline emission estimates based on population—projected populations were used to recalculate emissions;

ii. For gasoline marketing source categories—projected emissions were based on projected gasoline sales;

iii. For other area source emission categories—projections were based on EGAS estimates (some EGAS estimates were judged to be inappropriate and alternative surrogates were used to estimate future emissions);

c. *Mobile Sources.* Vehicle miles traveled projections were based on transportation modeling for northeast Illinois, northwest Indiana, and southeast Wisconsin, and on State-supplied growth factors for the rest of the ozone modeling domain; and

d. *Biogenic Sources.* No growth was assumed.

To account for emission changes resulting from various emission controls (these emission controls also affect projected emissions), the States tested several emission control strategies. Emission reduction scalars were developed to reflect the expected or required emission reduction levels, rule penetration (accounting for the percentage of source category emissions affected by the emission reduction requirements), and rule effectiveness (some source control rules do not fully achieve the emission reductions expected due to control device failure, human error, or other factors). The base component of these control strategies were the emission reductions resulting from the controls mandated by the Clean Air Act and expected to be in place by 2007. These emission controls are further discussed below.

How Were the Emissions, Air Quality, and Meteorological Input Data Quality Assured?

Emissions. The Lake Michigan States' quality assurance of the emissions data focused on the comprehensiveness and reasonableness of the emissions data rather than on precision and accuracy of the data. During the initial development of the regional emissions inventory, internal quality control activities included the preparation and implementation of quality assurance plans for the derivation of emission estimates by each State and for the development and application of the EMS–95 emissions software. External quality assurance activities included: (1) Audits of the point and area source data inputs; (2) review of the EMS–95 output; and (3) independent testing of the EMS–95 model source code. The State emission estimates were compared against each other to assess their completeness, consistency, and reasonableness.

Several approaches were used to compare the emission estimates against ambient measurements. These included: (1) Comparisons of ambient to emissions-based ratios of non-methane organic compounds to oxides of nitrogen; (2) comparisons of ambient to emissions-based ratios of carbon monoxide to oxides of nitrogen; (3) receptor modeling (determining individual source shares of monitored pollutant concentrations based on source-specific emission profiles and temporal and spatial statistical analyses of monitored pollutant species); and (4) comparisons of ambient to model-based ratios of non-methane organic compounds to oxides of nitrogen. The comparison of the measurement-based pollutant ratios with the emissions inventory-based pollutant ratios showed good agreement between the emissions inventory and the ambient data. The receptor modeling results also generally supported the validity of the emissions inventory.

Air Quality and Meteorological Data. Validation of the 1991 Lake Michigan Ozone Study field data (the data used as input to the meteorological and photochemical dispersion models and used to validate the models' outputs) was performed by the Lake Michigan Ozone Study Data Management and Data Analysis Contractors. The data were validated using a number of statistical analyses. Three levels of validation were used, depending on the intended use of the data. The three levels of data validation were:

a. *Level 1.* This validation was performed by the group collecting the data. This group: flagged suspect data values; verified the data contained in computer data files against input data sheets; eliminated invalid measurements; replaced suspect data with data from back-up data acquisition systems; and adjusted measurement values to eliminate quantifiable calibration and interference biases;

b. *Level 2.* This validation was performed on data assembled in a master data base. The level of data validation involved various consistency checks between data values within the data base, including: comparison of data from closely located sites collected at approximately the same time; comparison of data from co-located sampling systems; comparisons based on physical relationships; and special statistical analyses of the VOC and carbonyl data; and

c. *Level 3.* This validation was performed by the Lake Michigan Ozone Study Data Analysis Contractor and was performed as part of the data interpretation process. This validation included identification of unusual data values (*e.g.* extreme values, values which fail to track the values of other associated data in a time series, or those values which did not appear to fit the general and spatial or temporal overall pattern).

As a result of the data validation, several changes were made to the meteorological and air quality input data. Volume III (December 1995) of the Lake Michigan Ozone Study/Lake Michigan Ozone Control Program Project Report documents all of the data changes resulting from the data validation efforts.

3. Modeling Results

How Did the States Validate the Photochemical Modeling Results?

A protocol document outlining the operational and scientific evaluation of the modeling system was prepared by

LADCO, and was approved by the Environmental Protection Agency on March 6, 1992. The evaluation of the photochemical model consisted of seven steps:

a. Evaluation of the scientific formulation of the model by the Photochemical Modeling Contractor;

b. Assessment of the fidelity of the computer codes to scientific-formulation, governing equations, and numerical solution procedures performed by an independent contractor (independent of the Photochemical Modeling Contractor);

c. Evaluation of the predictive performance of the individual modeling process modules and preprocessor modules to identify possible flaws or systematic biases;

d. Evaluation of the full model's predictive performance against statistical performance tests and performance criteria specified by the EPA (see discussion of the model's performance for specific days modeled below);

e. Performance of sensitivity tests to assure conformance of the model with known or expected model behavior;

f. Performance of comparative modeling analyses, comparing the results from the use of UAM–V with similar results from the use of UAM–IV (the photochemical model generally recommended by the Environmental Protection Agency); and

g. Implementation of quality control and quality assurance activities, including: (i) Benchmark modeling; (ii) pre-established file structuring; (iii) duplicative modeling; (iv) modeling procedure and results documentation; and (v) external review of modeling results.

Numerous modeling runs and overall system evaluations were conducted to carry out these validation procedures.

What Were the Results of the Model Performance Evaluations for the Modeling System Used in the Attainment Demonstration?

The following highlights the results of the operational and scientific evaluation of the modeling system. These results are discussed in detail in many documents generated by LADCO and supplied to the Environmental Protection Agency:

a. Many modeling runs and evaluations of output data were made to derive statistical results indicative of the modeling system's overall performance. Statistical data, such as: observed peak ozone concentrations versus peak predicted concentrations; unpaired peak concentration accuracy; bias in peak concentrations and overall system bias; and gross system error, were compared to acceptable system criteria specified by the EPA (*Guideline for Regulatory Application of the Airshed Model,* EPA–450/4–91–013, July 1991). The statistical accuracy results for the modeling system comply with the EPA performance criteria;

b. The spatial and temporal representation of the surface ozone concentrations are reasonable both region-wide and in the areas of high concentrations. Broad areas of high ozone concentrations were reproduced successfully and magnitude and times of peak ozone concentrations reasonably matched those observed;

c. Model performance across the full modeling domain was consistent with model performance in individual subregions. This further supports the credibility of the modeling system;

d. Predicted aloft downwind ozone concentrations compare favorably with airborne/aircraft monitored ozone concentrations. This supports the three-dimensional validity of the modeling system; and

e. Model performance for ozone precursors, especially for NO_X, was very good. This further supports the validity of the use of the model to evaluate the impacts on ozone due to changes in precursor emissions and the testing of the emission control strategy scenarios.

Based on the model performance evaluation results, the EPA approved the validity of the modeling system and its use for control strategy evaluations on December 15, 1994 (letter from John Seitz, Director of the Office of Air Quality Planning and Standards to Lake Michigan Air Directors Consortium).

What Were the Ozone Modeling Results for the Base Period and for the Future Attainment Period?

Many modeling runs were conducted, producing millions of model output data. What is summarized in Tables 1 and 2 are the observed and modeled peak ozone concentrations for the selected ozone episode days for two considered emission control strategies. Please note that the ozone control strategy covered by each table is further discussed below.

The ozone modeling system was run to simulate ozone concentrations on selected high ozone days for the base year and future year (2007). The future year simulations covered five boundary condition scenarios, corresponding to base year boundary conditions, and to the reduction of peak boundary ozone levels to 85, 80, 70, and 60 parts per billion (ppb), 1-hour average. The future year simulations also covered two emission control strategy sets, Strategy 2 and Strategy 4.

The resulting domain-wide modeled peak ozone concentrations for Strategy 2 are given in Table 1. Similarly, the resulting domain-wide modeled peak ozone concentrations for Strategy 4 are given in Table 2.

TABLE 1.—LAKE MICHIGAN OZONE CONTROL PROGRAM STRATEGY 2 OZONE MODELING RESULTS

[Domain-wide Peak Ozone Concentrations, ppb]

1991 Date	1991 OBS	1991 MOD	2007 BY BC	2007 85 ppb	2007 80 ppb	2007 70 ppb	2007 60 ppb
June 26	175	165	141	134	133	128	122
June 27	118	152	130	123	122	119	114
June 28	138	142	123	118	118	116	109
June 20	152	137	123	121	121	120	120
June 21	134	126	—	—	—	—	114
July 17	145	148	133	126	124	120	113
July 18	170	162	146	135	135	128	119
July 19	170	161	145	137	137	129	119
Aug 25	148	128	126	121	120	116	109
Aug 26	189	158	142	135	131	124	115

OBS = Observed Peak Ozone Concentration.
MOD = Modeled Base Year Peak Ozone Concentration.
BY BC = Base Year Boundary Conditions.
85 ppb, 80 ppb, 70 ppb, 60 ppb = Future Year Peak Ozone Boundary Concentrations.

TABLE 2.—LAKE MICHIGAN OZONE CONTROL PROGRAM STRATEGY 4 OZONE MODELING RESULTS

[Domain-wide Peak Ozone Concentrations, ppb]

1991 Date	1991 OBS	1991 MOD	2007 BY BC	2007 85 ppb	2007 80 ppb	2007 70 ppb	2007 60 ppb
June 26	175	165	137	130	129	124	117
June 27	118	152	125	117	117	114	109
June 28	138	142	119	114	114	112	104
June 20	152	137	117	117	117	117	116
June 21	134	126	121	118	117	115	110
July 17	145	148	132	123	121	116	110
July 18	170	162	141	131	129	123	115
July 19	170	161	140	131	129	123	114
Aug 25	148	128	125	120	119	115	108
Aug 26	189	158	139	133	129	122	113

OBS = Observed Peak Ozone Concentration.
MOD = Modeled Base Year Peak Ozone Concentration.
BY BC = Base Year Boundary Conditions.
85 ppb, 80 ppb, 70 ppb, 60 ppb = Future Year Peak Ozone Boundary Concentrations.

Do the Modeling Results Demonstrate Attainment of the Ozone Standard?

The modeling of the Strategy 2 and Strategy 4 impacts by themselves (the 2007 BY BC columns in Tables 1 and 2) does not demonstrate attainment. The modeling supports the need for significant reductions in background ozone and ozone precursor concentrations. In addition, the model indicates the potential for ozone exceedances or ozone standard violations under the scenarios of smaller reductions in background ozone levels. Nonetheless, when considered along with a WOE determination, as discussed below, the EPA believes that the modeling results do support a conclusion that local VOC emission reductions combined with possible transported ozone reductions can lead to attainment of the 1-hour ozone standard in the Chicago-Gary-Lake County ozone nonattainment area and its downwind environs.

Does the Attainment Demonstration Depend on Future Reductions of Regional Emissions?

As noted in the tables summarizing the peak modeled ozone concentrations above and in the discussion elsewhere in this proposed rulemaking, the States considered emission control strategies which by themselves would not achieve attainment of the 1-hour ozone standard. The States, however, also show that, with a significant reduction in background ozone concentrations expected to result from the implementation of regional NO_X emission controls under the NO_X state implementation plan call, attainment of the standard can be achieved using the control strategies considered. Strategy 2 can lead to attainment of the ozone standard with a future reduction in peak ozone background concentrations down to 70 ppb. Strategy 4 can lead to attainment if peak background ozone concentrations are reduced to 80 ppb. LADCO documents that these future ozone background concentration levels may be obtained through the implementation of the NO_X SIP call.

