

machines of any kind. On April 9, 1992, the Commission issued a final rule defining key terms in the Act. Among the terms defined by the Commission was "electronic or electromechanical facsimile." The Commission defined this term by reference to the Johnson Act, 15 U.S.C. 1171(a)(2) and (3). See 25 CFR 502.8. Although an agency's interpretation of ambiguous terms in a federal law that it is responsible for administering is ordinarily entitled to great deference, the courts, in several recent decisions, have not relied on the Commission's definition of electronic or electromechanical facsimile. Instead the courts have relied exclusively on the terms contained in the Indian Gaming Regulatory Act, applying a plain language interpretation of this phrase. To ensure consistency with developments in the case law and to ensure a uniform approach to this term by the Commission and the courts, the Commission now proposes and seeks public comment on removal of 25 CFR 502.8 and use instead the plain language interpretation that has been preferred by the courts.

#### *Regulatory Flexibility Act*

This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

#### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of \$100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

The Commission has determined that this proposed rule does not impose an unfunded mandate on State, local or tribal governments or on the private sector of more than \$100 million per year. Thus, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.* The Commission has also determined that the proposed rule does not have a unique effect on tribal

governments because the proposed removal of the reference to the Johnson Act merely codifies the practice of defining "electronic and electromechanical facsimile" in accordance with the plain meaning of those words.

#### *Takings*

In accordance with Executive Order 12630, the Commission has determined that this rule does not have significant takings implications. A takings implication assessment is not required.

#### *Civil Justice Reform*

In accordance with Executive Order 12988, the Office of General Counsel has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Instead, the rule is likely to decrease litigation with Indian tribes and reduce unnecessary friction between the Department of Justice and the Commission.

#### *Paperwork Reduction Act*

This regulation does not require an information collection under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

#### *National Environmental Policy Act*

The Commission has analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required.

#### **List of Subjects in 25 CFR Part 502**

Gaming, Indian lands.

For the reasons set forth in the preamble, the National Indian Gaming Commission proposes to amend 25 CFR Part 502 as follows:

#### **PART 502—DEFINITIONS OF THIS CHAPTER**

1. The authority citation for part 502 continues to read as follows:

**Authority** 25 U.S.C. 2701 *et seq.*

2. Amend § 502.8 as follows:

#### **§ 502.8 [Removed and Reserved]**

Remove and reserve § 502.8.

Dated: June 18, 2001.

**Elizabeth L. Homer,**  
*Vice Chair.*

**Teresa E. Poust,**  
*Commissioner.*

[FR Doc. 01-15700 Filed 6-21-01; 8:45 am]

**BILLING CODE 7565-01-U**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[W185-01-7316; FRL-7000-6]

#### **Approval and Promulgation of Air Quality Plans; Wisconsin; Post-1996 Rate Of Progress Plan for the Milwaukee-Racine Ozone Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the post-1996 Rate-Of-Progress (ROP) plan submitted by the State of Wisconsin for the Milwaukee-Racine ozone nonattainment area, as a requested revision of the State Implementation Plan (SIP) for ozone. The Clean Air Act (Act) requires a post-1996 ROP plan for the Milwaukee-Racine ozone nonattainment area. The purpose of the post-1996 ROP plan is to incrementally provide for progress toward attainment of the 1-hour ozone standard in the Milwaukee-Racine ozone nonattainment area by reducing ground-level ozone precursor emissions. The submitted plan, which covers the period of 1996 through 1999 and emission reductions occurring by November 15, 1999, shows that Wisconsin reduced emissions of volatile organic compounds (VOC), ozone-forming pollutants by the amounts required by the Act.

**DATES:** EPA must receive comments in writing by July 23, 2001.

**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's submittal addressed in this proposed rule, and other relevant materials are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Jacqueline Nwia at (312) 886-6081 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Nwia, Environmental Scientist, U.S. Environmental Protection Agency, Air and Radiation Division (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6081, nwia.jacqueline@epa.gov.

**SUPPLEMENTARY INFORMATION:**

Throughout this document, “we,” “us,” or “our” mean EPA.

This section provides additional information by addressing the following questions and topics:

- I. What Is EPA Proposing to Approve In This Action?
- II. What Is the Procedural Background of the Wisconsin Submittal?
- III. The Wisconsin Post-1996 ROP Plan.
  - A. What is a post-1996 ROP plan?
  - B. What environmental benefits does the post-1996 ROP plan provide?
  - C. What Wisconsin counties are in the Milwaukee-Racine ozone nonattainment area?
  - D. Who is affected by the Wisconsin post-1996 ROP plan?
  - E. What public review opportunities were provided?
  - F. What criteria must a post-1996 ROP plan meet to be approved?
  - G. What are the special requirements for claiming VOC reductions from sources outside the nonattainment area boundary?
- IV. Wisconsin’s Calculation of the Needed ROP Reduction.
  - A. How did Wisconsin calculate the needed ROP?
    1. Emission Baselines.
    2. 1999 Emission Target Level to Meet ROP Emission Reduction Requirement.
    4. 1999 Projected Growth Level.
    5. Emission Reduction Needed for ROP Reduction Net-Of-Growth.
- V. The Wisconsin Post-1996 ROP Plan Control Strategies.
  - A. What are the criteria for acceptable control strategies?
  - B. What are the control strategies under the Wisconsin post-1996 ROP plan?
    1. Point/Area Sources.
      - a. Wood Furniture Coating.
      - b. Yeast Manufacturing.
      - c. Screen Printing.
      - d. Gray Iron and Steel Foundries.
      - e. Industrial Adhesives.
      - f. Lithographic Printing.
      - g. Degreasing.
      - h. Federal Architectural and Industrial Maintenance (AIM) Coating (Industrial).
      - i. Federal AIM Coating.
      - j. Autobody Refinishing.
      - k. Stage 2 Vapor Recovery.
      - l. Traffic Markings.
      - m. Underground Gasoline Tank Vent Valves.
      - n. Federal Commercial and Consumer Solvents.
    - o. Reformulated Gasoline-Area Petroleum Sources.
    2. Mobile Sources.
      - a. Federal Tier I Vehicle Tailpipe Standards.
      - b. Reformulated Gasoline.
      - c. Enhanced Motor Vehicle Inspection/Maintenance Program.
      - d. Federal Gasoline Detergent Additive.
      - e. Federal On-Board Vapor Recovery Canisters.
      - f. Reformulated Gasoline—Off-Road Source.
      - g. Federal Off-Road Engine Standards.