It should be noted that LADCO not only considered lowered background ozone concentrations resulting from regional upwind emission controls, they also considered reductions in background ozone precursor concentrations. The States used various analyses to estimate the reductions in background ozone precursor concentrations associated with the assumed reductions in background ozone concentrations. This was primarily accomplished by considering available modeling data from OTAG.

The following two step process was used to determine which of the tested boundary conditions correspond best to the boundary conditions that would be expected under the EPA NO_X SIP call:

a. The NO_X emissions of the OTAG modeling domain were compared to the regional NO_X emissions expected under the NO_X SIP call. Several emission control strategies considered in the OTAG process were assessed. It is noted that the attainment demonstration's NO_X emissions fall between OTAG emission control strategy runs C and H; and

b. The boundary ozone concentration changes resulting from the selected OTAG strategy runs were then compared to the ozone boundary changes considered in the Lake Michigan Ozone Control Program modeling runs. The reduction of peak background ozone levels down to 70 ppb in the Lake Michigan Ozone Control Program was found to correspond best with the expected ozone changes considered under the selected OTAG emission control strategy runs C through H.

Based on this approach, it is assumed that the NO_X SIP call would reduce peak background ozone levels to 70 ppb.

4. Application of Attainment Test and the Attainment Demonstration

What Approach Was Used To Demonstrate Attainment of the Ozone Standard?

To assess attainment of the 1-hour ozone standard, LADCO applied 2 approaches to review the results of emission control strategy modeling, supplementing them with modeling results from the OTAG process. First, the States considered the modeling results through the use of a deterministic approach, and second, the States considered a statistical approach.

a. Deterministic Approach. The deterministic approach to ozone attainment demonstrations, as defined in the *Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS* (June 1996), requires the daily peak 1-hour ozone concentrations modeled for every grid cell (in the surface level) to be at or below the ozone standard for all days modeled. If there are modeled ozone standard exceedances in only a few grid cells on a limited number of days, this approach can still be used to demonstrate attainment of the ozone standard through the use of weight of evidence determinations.

The States note that the deterministic test is passed for:

i. Strategy 2 with future (2007) ozone boundary concentrations capped at 60 ppb; or

ii. Strategy 4 with future ozone boundary concentrations capped at 70 ppb.

Note that Strategy 2 with a future ozone boundary concentration of 70 ppb

or Strategy 4 with a future ozone boundary concentration of 80 ppb produces peak ozone concentrations that may demonstrate attainment given the supporting weight of evidence analysis. The modeling results for other Strategy 2 and Strategy 4 scenarios with higher ozone boundary concentrations, however, do not appear to be close enough to the standard to warrant the consideration of weight of evidence.

b. *Statistical Approach.* The States note that the statistical approach permits occasional ozone standard exceedances and reflects an approach comparable to the form of the 1-hour ozone standard. Therefore, the States have also given this approach some attention.

Under the statistical approach, there are three benchmarks related to the frequency and magnitude of allowed exceedances and the minimum level of air quality improvement after emission controls are applied. All three benchmarks must be passed in the statistical approach, or if one or more of the benchmarks are failed, the attainment demonstration must be supported by a weight of evidence analysis.

i. Limits on the Number of Modeled Exceedance Days

This benchmark is passed when the number of modeled exceedances days in each subregion is less than or equal to 3 or N–1 (N is the number of severe days), whichever is less. To determine the number of severe days, the States concluded that a day is severe if there are at least two nonattainment areas within the modeling domain with observed 1-hour peak ozone concentrations greater than the corresponding ozone design value (generally the fourth highest daily peak 1-hour ozone concentration at a monitor during a three year period) during the 1990 through 1992 period. The States conclude that only two modeled days, June 26 and August 26, 1991, are severe ozone days. Therefore, N is 2.

Based on a review of the modeled daily peak ozone concentrations, the States conclude that Strategy 2 with a maximum background ozone concentration of 60 ppb and Strategy 4 with a maximum background ozone concentration of 70 ppb would clearly pass this benchmark test. They also conclude that Strategy 2 with a future maximum background ozone concentration of 70 ppb and Strategy 4 with a maximum background ozone concentration of 80 ppb would also pass the benchmark based on an additional WOE analysis. The WOE analysis is based on the following evidence:

A. Factors Providing Confidence in Modeled Results

Evaluation of the modeling system's performance shows that:

- Statistical measures for ozone comply with EPA's model performance criteria;
- Spatial and temporal patterns of monitored surface ozone concentrations are reproduced well by the modeling system on most days;
- Model performance for ozone across the full domain is consistent with the model performance in individual subregions;
- Aloft ozone predictions compare favorably with aircraft ozone data; and
- Model performance for ozone precursors, especially NO_X, is very good.

Confidence in underlying data bases is high. A comprehensive field program was conducted during the summer of 1991. This field program was used to collect a large quantity of air quality and meteorological data to support the photochemical grid modeling.

The modeling results obtained by the LADCO States were corroborated with the results from other modeling studies. As part of the Cooperative Regional Model Evaluation (CReME), the photochemical models UAM–IV, UAM–V, and SAQM were applied in the Lake Michigan region. The supplemental analyses show that UAM–V produces results directionally consistent with those produced by UAM–IV and SAQM. All three models concurred in showing that VOC emission reductions are generally locally beneficial and that local NO_X emission controls are not beneficial in certain locations, generally within 100 to 200 kilometers downwind of Chicago.

B. Severity of Modeled Episodes

Three of the four ozone episodes modeled reflect meteorological conditions which typically favor high ozone in the Lake Michigan area (when the Lake Michigan area is on the ''back-side'' of a high pressure system with warm temperatures, high humidity, and south-southwesterly winds). The fourth episode is representative of warm temperatures with easterly winds, conditions which generally produce lower peak ozone concentrations and fewer ozone standard exceedances on a per year basis.

The magnitudes of the observed peak ozone concentrations at one or more locations within the modeling domain for the selected ozone episodes exceed the corresponding ozone design values for many locations within the region. This implies that the modeled ozone episodes are conservative and that attaining the ozone standard for these episodes should lead to attainment of the ozone standard in non-modeled episodes and during most future ozone conducive periods.

C. Trends Analyses

Several trends analyses have been considered. First, 10-year trends established by the EPA based on second high daily maximum 1-hour ozone concentrations for each year show no significant changes in Chicago, Grand Rapids, Gary, and Kenosha; and a downward trend in Racine and Milwaukee. Second, 17-year trends based on the number of ozone exceedance days normalized based on the annual number of hot days show that the number of exceedance days is significantly decreasing relative to the number of hot days each year. Third, 15-year trends show downward trends in ozone at monitoring sites.

Examination of limited morning total non-methane hydrocarbon concentration levels in Chicago and Milwaukee over the past 10 years show a significant downward trend. This downward trend is consistent with the calculated downward trend in VOC emissions.

The LADCO States conclude that the weight of evidence demonstration provides additional information which verifies the directionality of the modeling and demonstrates the potential stringency of the modeling results. The States conclude this information is sufficient to support minor exceptions to the benchmark, supporting a demonstration of attainment at the higher background ozone concentrations.

ii. Limits on the Values of Allowed Exceedances

Under this benchmark, the maximum modeled ozone concentration on severe days shall not exceed 130 ppb. The States, based on the modeled peak ozone concentrations, conclude this benchmark is passed for Strategy 2 with a maximum background ozone concentration of 70 ppb and for Strategy 4 with a maximum background ozone concentration of 80 ppb.

iii. Required Minimum Level of Air Quality Improvement

Under this benchmark, the number of grid cells with modeled peak ozone concentrations greater than 124 ppb must be reduced by at least 80 percent on each day with allowed modeled ozone standard exceedances. The States, based on the modeled peak ozone concentrations, conclude that this

benchmark is passed for Strategy 2 with a maximum background ozone concentration of 80 ppb and for Strategy 4 with a maximum background ozone concentration of 80 ppb.

From the above, it can be seen that benchmark i. is the most stringent of benchmarks in this case. Based on the statistical approach, coupled with a WOE analysis, the States conclude that Strategy 2 with a maximum background ozone concentration of 70 ppb or Strategy 4 with a maximum background ozone concentration of 80 ppb is sufficient to attain the 1-hour ozone standard by 2007.

The States further conclude, based on both attainment demonstration approaches, that either Strategy 2 or Strategy 4 coupled with future year boundary conditions generally consistent with the impacts of the NO_X SIP call is sufficient to attain the 1-hour ozone standard. The States, however, note that reliance on the impacts of the NO_X SIP call cannot be construed as concurrence on the part of the States with the substance of the NO_X SIP call itself. Indiana has not committed to comply with the requirements of the NO_X SIP call.

5. Emission Control Strategies

What Emission Control Strategies Were Considered in the Attainment Demonstrations?

LADCO selected two emission control strategies considered during the Lake Michigan Ozone Control Program for further attainment demonstration modeling (numerous emission control measures were initially examined). The two strategies selected are referred to as Strategy 2 and Strategy 4. These emission control strategies would apply to the ozone nonattainment areas only and are summarized as the following:

a. *Strategy 2.* Strategy 2 includes all national emission control measures (federal controls) mandated by the 1990 Clean Air Act, as amended in 1990, to be in place by 2007 and the State emission controls mandated to be in place by 1996, including the emission controls needed to comply with the requirements for 15 percent ROP plans. Additional ROP plans and State emission controls for the post-1996 period were not considered, and additional NO_X emission controls, such as NO_X Reasonably Available Control Technology (RACT), were not considered due to the existence of an approved NO_X emission control waiver under section 182(f) of the Clean Air Act. Existing NO_X emission reduction requirements, such as the acid rain control requirements under Title IV of the Clean Air Act, were considered.

b. Strategy 4. Strategy 4 includes all Strategy 2 measures and also includes some additional point, area, and mobile source control measures in the severe ozone nonattainment areas. The additional controls are measures that the State could consider. The State, however, has not evaluated the technical feasibility or cost-effectiveness of these measures. The measures have only been considered regarding their potential to reduce VOC and NO_X emissions by 2007. For the additional measures considered, please see Table 4.

Table 3 lists the VOC and NO_X emission reductions expected in Grid B and in the severe ozone nonattainment areas. Emissions control strategy components for Indiana considered in the attainment strategy modeling are listed in Table 4. The following acronyms are used:

RACT—Reasonably Available Control Technology
NESHAP—National Emission Standard for Hazardous Air Pollutants
MACT—Maximum Available Control Technology
I/M—Vehicle Inspection and Maintenance.

TABLE 3.—EMISSION CONTROL LEVELS FROM STRATEGIES 2 AND 4 GRID B AND SEVERE OZONE NONATTAINMENT AREAS

[Lake Michigan Ozone Modeling Domain]

Strategy	VOC		VOC	
	Grid B percent emission change	NO_X	NO_X	Severe nonattainment area percentage emissions change
2	−27	−13	−37	−11
4	−40	−19	−53	−18

TABLE 4.—EMISSION CONTROL MEASURES FOR INDIANA

STRATEGY 2—2007 MANDATORY CLEAN AIR ACT MEASURES

POINT SOURCE VOC CONTROLS
- Batch Processes RACT
- Industrial Wastewater RACT
- Marine Vessel Volatile Organic Liquid Loading Controls
- Metal Coil Coating Controls Tightening
- Paper Coating Controls Tightening
- Synthetic Organic Chemical Manufacturing Industry Reactor Processes
- Wood Parts Coating
- Coke Oven NESHAP
- Large Gasoline Storage
- Metal Can Coating Controls Tightening
- Offset Lithography
- Plastic Parts Coating Controls Tightening
- Volatile Organic Liquid Storage RACT
- Plant Shutdowns (Inland Steel Coke Batteries, Gary Incinerator, and Some Processes at Keil Chemical)

POINT SOURCE NO_X CONTROLS
- Phase I Acid Rain NO_X Limits

AREA SOURCE VOC CONTROLS

TABLE 4.—EMISSION CONTROL MEASURES FOR INDIANA—Continued

Automobile Refinishing
Architectural and Industrial Maintenance Coatings
Marine Vessel Volatile Organic Loading
Municipal Waste Landfills
Open Burning Ban
Gasoline Tank Truck Leak Reductions (due to use of reformulated gasoline)
Stage I Refueling Reductions (due to use of reformulated gasoline)
Stage II Refueling Vapor Recovery
Underground Storage Tank Breathing Losses and Leaks (due to use of reformulated gasoline and improved valves)
Commercial/Consumer Solvent Reformulation or Elimination
Off-Road Engine Standards
On-Board Vehicle Controls
MOBILE SOURCE CONTROLS
Tier I Light-Duty Vehicle Standards
Reformulated Gasoline—Phase II (Class C)
Enhanced I/M (no NO_X cut-points)
Clean Fuel Fleets
Current Transportation Improvement Program/Build Scenario
Northwest Indiana Regional Transportation Plan, including the following elements:
* Programs For Improved Public Transit
* Employer-Based Transportation Management Plans
* Traffic Flow Improvement Programs
* Fringe and Transportation Corridor Parking Facilities Serving Multiple Occupancy Vehicle Programs
* Programs for Secure Bicycle Storage Facilities and Other Bicycle Programs, including Bicycle Lanes
STRATEGY 4—2007 MANDATORY MEASURES PLUS
All Strategy 2 measures plus:
POINT SOURCE VOC CONTROLS
Improved Rule Effectiveness
Phased Emission Reduction Program
AREA SOURCE VOC CONTROLS
Agricultural Pesticides Application Controls
Degreasing Controls
Graphic Arts
Improved Rule Effectiveness
Petroleum Dry Cleaning Regulations
Small Engine Buy-Back Program
POINT SOURCE NO_X CONTROLS
Phase II Acid Rain NO_X Limits
MOBILE SOURCE CONTROLS
California Low Emission Vehicle Controls
Specific Vehicle I/M (no NO_X cut-points)
Reformulated Gasoline—Phase II (Class B)

Has the State Adopted a Selected Emission Control Strategy?

The State has not selected either emissions control strategy as the official, adopted emissions control strategy of the Phase II ozone attainment demonstration. The State, however, has adopted and developed regulations for many of the emission control measures contained in the two emission control strategies, and particularly for the controls contained in Strategy 2. Some of the emission control measures in Strategy 4, however, have not been adopted. For example, Indiana has not adopted major agricultural pesticide application restrictions and California low emission vehicle standards.

6. Transportation Conformity

Did the State Address Transportation Conformity in the Submittals?

Indiana has not specifically addressed transportation conformity or associated mobile source emission budgets in the attainment demonstration and no such mobile source emission budget has been adopted as part of the Phase II submittal.

7. State Commitments

Are There any State Commitments for Further Analyses and Air Quality Plans Addressing a Final Ozone Attainment Demonstration for the 1-hour Ozone Standard?

Indiana believes that, with the level of NO_X emission reductions consistent with the NO_X SIP call (Indiana itself is not committing at this time to develop a NO_X SIP and implement NO_X emission controls consistent with the NO_X SIP call) and considering the VOC emission reductions from the 15 percent (1996) and 9 percent (post-1996) ROP plans, little or no additional VOC emission reductions are necessary to provide for attainment of the 1-hour ozone standard. Indiana has committed to submitting a final plan, including additional modeling and adopted emission control regulations, to achieve attainment of the 1-hour standard and to meet post-1999 ROP requirements, no later than the end of 2000. After the impact of the selected regional NO_X controls is assessed, Indiana will reconsider the need for further VOC emission controls. If additional VOC control measures are needed, Indiana will revise the SIP to include the necessary regulations. Indiana commits to implement the emission control programs on a schedule necessary to meet ROP requirements.

B. Environmental Protection Agency Review of the Submittals

1. Adequacy of the State's Demonstration of Attainment

Did the State Adequately Document the Techniques and Data Used to Derive the Modeling Input Data and Modeling Results of the Analyses?

The Phase I submittals from the States thoroughly documented the techniques and data used to derive the modeling input data. The April 1998 submittal adequately summarized the modeling outputs and the conclusions drawn from these model outputs.

Did the Modeling Procedures and Input Data Used Comply With the Clean Air Act and EPA Requirements?

Yes.

Did the States Adequately Demonstrate Attainment of the Ozone Standard?

Indiana, in accordance with EPA's December 1997 guidance, has demonstrated that attainment of the standard is achievable provided sufficient reductions in background ozone concentrations (and background ozone precursor concentrations) occur as a result of the implementation of regional NO_X emission controls under the NO_X State implementation plan call. Indiana, however, has not selected a specific emission control strategy that would achieve attainment of the 1-hour ozone standard. This will not be done until the LADCO States submit a final attainment demonstration in December 2000. By then the States plan to complete an assessment of the ozone impacts of regional NO_X controls and to adopt additional VOC and NO_X emission control measures needed to attain the 1-hour standard.

Does the Weight of Evidence Test Support the States' Conclusions Regarding the Attainment Demonstration?

The documented WOE analyses support the conclusions of the deterministic test and the statistical test. Both the deterministic test and the statistical test lead to similar conclusions regarding the ozone 1-hour standard attainment demonstration. Both the deterministic and the statistical tests, as supplemented by a WOE analysis, show that attainment can be achieved with local emission controls already implemented couple with significant reductions in transported ozone and ozone precursors.

2. Adequacy of the Emissions Control Strategy

Has an Adopted Emissions Control Strategy Been Adequately Documented?

No. The State has not adopted a final emissions control strategy for attainment of the 1-hour ozone standard. The State, however, has demonstrated that significant reductions in transported ozone and NO_X will be necessary to attain the 1-hour standard. These reductions are expected to occur as a result of the implementation of regional NO_X emission reductions. All three of the LADCO States, including Indiana, are expected to implement alternative regional NO_X controls within their States.

Is the Emission Control Strategy Acceptable?

No. The State must select an emissions control strategy that is consistent with attainment in order to establish a motor vehicle emissions budget. The State must do so in sufficient time for EPA to find the motor vehicle emissions budget adequate by May 31, 2000. The State has committed to adopt and submit a final emissions control strategy associated with a revised modeling analysis by December 2000.

3. State Commitments

Are the State Commitments for Future Analyses and Finalization of the Attainment Demonstration Acceptable?

Yes. Indiana's commitments to complete the attainment demonstration and to adopt and submit the post-1999 ROP plan (the post-1996 ROP plan, covering the period of 1997 through 1999, is currently under review by the EPA) by December 2000 are adequate.

4. Relationship to Other Requirements

Will the Future Analyses Adequately Address the Impacts of the EPA NO_X State Implementation Plan Call?

Yes. The LADCO States have made it very clear that the 1-hour ozone standard will be difficult to attain without the regional NO_X emission reductions and that the final demonstration of attainment will incorporate the States' best estimates of the impacts of the NO_X SIP call or of alternative regional NO_X emission controls.

Has the State Specified and Adopted an Acceptable Transportation Conformity Mobile Source Emission Budget?

No. The State has not selected a specific emission control strategy. The State must select a control strategy that is consistent with attainment of the NAAQS. The will need to establish a motor vehicle emissions budget based on the selected strategy and will need to submit the budget in time for EPA to find the budget adequate by May 31, 2000.

C. Summary

Overall, Is Indiana's Ozone Attainment Demonstration Acceptable?

Indiana's commitment to complete the control strategy adoption process is adequate to warrant a conditional approval of the attainment demonstration plan. Indiana has accomplished as much as can be expected at this time and has generally met the requirements of the EPA December 1997 ozone attainment demonstration guidance, with the exception of adopting a final emission control strategy and associated emission control regulations.

What Portions of the Attainment Demonstration Need Additional Work and Consideration in the Final Attainment Demonstration?

The following items need further consideration in the final ozone attainment demonstration:

1. A final modeled demonstration of attainment that considers the impacts of the regional NO_X emission reductions, local control measures, and NO_X emissions control waiver (if maintained);

2. Adoption and submission of CAA measures, including VOC and NO_X (within the modeling domain) measures relied on in the final modeled attainment demonstration;

3. Motor vehicle emissions budget, including both VOC and NO_X emissions.

The EPA has found that the motor vehicle emissions budget in the attainment demonstration submitted for the Chicago-Gary-Lake County ozone nonattainment area is inadequate for conformity purposes. The EPA is proposing to conditionally approve the attainment demonstration SIP if the State corrects the deficiencies that cause the motor vehicle emissions budget to be inadequate and, alternatively, to disapprove it if Indiana does not correct the deficiencies.

III. Proposed Action

The Environmental Protection Agency proposes to issue a conditional approval of the ozone attainment demonstration. The State already committed to do the following in the April 1998 ozone attainment demonstration: (1) perform and submit a final modeled ozone

attainment demonstration by December 2000; (2) adopt and submit a specific emissions control strategy, including adopted control measures, adequate to attain the 1-hour ozone NAAQS in the ozone nonattainment area and throughout the ozone modeling domain by December 2000; (3) adopt and submit control measures necessary to meet ROP from 1999 until the attainment year and the associated target calculations. For EPA to issue a final conditional approval the State will need to take the following steps in sufficient time for EPA to determine by May 31, 2000 that the state has an adequate motor vehicle emissions budget and an adequate commitment for a mid-course review: (1) Select a control strategy consistent with its current modeling analysis; (2) adopt and submit an adequate motor vehicle emissions budget consistent with the selected strategy; and (3) commit to perform a mid-course review in 2003.

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

If the State does not take one or more of the actions listed above in time for EPA to make the May 31, 2000 determinations, EPA will disapprove Indiana's attainment demonstration submission for the Chicago-Gary-Lake County nonattainment area.

If EPA issues a final conditional approval of the State's submission, the conditional approval will convert to a disapproval if the State does not adopt and submit a complete SIP submission with the following elements by December 31, 2000: (1) A final revised modeling analysis that fully assesses the impacts of regional NO_X reductions, models a specific local emissions reduction strategy, and reconsiders the effectiveness of the NO_X waiver; (2) control measures necessary to meet the ROP requirement from 1999 until the attainment year, including target calculations; and (3) VOC and regional (within the modeling domain) NO_X emission control measures sufficient to support the final ozone attainment demonstration.

If the State makes a complete submission with all of the above elements by December 31, 2000, EPA will propose action on the new submissions for the purpose of determining whether to issue a final full approval of the attainment demonstration.

What Are the Consequences of State Failure?

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

What Are the CAA's Provisions for Sanctions?

If EPA disapproves a required SIP, such as the attainment demonstration SIPs, section 179(a) provides for the imposition of two sanctions. The first sanction would apply 18 months after EPA disapproves the SIP if the State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to a broader area, but is not proposing to take such action today.

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.

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.

IV. Administrative Requirements

A. Executive Orders 12866

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

B. Executive Order 13045

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

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

C. Executive Order 13084

Under Executive Orders 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal

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

D. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

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

If the 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 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 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 Indiana, 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. 99–31721 Filed 12–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI80–01–7311; FRL–6503–3]

Approval and Promulgation of Implementation Plans; Wisconsin; Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve the 1-hour ozone attainment demonstration State Implementation Plan (SIP) for the Milwaukee-Racine, Wisconsin severe ozone nonattainment area submitted by the Wisconsin Department of Natural Resources (WDNR) on April 30, 1998. This proposed conditional approval is based on the submitted modeling analysis and the State's commitments to adopt and submit a final ozone attainment demonstration and a post-1999 Rate of Progress (ROP) plan, including the necessary State air pollution control regulations to support the attainment and ROP plans, by December 31, 2000. We are also proposing, in the alternative, to disapprove this demonstration if the State does not, by December 31, 1999, select a control strategy associated with its submitted modeled analysis and an adequate motor vehicle emissions budget for Volatile Organic Compound (VOC) and Oxides of Nitrogen (NO_X) for the ozone nonattainment area that complies with EPA's conformity regulations and that is derived from the selected emissions control strategy. In addition, the State must submit a commitment to adopt VOC rules and regulations for the plastic parts coating, industrial cleanup solvents, and ink manufacturing by December 2000; and submit an enforceable commitment to conduct a mid-course review of the ozone attainment demonstration in 2003.

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

ADDRESSES: Written comments should be sent to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Michael G. Leslie at (312) 353–6680 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–6680.

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 Milwaukee-Racine area.

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I. Background Information

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

1. CAA Requirements

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

An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.124 ppm. An area is violating the standard if, over a consecutive 3-year period, more than three exceedances are expected to occur at any one monitor. The CAA, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the 3-year period from 1987–1989. CAA section 107(d)(4); 56 FR 56694 (Nov. 6, 1991). The CAA further classified these areas, based on the area's design value, as marginal, moderate, serious, severe or extreme. CAA section 181(a). Marginal areas were suffering the least significant air pollution problems while the areas classified as severe and extreme had the most significant air pollution problems.

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas are required to attain the 1-hour standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The Milwaukee-Racine area is classified as severe 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.) EPA will take action on the State's ROP plan in a separate rulemaking action. In this proposed rule, EPA is proposing action on the attainment demonstration SIP submitted by WDNR for the Milwaukee-Racine area. In addition, elsewhere in this **Federal Register**, EPA is proposing to take action on nine other serious or severe 1-hour ozone attainment demonstration and, in some cases, ROP SIPs. The additional nine areas are Greater Connecticut (CT), Springfield (Western Massachusetts) (MA), 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), Chicago-Gary-Lake County (IL–IN), and Houston-Galveston-Brazoria (TX).

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

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

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

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by States but noting the remaining difficulties in making attainment demonstration SIP submittals.[1] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the States in the eastern half of the country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)[2] and provided for the States to submit the attainment demonstration SIPs 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 higher classified nonattainment areas additionally needed to submit: (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 public hearing on the State submittal.[4]

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.

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

The States generally submitted the SIPs between April and October of 1998; some States are still submitting additional revisions as described below. Under the CAA, EPA is required to approve or disapprove a State's submission no later than 18 months following submission. (The statute provides up to 6 months for a completeness determination and an additional 12 months for approval or disapproval.) The EPA believes that it is important to keep the process moving forward in evaluating these plans and, as appropriate, approving them. Thus, the EPA is proposing to take action on the 10 serious and severe 1-hour ozone

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

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

[3] 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 Wisconsin has relied on a commitment to submit these measures by December 2000 for the Milwaukee-Racine 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.

[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. 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.

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, 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 1 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 1 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 1 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. 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.[5] The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values and to predict air quality changes in the attainment year due to the emission changes which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted concentrations inside the modeling domain are at or below the NAAQS or at an acceptable upper limit above the NAAQS permitted under certain conditions by EPA's guidance. When the predicted concentrations are above the NAAQS, an optional weight of evidence determination which incorporates, but is not limited to other analyses such as air quality and emissions trends, may be used to address uncertainty inherent in the application of photochemical grid models.

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

[5] 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, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''UAMREG''). See also U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). A copy may be found on EPA's web site at http://www.epa.gov/ttn/scram/ (file name: ''O3TEST'').

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 [6] 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 3-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 3-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 3-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 3-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

2. Additional Analyses Where Modeling Fails To Show Attainment

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

Under a WOE determination, the State can rely on and EPA will consider factors such as other modeled attainment tests, *e.g.,* a rollback analysis; other modeled outputs, *e.g.,* changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value; actual observed air quality trends; estimated emissions trends; analyses of air quality monitored data; the responsiveness of the model predictions to further controls; and, whether there are additional control measures that are or will be approved into the SIP but were not included in the modeling analysis. This list is not an exclusive list of factors that may be considered and these factors could vary from case to case. The EPA's guidance contains no limit on how close a modeled attainment test must be to passing and 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.5.

A detailed discussion of the attainment modeling for the Milwaukee-Racine area is included later in this document.

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.

NO_X reductions affecting boundary conditions Motor vehicle emissions budget

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

Mid-course review

An enforceable commitment to conduct a Mid-Course Review (MCR) and evaluation based on air quality and emission trends. The mid-course review would indicate whether the adopted control measures are sufficient to reach attainment by the area's attainment date, or whether 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

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

been identified and adopted, whereas severe areas have until December 2000 to submit measures necessary to achieve ROP through the attainment year and to attain.) For purposes of fully approving the State's SIP, the State will need to adopt and submit all VOC and NO_X controls within the local modeling domain that were relied on for purposes of the modeled attainment demonstration.

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

CAA REQUIREMENTS FOR SERIOUS AREAS

—NSR for VOC and NO_X,[1] 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[1]
—Enhanced Inspection and Maintenance (I/M) program
—15% volatile organic compound (VOC) plans
—Emissions inventory
—Emission statements
—Attainment demonstration
—9% ROP plan through 1999
—Clean fuels program or substitute
—Enhanced monitoring Photochemical Assessment Monitoring Stations (PAMS)
—Stage II vapor recovery

[1] 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). Milwaukee is such an area, and is currently covered by a NO_X waiver under 182(f).

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

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

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

As provided in section 1 above, any controls assumed by the State inside the local modeling domain [7] 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

[7] 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 x 5 km or finer. The domain is large enough to ensure that emissions occurring at 8 am in the domain's center are still within the domain at 8 pm the same day. If recirculation of the nonattainment area's previous day's emissions is believed to contribute to an observed problem, the domain is large enough to characterize this.

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 of the above areas 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.[8] 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.[9] 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. Mid-Course Review

An 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 an MCR is a critical element of the WOE analysis for the attainment demonstration on which EPA is proposing action. In order to approve the attainment demonstration SIP for the Milwaukee-Racine area, EPA believes that the State must submit an enforceable commitment to perform a MCR as described here.[10]

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.

For severe areas, such as Milwaukee-Racine, the States must have an enforceable commitment to perform the MCR, preferably following the 2003 ozone season, the end of the review year (*e.g.,* by and to submit the results to EPA 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 to seek additional emission reductions as necessary from States in which the nonattainment area is located or upwind States, or both. The EPA would require the affected State or States to adopt and submit the new measures within a period specified at the time. The EPA anticipates that these findings would be made as calls for SIP revisions under section 110(k)(5) and, therefore, the period for submission of the measures would be no longer than 18 months after the EPA finding. A draft guidance document regarding the MCR process is located in the docket for this proposal and may also be found on EPA's web site at http://www.epa.gov/scram/.

D. In Summary, What Does EPA Expect To Happen With Respect to Attainment Demonstrations for the Severe 1-Hour Ozone Nonattainment Areas?

The following table shows a summary of information on what EPA expects from Wisconsin to allow EPA to approve the 1-hour ozone attainment demonstration SIPs for Milwaukee-Racine.

SUMMARY SCHEDULE OF FUTURE ACTIONS RELATED TO ATTAINMENT DEMONSTRATION FOR THE MILWAUKEE-RACINE SEVERE NONATTAINMENT AREA IN WISCONSIN

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. —Perform a mid-course review.
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 relied on in modeled attainment demonstration and relied on for ROP through attainment year. —State revises and submits SIP & motor vehicle emissions budget if the additional measures are for motor vehicle category. —State revises and submits SIP & motor vehicle emissions budget to account for Tier 2 reductions as needed.[3]

[8] 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.

[9] A final budget is preferred; but, if the State public hearing process is not yet complete, then the draft budget 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.

[10] For purposes of conformity, the State needs a commitment that has been subject to public hearing. If the State has submitted a commitment that has been subject to public hearing and that provides for the adoption of all measures necessary for attainment, the State should submit a letter prior to December 31, 1999, amending the commitment to include the MCR.

SUMMARY SCHEDULE OF FUTURE ACTIONS RELATED TO ATTAINMENT DEMONSTRATION FOR THE MILWAUKEE-RACINE SEVERE NONATTAINMENT AREA IN WISCONSIN—Continued

Required no later than:	Action
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.''

[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.

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

E. What Are the Relevant Policy and Guidance Documents?

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

Recent Documents

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

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

3. Memorandum, ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstrations,'' from Merrylin Zaw-Mon, Office of Mobile Sources, to Air Division Directors, Regions I–VI. November 3, 1999. Web site: http://www.epa.gov/oms/transp/traqconf.htm.

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

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

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

Previous Documents

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

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

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

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

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

II. EPA's Review and Technical Information

A. Summary of State Submittals

1. General Information

When Was the Submittal Addressed in Public Hearings, and When Was the Submittal Formally Submitted by Wisconsin?

The State held a public hearing on the ozone attainment demonstration on April 24, 1998 and submitted it to EPA on April 30, 1998.

What Are the Basic Components of the Submittal?

Since Wisconsin, along with Illinois, Indiana, and Michigan, participated in the Lake Michigan Ozone Study and the Lake Michigan Ozone Control Program, and since these ozone modeling studies form the technical basis for the ozone attainment demonstration, Wisconsin, Illinois, and Indiana centered their ozone attainment demonstrations around a single technical support document (April 1998) produced by the four States through the Lake Michigan Air Directors Consortium (LADCO). This technical support document is entitled ''Modeling Analysis for 1-Hour Ozone NAAQS in the Lake Michigan Area.'' Each State has also included a state-specific cover letter and state-specific synopsis of the ozone attainment demonstration. The Wisconsin ozone attainment demonstration submittal relies on the original Phase I submittals, submitted June 1996, for much of its technical documentation. The Phase I submittal included modeling with interim assumptions about ozone transport levels and future changes in these transport levels

2. Modeling Procedures and Basic Input Data

What Modeling Approach Was Used in the Analyses?

All three States, as members of LADCO and as participants in the Lake Michigan Ozone Study and Lake Michigan Ozone Control Program, used the same ozone modeling approach. The modeling approach is documented in an April 1998 technical support document, entitled ''Modeling Analysis For 1-Hour Ozone NAAQS In The Lake Michigan Area.'' Since the April 1998 technical support document failed to document all of the modeling approaches and bases for the development and selection of model input data, this review also relies on the Phase I submittal, which does a more thorough job of documenting the system and input data.

The heart of the modeling system and approach is the Urban Airshed Model—Version V (UAM–V) developed originally for application in the Lake Michigan area. This photochemical model was used to model ozone and ozone precursors in a multiple, nested grid system. In the horizontal dimension, three nested grids were used. Grid A, the largest of the three grids, is a 35 cell by 50 cell grid (560 kilometers east-west by 800 kilometers north-south) generally centered on the lower two-thirds of Lake Michigan with a horizontal resolution of 16 kilometers per cell. Grid B is a 34 cell by 60 cell grid (272 kilometers east-west by 480 kilometers north-south) centered on the lower three-quarters of Lake Michigan with a horizontal resolution of 8 kilometers per cell. Grid B covers all of the one-hour ozone nonattainment areas of interest in the analysis. Grid C is a 20 cell by 80 cell grid (80 kilometers east-west by 320 kilometers north-south) approximately centered on the western shoreline of lower Lake Michigan with a horizontal resolution of 4 kilometers per cell. The model covered 8 vertical layers over the entire horizontal modeling domain. Mixing heights used in the modeling system were determined from regional upper-air monitoring station data.

Besides being able to model ozone and other pollutants in nested horizontal grids, UAM–V can also model individual elevated source plumes within the modeling grid (plume-in-grid or PiG). Gaussian dispersion models are used to grow plumes until the plumes essentially filled grid cells. At these points, the numerical dispersion and advection components of UAM take over to address further downwind dispersion and advection.

The UAM–V modeling system is also used to assess the impacts of clouds on certain high ozone episode days. Observed cloud data are used to modify chemical photolysis rates and other meteorological input data.

The following input data systems and analyses were also used as part of the combined modeling system for the Lake Michigan area:

a. *Emissions.* UAM–V requires the input of gridded, hourly estimates of CO, NO_X, and speciated VOC emissions (speciated based on carbon bond types). The States provided emission inventories, which were processed through the Emissions Modeling System—1995 version (EMS–95) to prepare UAM–V input data files. Emission data files were generated for Grid A and Grid B.

For Grid B, the States supplied point source (individually identified stationary sources) and area source (sources too small and numerous to be identified and recorded as individual sources) emissions for a typical summer weekday. These emissions were based on the States' 1990 base year emissions inventories for the ozone nonattainment areas and were adjusted to 1991 levels to be compatible with the high ozone periods modeled. The base emissions were adjusted for some source categories to reflect typical ''hot summer days.'' Day-specific emissions data were supplied by over 200 facilities in the modeling domain. Mobile source emissions were calculated by EMS–95 using MOBILE5a (a mobile source emissions model supplied by the Environmental Protection Agency) emission factors (using day-specific temperatures) and local vehicle-miles-traveled data generally supplied by local metropolitan planning agencies and based on transportation models. Finally, the biogenic emission rates used in Grid B were calculated based on BIOME, which is the biogenics emissions model contained within EMS–95.

For Grid A, point and area anthropogenic emissions rates were derived from EPA's 1990 Interim Regional Inventory, except for Wisconsin, which supplied state-specific data. Mobile source emissions were based on MOBILE5a emission factors (derived for a representative hot summer day) and vehicle miles traveled data derived using the 1990 Highway Performance Monitoring System. Biogenic emission rates were calculated using the Biogenics Emissions Inventory System (BEIS) assuming temperatures for a representative, hot summer day. This version of BEIS includes soil NO_X emissions and land use data from the United States Geological Survey.

Grid B emissions data superceded Grid A data within Grid B. Grid C emissions data were not specifically derived—Grid B emissions data were used within Grid C.

All emission estimates were speciated by compound or carbon bond type and spatially, and temporally resolved into UAM–V input data files by the use of EMS–95.

b. *Meteorology.* Meteorological input data by grid cell and hour were generated by use of a prognostic meteorological model (model output data derived from equations which describe how meteorological variables, such as wind speed/direction, temperature, and water vapor change over time) known as CALRAMS. CALRAMS was run with varying horizontal resolution depending on location. Over Grids B and C, CALRAMS was run with 4 kilometer resolution. Over Grid A, a resolution of 16 kilometers was used. Over the remainder of the continental United States, a resolution of 80 kilometers was used. The model's vertical structure used 31 layers in Grid A and over the remainder of the continental United States outside of the UAM–V modeling domain and 26 layers over Grids B and C.

Four-dimensional data assimilation using observed meteorological data values was used to ensure that the model estimates did not deviate significantly from observed meteorological data. Preprocessor programs were used to map the model's output data into the UAM–V grid system and to derive other necessary model inputs.

Some adjustments were made to CALRAMS results where the model produced near-calm wind speeds and where observed wind speeds were significantly higher than modeled wind speeds during one modeled ozone episode.

c. *Chemistry* Atmospheric chemistry within the modeling grid system and UAM–V was simulated using the Carbon Bond-Version IV model developed by the Environmental Protection Agency and used in Version IV of UAM.

d. *Boundary and Initial Conditions.* Initial sensitivity analyses of the modeling system's response to modeling domain boundary conditions (incoming ozone and ozone precursor levels at the outer edges of the modeling domain) showed that the system was very sensitive to these boundary conditions. LADCO used all available upwind data, and especially those collected during the 1991 intensive field study, to derive boundary conditions. In addition, the

contractor, SAI, Incorporated, used output data from the use of the Regional Oxidant Model (ROM) to derive initial concentrations in the modeling domain for the first day of each modeled ozone episode. Data from this first day, along with other model input data, were used to model ozone and precursor concentrations for the next 1 to 2 days, to be used as inputs into the main part of the modeled ozone episode. The first 1 to 2 days modeled were treated as ''ramp-up days'' for the main part of each modeled ozone episode. This process produced more stable input data for the modeling of high ozone days.

What high ozone periods were modeled?

Four high ozone episodes in 1991 were considered. These episodes were:
June 18–21, 1991;
June 24–28, 1991;
July 15–19, 1991; and
August 22–26, 1991.
The 1991 ozone episodes were selected as the focus of the modeling analyses because the summer of 1991 was a relatively conducive period for ozone formation, and, most importantly, because LADCO conducted an intensive field study during that summer to collect data needed to support the modeling study.

What Procedures and Sources of Projection Data Were Used To Project the Emissions to Future Years?

The future year emission inventories used in the Lake Michigan Ozone Control Program and ozone attainment demonstration were derived from the Lake Michigan Ozone Study base year regional inventory (discussed above). Three adjustments were made to the base year emissions inventory to generate the future year emission inventories. First, a baseline inventory was prepared by replacing the day-specific emissions with typical hot summer day emissions for point sources. Emissions for other source categories were simply carried over to the baseline inventory. Second, the baseline emissions inventory was projected to 2007 (the attainment year for severe ozone nonattainment areas) by applying scalar growth factors. Finally, the projected baseline emission inventories were reduced to reflect the implementation of various emission control measures expected or required to occur by those years.

The growth factors used in the projection of emissions for each source sector are as follows:

a. *Point Sources.* i. For electric utilities—company-specific data were provided by each State;

ii. For certain individual point sources—a growth factor of ''0'' was used to reflect the shutdown of these sources;

iii. For all remaining point source emission categories—growth factors based on the Environmental Protection Agency Economic Growth Analysis System (EGAS) were used;

b. *Area Sources.* i. For baseline emission estimates based on population—projected populations were used to recalculate emissions;

ii. For gasoline marketing source categories—projected emissions were based on projected gasoline sales;

iii. For other area source emission categories—projections were based on EGAS estimates (some EGAS estimates were judged to be inappropriate and alternative surrogates were used to estimate future emissions);

c. *Mobile Sources.* Vehicle miles traveled projections were based on transportation modeling for northeast Illinois, northwest Indiana, and southeast Wisconsin, and on State-supplied growth factors for the rest of the ozone modeling domain; and

d. *Biogenic Sources.* No growth was assumed.

To account for emission changes resulting from various emission controls (these emission controls also affect projected emissions), the States tested several emission control strategies. Emission reduction scalars were developed to reflect the expected or required emission reduction levels, rule penetration (accounting for the percentage of source category emissions affected by the emission reduction requirements), and rule effectiveness (some source control rules do not fully achieve the emission reductions expected due to control device failure, human error, or other factors). The base component of these control strategies were the emission reductions resulting from the controls mandated by the Clean Air Act and expected to be in place by 2007. These emission controls are further discussed below.

How Were the Emissions, Air Quality, and Meteorological Input Data Quality Assured?

Emissions. The Lake Michigan States' quality assurance of the emissions data focused on the comprehensiveness and reasonableness of the emissions data rather than on precision and accuracy of the data. During the initial development of the regional emissions inventory, internal quality control activities included the preparation and implementation of quality assurance plans for the derivation of emission estimates by each State and for the development and application of the EMS–95 emissions software. External quality assurance activities included: (1) Audits of the point and area source data inputs; (2) review of the EMS–95 output; and (3) independent testing of the EMS–95 model source code. The State emission estimates were compared against each other to assess their completeness, consistency, and reasonableness.

Several approaches were used to compare the emission estimates against ambient measurements. These included: (1) Comparisons of ambient to emissions-based ratios of non-methane organic compounds to oxides of nitrogen; (2) comparisons of ambient to emissions-based ratios of carbon monoxide to oxides of nitrogen; (3) receptor modeling (determining individual source shares of monitored pollutant concentrations based on source-specific emission profiles and temporal and spatial statistical analyses of monitored pollutant species); and (4) comparisons of ambient to model-based ratios of non-methane organic compounds to oxides of nitrogen. The comparison of the measurement-based pollutant ratios with the emissions inventory-based pollutant ratios showed good agreement between the emissions inventory and the ambient data. The receptor modeling results also generally supported the validity of the emissions inventory.

Air Quality and Meteorological Data. Validation of the 1991 Lake Michigan Ozone Study field data (the data used as input to the meteorological and photochemical dispersion models and used to validate the models' outputs) was performed by the Lake Michigan Ozone Study Data Management and Data Analysis Contractors. The data were validated using a number of statistical analyses. Three levels of validation were used, depending on the intended use of the data. The three levels of data validation were:

a. *Level 1.* This validation was performed by the group collecting the data. This group: flagged suspect data values; verified the data contained in computer data files against input data sheets; eliminated invalid measurements; replaced suspect data with data from back-up data acquisition systems; and adjusted measurement values to eliminate quantifiable calibration and interference biases;

b. *Level 2.* This validation was performed on data assembled in a master data base. The level of data validation involved various consistency checks between data values within the data base, including: comparison of data from closely located sites collected at

approximately the same time; comparison of data from co-located sampling systems; comparisons based on physical relationships; and special statistical analyses of the VOC and carbonyl data; and

c. *Level 3.* This validation was performed by the Lake Michigan Ozone Study Data Analysis Contractor and was performed as part of the data interpretation process. This validation included identification of unusual data values (*e.g.* extreme values, values which fail to track the values of other associated data in a time series, or those values which did not appear to fit the general and spatial or temporal overall pattern).

As a result of the data validation, several changes were made to the meteorological and air quality input data. Volume III (December 1995) of the Lake Michigan Ozone Study/Lake Michigan Ozone Control Program Project Report (submitted as the documentation for the Phase I attainment demonstration submittal) documents all of the data changes resulting from the data validation efforts.

3. Modeling Results

How Did the States Validate the Photochemical Modeling Results?

A protocol document outlining the operational and scientific evaluation of the modeling system was prepared by LADCO, and was approved by the Environmental Protection Agency on March 6, 1992. The evaluation of the photochemical model consisted of seven steps:

a. Evaluation of the scientific formulation of the model by the Photochemical Modeling Contractor;

b. Assessment of the fidelity of the computer codes to scientific-formulation, governing equations, and numerical solution procedures performed by an independent contractor (independent of the Photochemical Modeling Contractor);

c. Evaluation of the predictive performance of the individual modeling process modules and preprocessor modules to identify possible flaws or systematic biases;

d. Evaluation of the full model's predictive performance against statistical performance tests and performance criteria specified by the Environmental Protection Agency (see discussion of the model's performance for specific days modeled below);

e. Performance of sensitivity tests to assure conformance of the model with known or expected model behavior;

f. Performance of comparative modeling analyses, comparing the results from the use of UAM–V with similar results from the use of UAM–IV (the photochemical model generally recommended by the Environmental Protection Agency); and

g. Implementation of quality control and quality assurance activities, including: (i) Benchmark modeling; (ii) pre-established file structuring; (iii) duplicative modeling; (iv) modeling procedure and results documentation; and (v) external review of modeling results.

Numerous modeling runs and overall system evaluations were conducted to carry out these validation procedures.

What Were the Results of the Model Performance Evaluations for the Modeling System Used in the Attainment Demonstration?

The following highlights the results of the operational and scientific evaluation of the modeling system. These results are discussed in detail in many documents generated by LADCO and supplied to the EPA:

a. Many modeling runs and evaluations of output data were made to derive statistical results indicative of the modeling system's overall performance. Statistical data, such as: Observed peak ozone concentrations versus peak predicted concentrations; unpaired peak concentration accuracy; bias in peak concentrations and overall system bias; and gross system error, were compared to acceptable system criteria specified by the Environmental Protection Agency (*Guideline for Regulatory Application of the Airshed Model,* EPA–450/4–91–013, July 1991). The statistical accuracy results for the modeling system comply with the Environmental Protection Agency performance criteria;

b. The spatial and temporal representation of the surface ozone concentrations are reasonable both region-wide and in the areas of high concentrations. Broad areas of high ozone concentrations were reproduced successfully and magnitude and times of peak ozone concentrations reasonably matched those observed;

c. Model performance across the full modeling domain was consistent with model performance in individual subregions. This further supports the credibility of the modeling system;

d. Predicted aloft downwind ozone concentrations compare favorably with airborne/aircraft monitored ozone concentrations. This supports the three-dimensional validity of the modeling system; and

e. Model performance for ozone precursors, especially for NO_X, was very good. This further supports the validity of the use of the model to evaluate the impacts on ozone due to changes in precursor emissions and the testing of the emission control strategy scenarios.

Based on the model performance evaluation results, the EPA's approved the validity of the modeling system and its use for control strategy evaluations on December 15, 1994 (letter from John Seitz, Director of the Office of Air Quality Planning and Standards to Lake Michigan Air Directors Consortium).

What Were the Ozone Modeling Results for the Base Period and for the Future Attainment Period?

Many modeling runs were conducted, producing millions of model output data. What is summarized in Tables 1 and 2 are the observed and modeled peak ozone concentrations for the selected ozone episode days for two considered emission control strategies. Please note that the ozone control strategy covered by each table is further discussed below.

The ozone modeling system was run to simulate ozone concentrations on selected high ozone days for the base year and future year (2007). The future year simulations covered five boundary condition scenarios, corresponding to base year boundary conditions, and to the reduction of peak boundary ozone levels to 85, 80, 70, and 60 parts per billion (ppb), one-hour average. The future year simulations also covered two emission control strategy sets, Strategy 2 and Strategy 4.

The resulting domain-wide modeled peak ozone concentrations for Strategy 2 are given in Table 1. Similarly, the resulting domain-wide modeled peak ozone concentrations for Strategy 4 are given in Table 2.

TABLE 1.—LAKE MICHIGAN OZONE CONTROL PROGRAM STRATEGY 2 OZONE MODELING RESULTS

[Domain-wide Peak Ozone Concentrations, ppb]

1991 Date	1991 OBS	1991 MOD	2007 BY BC	2007 85 ppb	2007 80 ppb	2007 70 ppb	2007 60 ppb
June 26	175	165	141	134	133	128	122
June 27	118	152	130	123	122	119	114
June 28	138	142	123	118	118	116	109
June 20	152	137	123	121	121	120	120
June 21	134	126	.....	.....	.....	.....	114
July 17	145	148	133	126	124	120	113
July 18	170	162	146	135	135	128	119
July 19	170	161	145	137	137	129	119
Aug 25	148	128	126	121	120	116	109
Aug 26	189	158	142	135	131	124	115

OBS = Observed Peak Ozone Concentration.
MOD = Modeled Base Year Peak Ozone Concentration.
BY BC = Base Year Boundary Conditions.
85 ppb, 80 ppb, 70 ppb, 60 ppb = Future Year Peak Ozone Boundary Concentrations.

TABLE 2.—LAKE MICHIGAN OZONE CONTROL PROGRAM STRATEGY 4 OZONE MODELING RESULTS

[Domain-wide Peak Ozone Concentrations, ppb]

1991 Date	1991 OBS	1991 MOD	2007 BY BC	2007 85 ppb	2007 80 ppb	2007 70 ppb	2007 60 ppb
June 26	175	165	137	130	129	124	117
June 27	118	152	125	117	117	114	109
June 28	138	142	119	114	114	112	104
June 20	152	137	117	117	117	117	116
June 21	134	126	121	118	117	115	110
July 17	145	148	132	123	121	116	110
July 18	170	162	141	131	129	123	115
July 19	170	161	140	131	129	123	114
Aug 25	148	128	125	120	119	115	108
Aug 26	189	158	139	133	129	122	113

OBS = Observed Peak Ozone Concentration.
MOD = Modeled Base Year Peak Ozone Concentration.
BY BC = Base Year Boundary Conditions.
85 ppb, 80 ppb, 70 ppb, 60 ppb = Future Year Peak Ozone Boundary Concentrations.

Do the Modeling Results Demonstrate Attainment of the Ozone Standard?

The modeling of the Strategy 2 and Strategy 4 impacts by themselves (the 2007 BY BC columns in Tables 1 and 2) does not demonstrate attainment. The modeling supports the need for significant reductions in background ozone and ozone precursor concentrations. In addition, the model indicates the potential for ozone exceedances or ozone standard violations under the scenarios of smaller reductions in background ozone levels.

Does the Attainment Demonstration Depend on Future Reductions of Regional Emissions?

As noted in the tables summarizing the peak modeled ozone concentrations above and in the discussion elsewhere in this proposed rulemaking, the States considered emission control strategies which by themselves would not achieve attainment of the one-hour ozone standard. The States, however, also show that, with a significant reduction in background ozone concentrations expected to result from the implementation of regional NO_X emission controls under the NO_X SIP call, attainment of the standard can be achieved using the control strategies considered. Strategy 2 can lead to attainment of the ozone standard with a future reduction in peak ozone background concentrations down to 70 ppb. Strategy 4 can lead to attainment if peak background ozone concentrations are reduced to 80 ppb. LADCO documents that these future ozone background concentration levels may be obtained through the implementation of the NO_X emission controls required in the NO_X SIP.

It should be noted that LADCO not only considered lowered background ozone concentrations resulting from regional upwind emission controls, they also considered reductions in background ozone precursor concentrations. The States used various analyses to estimate the reductions in background ozone precursor concentrations associated with the assumed reductions in background ozone concentrations. This was primarily accomplished by considering available modeling data from OTAG.

The following two step process was used to determine which of the tested boundary conditions correspond best to the boundary conditions that would be expected under EPA's NO_X SIP call:

a. The NO_X emissions of the OTAG modeling domain were compared to the regional NO_X emissions expected under the NO_X SIP call. Several emission control strategies considered in the OTAG process were assessed. It is noted that the SIP Call level of NO_X emissions fall between OTAG emission control strategy runs C and H; and

b. The boundary ozone concentration changes resulting from the selected OTAG strategy runs were then compared to the ozone boundary changes considered in the Lake Michigan Ozone Control Program modeling runs. The reduction of peak background ozone levels down to 70 ppb in the Lake Michigan Ozone Control Program was found to correspond best with the expected

ozone changes considered under the selected OTAG emission control strategy runs C through H.

Based on this approach, it is assumed that the NO_X SIP Call will reduce peak background ozone levels to 70 ppb.

4. Application of Attainment Test and the Attainment Demonstration

What Approach Was Used To Demonstrate Attainment of the Ozone Standard?

To assess attainment of the one-hour ozone standard, LADCO applied two approaches to review the results of emission control strategy modeling, supplementing them with modeling results from the OTAG process. First, the States considered the modeling results through the use of a deterministic approach. Second, the States considered a statistical approach.

a. Deterministic Approach. The deterministic approach to ozone attainment demonstrations, as defined in the *Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS* (June 1996), requires the daily peak one-hour ozone concentrations modeled for every grid cell (in the surface level) to be at or below the ozone standard for all days modeled. If there are modeled ozone standard exceedances in only a few grid cells on a limited number of days, this approach can still be used to demonstrate attainment of the ozone standard through the use of weight-of-evidence determinations.

The States note that the deterministic test is passed for:

i. Strategy 2 with future (2007) ozone boundary concentrations capped at 60 ppb; or

ii. Strategy 4 with future ozone boundary concentrations capped at 70 ppb.

Note that Strategy 2 with a future ozone boundary concentration of 70 ppb or Strategy 4 with a future ozone boundary concentration of 80 ppb produces peak ozone concentrations that may demonstrate attainment given supporting weight-of-evidence analysis. The modeling results for other Strategy 2 and Strategy 4 scenarios with higher ozone boundary concentrations, however, do not appear to be close enough to the standard to warrant the consideration of weight-of-evidence.

b. Statistical Approach. The States note that the statistical approach permits occasional ozone standard exceedances and reflects an approach comparable to the form of the one-hour ozone standard. Therefore, the States have also given this approach some attention.

Under the statistical approach, there are three benchmarks related to the frequency and magnitude of allowed exceedances and the minimum level of air quality improvement after emission controls are applied. All three benchmarks must be passed in the statistical approach, or if one or more of the benchmarks are failed, the attainment demonstration must be supported by a weight-of-evidence analysis.

i. Limits on the Number of Modeled Exceedance Days. This benchmark is passed when the number of modeled exceedances days in each subregion is less than or equal to 3 or N–1 (N is the number of severe days), whichever is less. To determine the number of severe days, the States concluded that a day is severe if there are at least two nonattainment areas within the modeling domain with observed one-hour peak ozone concentrations greater than the corresponding ozone design value (generally the fourth highest daily peak one-hour ozone concentration at a monitor during a three year period) during the 1990 through 1992 period. The States conclude that only two modeled days, June 26 and August 26, 1991, are severe ozone days. Therefore, N is 2.

Based on a review of the modeled daily peak ozone concentrations, the States conclude that Strategy 2 with a maximum background ozone concentration of 60 ppb and Strategy 4 with a maximum background ozone concentration of 70 ppb would clearly pass this benchmark test. They also conclude that Strategy 2 with a future maximum background ozone concentration of 70 ppb and Strategy 4 with a maximum background ozone concentration of 80 ppb would also pass the benchmark based on an additional weight-of-evidence analysis. The weight-of-evidence analysis is based on the following evidence:

A. Factors Providing Confidence in Modeled Results

Evaluation of the modeling system's performance show that:

- Statistical measures for ozone comply with EPA's model performance criteria;
- Spatial and temporal patterns of monitored surface ozone concentrations are reproduced well by the modeling system on most days;
- Model performance for ozone across the full domain is consistent with the model performance in individual subregions;
- Aloft ozone predictions compare favorably with aircraft ozone data; and
- Model performance for ozone precursors, especially NO_X, is very good.

Confidence in underlying data bases is high. A comprehensive field program was conducted during the summer of 1991. This field program was used to collect a large quantity of air quality and meteorological data to support the photochemical grid modeling.

The modeling results obtained by the LADCO States were corroborated with the results from other modeling studies. As part of the Cooperative Regional Model Evaluation (CReME), the photochemical models UAM–IV, UAM–V, and SAQM were applied in the Lake Michigan region. The supplemental analyses shows that UAM–V produces results directionally consistent with those produced by UAM–IV and SAQM. All three models concurred in showing that VOC emission reductions are generally locally beneficial and that local NO_X emission controls are not beneficial in certain locations, generally within 100 to 200 kilometers downwind of Chicago.

B. Severity of Modeled Episodes

Three of the four ozone episodes modeled reflect meteorological conditions which typically favor high ozone in the Lake Michigan area (when the Lake Michigan area is on the ''back-side'' of a high pressure system with warm temperatures, high humidity, and south-southwesterly winds). The fourth episode is representative of warm temperatures with easterly winds, conditions which generally produce lower peak ozone concentrations and fewer ozone standard exceedances on a per year basis.

The magnitudes of the observed peak ozone concentrations at one or more locations within the modeling domain for the selected ozone episodes exceed the corresponding ozone design values for many locations within the region. This implies that the modeled ozone episodes are conservative and that attaining the ozone standard for these episodes should lead to attainment of the ozone standard in non-modeled episodes and during most future ozone conducive periods.

C. Trends Analyses

Several trends analyses have been considered. First, 10-year trends established by the Environmental Protection Agency based on second high daily maximum one-hour ozone concentrations for each year show no significant changes in Chicago, Grand Rapids, Gary, and Kenosha; and a downward trend in Racine and Milwaukee. Second, 17-year trends

based on the number of ozone exceedance days normalized based on the annual number of hot days show that the number of exceedance days is significantly decreasing relative to the number of hot days each year. Third, 15-year trends show downward trends in ozone at sites on the western side of Lake Michigan.

Examination of limited morning total non-methane hydrocarbon concentration levels in Chicago and Milwaukee over the past 10 years show a significant downward trend. This downward trend is consistent with the calculated downward trend in VOC emissions.

The LADCO States conclude that the weight-of-evidence demonstration provides additional information which verifies the directionality of the modeling and demonstrates the potential stringency of the modeling results. The States conclude this information is sufficient to support minor exceptions to the benchmark, supporting a demonstration of attainment at the higher background ozone concentrations.

ii. Limits on the Values of Allowed Exceedances. Under this benchmark, the maximum modeled ozone concentration on severe days shall not exceed 130 ppb. The States, based on the modeled peak ozone concentrations, conclude this benchmark is passed for Strategy 2 with a maximum background ozone concentration of 70 ppb and for Strategy 4 with a maximum background ozone concentration of 80 ppb.

iii. Required Minimum Level of Air Quality Improvement. Under this benchmark, the number of grid cells with modeled peak ozone concentrations greater than 124 ppb must be reduced by at least 80 percent on each day with allowed modeled ozone standard exceedances. The States, based on the modeled peak ozone concentrations, conclude this benchmark is passed for Strategy 2 with a maximum background ozone concentration of 80 ppb and for Strategy 4 with a maximum background ozone concentration of 85 ppb.

From the above, it can be seen that benchmark i. is the most stringent of benchmarks in this case. Based on the statistical approach, coupled with a weight-of-evidence analysis, the States conclude that Strategy 2 with a maximum background ozone concentration of 70 ppb or Strategy 4 with a maximum background ozone concentration of 80 ppb is sufficient to attain the one-hour ozone standard by 2007.

The States further conclude, based on both attainment demonstration approaches, that either Strategy 2 or Strategy 4 coupled with future year boundary conditions generally consistent with the impacts of the NO_X SIP call is sufficient to attain the one-hour ozone standard.

5. Emission Control Strategies

What Emission Control Strategies Were Considered in the Attainment Demonstrations?

LADCO selected two emission control strategies considered during the Lake Michigan Ozone Control Program for further attainment demonstration modeling (numerous emission control measures were initially examined). The two strategies selected are referred to as Strategy 2 and Strategy 4. These emission control strategies would apply to the ozone nonattainment areas only and are summarized as the following:

a. Strategy 2. Strategy 2 includes all national emission control measures mandated by the CAA to be in place by 1996, including the emission controls needed to comply with the requirements for 15 percent Rate-Of-Progress (ROP) plans. Additional ROP plans for the post-1996 period were not considered, and additional NO_X emission controls, such as NO_X Reasonably Available Control Technology, were not considered due to the existence of an approved NO_X emission control waiver under section 182(f) of the Clean Air Act. Existing NO_X emission reduction requirements, such as the acid rain control requirements under Title IV of the Clean Air Act, were considered.

b. Strategy 4. Strategy 4 includes all Strategy 2 measures and also includes some additional point, area, and mobile source control measures in the severe ozone nonattainment areas. The additional controls are measures that the State could consider. The State, however, has not evaluated the technical feasibility or cost-effectiveness of these measures. The measures have only been considered regarding their potential to reduce VOC and NO_X emissions by 2007.

Table 3 lists the VOC and NO_X emission reductions expected in Grid B and in the severe ozone nonattainment areas. Emissions control strategy components for Wisconsin are listed in Table 4. The following acronyms are used:

RACT—Reasonably Available Control Technology

NESHAP—National Emission Standard for Hazardous Air Pollutants

MACT—Maximum Available Control Technology

I/M—Vehicle Inspection and Maintenance

TABLE 3.—EMISSION CONTROL LEVELS FROM STRATEGIES 2 AND 4 GRID B AND SEVERE OZONE NONATTAINMENT AREAS

[Lake Michigan Ozone Modeling Domain]

Strategy	Grid B—Percent emission change		Severe nonattainment area percentage emissions change	
	VOC	NO_X	VOC	NO_X
2	−27	−13	−37	−11
4	−40	−19	−53	−18

TABLE 4.—EMISSION CONTROL MEASURES IN WISCONSIN

STRATEGY 2—2007 MANDATORY CLEAN AIR ACT MEASURES

POINT SOURCE VOC CONTROLS
- Asphalt Production Plants
- Industrial Adhesives
- Iron and Steel Foundries RACT
- Miscellaneous Wood Product Coating
- Degreasing Controls

TABLE 4.—EMISSION CONTROL MEASURES IN WISCONSIN—Continued

Industrial Solvent Cleanup RACT
Large Gasoline Storage
Offset Lithography
Plastic Parts Coating Tightening
Wood Furniture Coating RACT
Screen Printing RACT
Yeast Manufacturing RACT
POINT SOURCE NO_X CONTROLS
Acid Rain Phase I NO_X Limits
AREA SOURCE VOC CONTROLS
Automobile Refinishing
Degreasing Controls
Solid Waste Toxic Substance Disposal Facility MACT
Stage II Vehicle Refueling Vapor Recovery
Reformulated Gasoline Use in Off-Road Vehicles
Traffic Marking Reformulation or Solvent Control
Wood Furniture Coating Tightening
Architectural and Industrial Maintenance Coatings
Municipal Waste Landfills
Stage I Refueling Reductions Due To Use of Reformulated Gasoline
Gasoline Tank Truck Leak Reductions Due To Use of Reformulated Gasoline
Underground Tank Breathing Losses and Leak Control Due To
Use of Reformulated Gasoline
Commercial/Consumer Solvent Reformulation or Elimination
Off-Road Engine Standards
On-Board Vehicle Controls
MOBILE SOURCE CONTROLS
Tier I Light-Duty Vehicle Standards
Reformulated Gasoline—Phase II (Class C)
Enhanced I/M (no NO_X cut-points)
Clean Fuel Fleets
Current Transportation Improvement Program/Build Scenario Long Range Transportation Plan, including the following elements:
- Full implementation of adopted Land Use Plan and promotion of land use and urban design elements that encourage alternatives to automobile commuting
- Public Transit Service Improvements with a Phase-In 75 Percent Increase in Service by 2010
- Transportation Demand Management Measures that Support Employee Commute Options Program Goals, including: Ridesharing; telecommuting; Transportation Management Associations; and Alternative Work Schedule Promotion
- Freeway Traffic Management Plan Implementation
- Highway Improvements—Congestion Mitigation

2010 Transportation System Plan Recommended Transportation Control Measures

STRATEGY 4—2007 MANDATORY MEASURES PLUS

All Strategy 2 measures plus:
POINT SOURCE VOC CONTROLS
Improved Rule Effectiveness
Phased Emission Reduction Program
POINT SOURCE NO_X CONTROLS
Phase II Acid Rain NO_X Limits
AREA SOURCE VOC CONTROLS
Agricultural Pesticides Application
Degreasing Controls
Improved Rule Effectiveness
Offset Lithography
Petroleum Dry Cleaning
Small Engine Buy-Back Program
Stage II Vehicle Refueling—Eliminate Small Business
Exemption
MOBILE SOURCE CONTROLS
California Low Emission Vehicle Controls
Specific Vehicle I/M (no NO_X cut-points)
Reformulated Gasoline—Phase II (Class B)

Has the State Adopted a Selected Emission Control Strategy?

The State has not selected either emissions control strategy as the official, adopted emissions control strategy of the Phase II ozone attainment demonstration. The State, however, has adopted and developed regulations for many of the emission control measures contained in the two emission control strategies, and particularly for the controls contained in Strategy 2. Some of the emission control measures in Strategy 4, however, have not been adopted. For example, Wisconsin has not adopted a Phased Emission Reduction Program (capped emissions with declining emission caps) and has not adopted major agricultural pesticide application restrictions.

6. Transportation Conformity

Did the State Address Transportation Conformity in the Submittals?

Wisconsin has not specifically addressed transportation conformity or associated mobile source emission budgets in the attainment demonstration submittals and no such mobile source emission budget has been adopted as part of the Phase II submittal.

7. State Commitments

Are There Any State Commitments for Further Analyses and Air Quality Plans Addressing a Final Ozone Attainment Demonstration for the One-Hour Ozone Standard?

Wisconsin believes that, with the level of NO_X emission reductions consistent with the NO_X SIP call and considering the VOC emission reductions from the 15 percent (1996) and 9 percent (post-1996) ROP plans, little or no additional VOC emission reductions are necessary to provide for attainment of the one-hour ozone standard. Wisconsin has committed to submit a final plan, including additional modeling and adopted emission control regulations, to achieve attainment of the one-hour standard and to meet post-1999 ROP requirements. This plan with all necessary control measures for attainment and ROP to the attainment year will be submitted to EPA no later than the end of 2000. The revised modeling submitted by December 2000 will fully consider the impact of NO_X regional reductions and the adopted control measures submitted in December 2000 will reflect those needed in light of the effect of the regional NO_X reductions on the modeled attainment demonstration. If additional VOC control measures are needed, Wisconsin will revise the SIP to include the necessary regulations.

Wisconsin commits to implement the emission control programs on a schedule necessary to meet ROP requirements and to implement NO_X emission controls consistent with the compliance schedule contained in the final NO_X SIP call.

B. Environmental Protection Agency Review of the Submittals

1. Adequacy of the State's Demonstration of Attainment

Did the State Adequately Document the Techniques and Data Used To Derive the Modeling Input Data and Modeling Results of the Analyses?

The Phase I submittals from the States, submitted in June 1996, thoroughly documented the techniques and data used to derive the modeling input data. The Phase II submittal adequately summarized the modeling outputs and the conclusions drawn from these model outputs.

Did the Modeling Procedures and Input Data Used Comply With the CAA and EPA Guidelines?

Yes.

Did the States Adequately Demonstrate Attainment of the Ozone Standard?

Wisconsin, in accordance with EPA's December 1997 guidance, has demonstrated that attainment of the standard is achievable provided sufficient reductions in background ozone concentrations (and background ozone precursor concentrations) occur as a result of the implementation of regional NO_X emission controls under the NO_X SIP call. Wisconsin, however, has not selected a specific final emission control strategy that would achieve attainment of the one-hour ozone standard. As described earlier, Wisconsin will select a control strategy for purposes of establishing a motor vehicle conformity budget. A subsequent emission control attainment strategy will be selected when the LADCO States submit a final attainment demonstration in December 2000.

Does the Weight-of-Evidence Test Support the States' Conclusions Regarding the Attainment Demonstration?

The documented WOE analyses support the conclusions of the deterministic test and the statistical test. Both the deterministic test and the statistical test lead to similar conclusions regarding the 1-hour ozone standard attainment demonstration. Both deterministic and statistical tests, as supplemented by a WOE analysis, show that attainment can be achieved with local emissions controls already implemented coupled with significant reductions in transported ozone and ozone precursors.

2. Adequacy of the Emissions Control Strategy

Has an Adopted Emissions Control Strategy Been Adequately Documented?

No. The State has not adopted a final emissions control strategy for attainment of the one-hour ozone standard. The State, however, has demonstrated that significant reductions in transported ozone and NO_X will be necessary to attain the 1-hour standard. These reductions are expected to occur as a result of the implementation of regional NO_X emission reductions. All three of the LADCO States, including Wisconsin, are expected to submit SIPs to address EPA's NO_X SIP call or to implement alternative regional NO_X controls within their States.

Is the Emission Control Strategy Acceptable?

No. The State must select an emissions control strategy that is consistent with attainment in order to establish a motor vehicle emissions budget. The State must do so in sufficient time for EPA to find the motor vehicle emissions budget adequate by May 31, 2000 (See Table in Section II.D.) The State has committed to adopt and submit the final emission control strategy associated with a revised modeling analysis by December 2000.

3. State Commitments

Are the State Commitments for Future Analyses and Finalization of the Attainment Demonstration Acceptable?

Yes. EPA's December 1997 policy provides that severe nonattainment area States must submit the control measures necessary to attain the NAAQS and meet post-1999 ROP no later than December 2000. Wisconsin's commitments to provide additional modeling and to adopt and submit the post-1999 ROP plan (the post-1996 ROP plan, covering the period of 1997 through 1999, is currently under review by the Environmental Protection Agency) and any additional measures needed for attainment by December 2000 are acceptable.

4. Relationship To Other Requirements

Will the Future Analyses Adequately Address the Impacts of the NO_X SIP Call?

Yes. The LADCO States have made it very clear that the one-hour ozone standard will be difficult to attain without regional NO_X emission reductions and that the final demonstration of attainment will incorporate the States' best estimates of the impacts of the NO_X SIP.

Has the State Specified and Adopted Acceptable Transportation Conformity Motor Vehicle Emission Budgets?

No. The State has not selected a specific emission control strategy. The State must select a control strategy that is consistent with the attainment. The State will need to establish a motor vehicle emissions budget based on the selected strategy and will need to submit the budget in time for EPA to find the budget adequate by May 31, 2000.

C. Summary

Overall, Is Wisconsin's Ozone Attainment Demonstration Acceptable?

Wisconsin has generally met the requirements of the EPA December 1997 ozone attainment demonstration guidance, with the exception of selecting an emission control strategy. EPA will not take final action conditionally approving the submission unless the State selects an emissions control strategy and submits a motor vehicle emissions budget that EPA may find adequate by May 31, 2000.

What Portions of the Attainment Demonstration Need Additional Work and Consideration for Purposes of a Final Attainment Demonstration?

The following items need further consideration in the final ozone attainment demonstration:

1. A final modeled demonstration of attainment that considers the impacts of the regional NO_X emission reductions, local control measures, and NO_X emissions control waiver (if maintained);
2. Adoption and submission of CAA measures, including VOC RACT for the following categories: Plastic parts coating, industrial cleanup solvents, and ink manufacturing, and adoption and submission of measures relied on in the final modeled attainment demonstration;
3. Motor vehicle emission budgets, including both VOC and NO_X emissions.

The EPA has found that the motor vehicle emissions budget in the attainment demonstration submitted for the Milwaukee-Racine is inadequate for conformity purposes. The EPA is proposing to conditionally approve the attainment demonstration SIP if the State corrects the deficiencies that cause the motor vehicle emissions budget to be inadequate and, alternatively, to disapprove it if Wisconsin does not correct the deficiencies. If Wisconsin submits a revised attainment demonstration, EPA will re-open the comment period for this proposal in order to take comment on whether to approve the new submission.

III. Proposed Action

The Environmental Protection Agency proposes to issue a final conditional approval of the ozone attainment demonstration.

The State already committed to do the following in the April 1998 ozone attainment demonstration: (1) Perform and submit a final modeled ozone attainment demonstration by December 2000; (2) adopt and submit a specific emissions control strategy, including adopted control measures, adequate to attain the 1-hour ozone NAAQS in the ozone nonattainment area and throughout the ozone modeling domain by December 2000; (3) adopt and submit control measures necessary to meet ROP from 1999 until the attainment year and the associated target calculations. For EPA to issue a final conditional approval the State will need to take the following steps in sufficient time for EPA to determine by May 31, 2000 that the state has an adequate motor vehicle emissions budget: (1) Select a control strategy consistent with its current modeling analysis; (2) adopt and submit an adequate motor vehicle emissions budget consistent with the selected strategy; (3) commit to adopt and submit certain VOC RACT rules by December 2000; and (4) commit to perform a mid-course review.

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

If the State does not take one or more of the actions listed above in time for EPA to determine the conformity budget adequate by May 31, 2000, or if the State submits a motor vehicle emissions budget that EPA determines is not adequate, EPA will disapprove the attainment demonstration submission for the Milwaukee-Racine area.

If EPA issues a final conditional approval of the State's submission, the conditional approval will convert to a disapproval if the State does not adopt and submit a complete SIP submission with the following four elements by December 31, 2000: (1) A final revised modeling analysis that fully assesses the impacts of regional NO_X reductions, models a specific local emissions reduction strategy, and reconsiders the effectiveness of the NO_X waiver; (2) VOC rules and regulations for the plastic parts coating, industrial cleanup solvents, and ink manufacturing; (3) control measures necessary to meet the ROP requirement from 1999 until the attainment year, including target calculations.

If the State makes a complete submission with all of the above elements by December 31, 2000, EPA will propose action on the new submissions for the purpose of determining whether to issue a final full approval of the attainment demonstration.

What Are the Consequences of State Failure?

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

What Are the CAA's Provisions for Sanctions?

If EPA disapproves a required SIP, such as the attainment demonstration SIPs, section 179(a) provides for the imposition of two sanctions. The first sanction would apply 18 months after EPA disapproves the SIP if the State fails to make the required submittal which EPA proposes to fully or conditionally approve within that time. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA. If the State has still failed to submit a SIP for which EPA proposes full or conditional approval 6 months after the first sanction is imposed, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds. EPA also has authority under section 110(m) to a broader area, but is not proposing to take such action today.

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.

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. These groups filed a lawsuit in the Federal District Court for the District of Columbia on November 8, 1999.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action 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.

This final rule is not subject to E.O. 13045 because it does 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

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

If the 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 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 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.

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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.

[FR Doc. 99–31723 Filed 12–15–99; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 15/P.L. 106–145
Otay Mountain Wilderness Act of 1999 (Dec. 9, 1999; 113 Stat. 1711)

H.R. 658/P.L. 106–146
Thomas Cole National Historic Site Act (Dec. 9, 1999; 113 Stat. 1714)

H.R. 1104/P.L. 106–147
To authorize the Secretary of the Interior to transfer administrative jurisdiction over land within the boundaries of the Home of Franklin D. Roosevelt National Historic Site to the Archivist of the United States for the construction of a visitor center. (Dec. 9, 1999; 113 Stat. 1717)

H.R. 1528/P.L. 106–148
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Quinebaug and Shetucket Rivers Valley National Heritage Corridor Reauthorization Act of 1999 (Dec. 9, 1999; 113 Stat. 1726)

H.R. 1665/P.L. 106–150
To allow the National Park Service to acquire certain land for addition to the Wilderness Battlefield in Virginia, as previously authorized by law, by purchase or exchange as well as by donation. (Dec. 9, 1999; 113 Stat. 1730)

H.R. 1693/P.L. 106–151
To amend the Fair Labor Standards Act of 1938 to clarify the overtime exemption for employees engaged in fire protection activities. (Dec. 9, 1999; 113 Stat. 1731)

H.R. 1887/P.L. 106–152
To amend title 18, United States Code, to punish the depiction of animal cruelty. (Dec. 9, 1999; 113 Stat. 1732)

H.R. 1932/P.L. 106–153
Father Theodore M. Hesburgh Congressional Gold Medal Act (Dec. 9, 1999; 113 Stat. 1733)

H.R. 2140/P.L. 106–154
To improve protection and management of the Chattahoochee River National Recreation Area in the State of Georgia. (Dec. 9, 1999; 113 Stat. 1736)

H.R. 2401/P.L. 106–155
U.S. Holocaust Assets Commission Extension Act of 1999 (Dec. 9, 1999; 113 Stat. 1740)

H.R. 2632/P.L. 106–156
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H.R. 2737/P.L. 106–157
To authorize the Secretary of the Interior to convey to the State of Illinois certain Federal land associated with the Lewis and Clark National Historic Trail to be used as an historic and interpretive site along the trail. (Dec. 9, 1999; 113 Stat. 1743)

H.R. 3381/P.L. 106–158
Export Enhancement Act of 1999 (Dec. 9, 1999; 113 Stat. 1745)

H.R. 3419/P.L. 106–159
Motor Carrier Safety Improvement Act of 1999 (Dec. 9, 1999; 113 Stat. 1748)

H.R. 3456/P.L. 106–160
To amend statutory damages provisions of title 17, United States Code. (Dec. 9, 1999; 113 Stat. 1774)

H.J. Res. 46/P.L. 106–161
Conferring status as an honorary veteran of the United States Armed Forces on Zachary Fisher. (Dec. 9, 1999; 113 Stat. 1775)

S. 67/P.L. 106–162
To designate the headquarters building of the Department of Housing and Urban Development in Washington, District of Columbia, as the ''Robert C. Weaver Federal Building''. (Dec. 9, 1999; 113 Stat. 1777)

S. 438/P.L. 106–163
Chippewa Cree Tribe of The Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Dec. 9, 1999; 113 Stat. 1778)

S. 548/P.L. 106–164
Fallen Timbers Battlefield and Fort Miamis National Historic Site Act of 1999 (Dec. 9, 1999; 113 Stat. 1792)

S. 791/P.L. 106–165
Women's Business Centers Sustainability Act of 1999 (Dec. 9, 1999; 113 Stat. 1795)

S. 1595/P.L. 106–166
To designate the United States courthouse at 401 West Washington Street in Phoenix, Arizona, as the ''Sandra Day O'Connor United States Courthouse''. (Dec. 9, 1999; 113 Stat. 1802)

S. 1866/P.L. 106–167
John H. Chafee Coastal Barrier Resources System Act (Dec. 9, 1999; 113 Stat. 1803)

S. 335/P.L. 106–168
To amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to sweepstakes, skill contests, facsimile checks, administrative procedures, orders, and civil penalties relating to such matter, and for other purposes. (Dec. 12, 1999; 113 Stat. 1806)

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