- C. What are the **Federal Register** citations for the federal approval or promulgation of the control measures?
- D. How did Wisconsin calculate the emission reductions for the control strategies?
- E. What amount of emission reduction does each control strategy achieve?
- VI. EPA Review of the Post-1996 ROP Plan.
  - A. Why is the Wisconsin Post-1996 ROP plan approvable?
- VII. What Action Are We Proposing Today?
- VIII. Administrative Requirements.
  - A. Executive Order 12866
  - B. Executive Order 13045
  - C. Executive Order 13084
  - D. Executive Order 13132
  - E. Regulatory Flexibility
  - F. Unfunded Mandates

**I. What Is EPA Proposing to Approve In This Action?**

We are approving the post-1996 ROP plan for the Milwaukee-Racine ozone nonattainment area because the plan identifies control measures to achieve a projected 9 percent VOC emission reduction by November 15, 1999. Section 182(c)(2) of the Act requires serious and above ozone nonattainment areas to submit plans that would achieve reductions in VOC emissions by at least 3 percent per year, net of growth, averaged over each consecutive 3 year period beginning in 1996 until the areas attainment date. These plans are referred to as rate-of-progress (ROP) plans. Section 182(c)(2) also requires such areas to submit a plan that demonstrates attainment of the ozone standard based on photochemical grid modeling or an equally effective method. The attainment demonstration and ROP plans were due to EPA by November 15, 1994.

Many states, however, found it difficult to meet the date for submittal of an attainment demonstration and post-1996 ROP plan due primarily to an inability to address or control transport of ozone. We consequently recognized the efforts made by the states and the challenges in developing technical information and control measures with respect to these submittals in a memorandum entitled “Ozone Attainment Demonstrations,” dated March 2, 1995, from Mary D. Nichols, Assistant Administrator for Air and Radiation. The memorandum then allowed new time frames for these SIP submittals and divided the required SIP submittals into two phases. Generally, Phase I consists of: SIP measures providing for ROP reductions due by the end of 1999, an enforceable SIP commitment to submit any remaining required ROP reductions on a specified schedule after 1999, and an enforceable SIP commitment to submit the additional SIP measures needed for

attainment. Phase II consists of the remaining ROP SIP measures, the attainment demonstration and additional local rules needed to attain, and any regional controls needed for attainment by all areas in the region.

This action is proposing to approve Wisconsin’s post-1996 ROP plan.

**II. What Is the Procedural Background of the Wisconsin Submittal?**

On December 11, 1997, the State of Wisconsin submitted the post-1996 ROP plan for the Milwaukee-Racine area as a requested SIP revision. The plan was submitted to meet the Act’s requirement, in section 182(c)(2)(B), that the state demonstrate a 9 percent reduction of VOC emission in the Milwaukee-Racine ozone nonattainment area during the 3 year period between 1996 and 1999. We issued a completeness letter on December 29, 1998. Wisconsin subsequently submitted several supplements to the December 11, 1997 ROP plan, consisting of supplemental documentation, on August 5, 1999, January 31, 2000, March 3, 2000, and February 2001.

**III. The Wisconsin Post-1996 ROP Plan****A. What is a Post-1996 ROP Plan?**

An ROP plan is a strategy to achieve timely periodic reductions of emissions that produce ground-level ozone in areas that are not attaining the ozone National Ambient Air Quality Standards (NAAQS). A post-1996 ROP plan must demonstrate a projected 9 percent emission reduction of ozone-forming VOC emissions in those areas between 1996 and 1999.

ROP plans are a requirement of the Act under section 182. Section 182(c)(2)(B) requires states with ozone nonattainment areas classified as serious and above to adopt and implement plans to achieve periodic reductions in VOC emissions after 1996. The requirement is intended to ensure that an area make progress toward attainment of the ozone NAAQS. The post-1996 ROP emission reductions must be achieved at a rate of 3 percent per year relative to the 1990 baseline emissions, net of growth of emissions, averaged over three-year periods. The first three-year 9 percent milestone, called the “post-1996 ROP plan,” must demonstrate that these emission reductions were projected to have occurred by November 15, 1999. Because the Milwaukee-Racine ozone nonattainment area is classified as a severe area, the area was required to meet the post-1996 ROP requirement.

The post-1996 ROP plan contains: (1) Documentation showing how the state

calculated the emission reduction(s) needed on a daily basis to achieve the 9 percent VOC emission reduction; (2) a description of the control measures used to achieve the emission reduction; and (3) a description of how the state determined the emission reduction from each control measure.

The post-1996 ROP plan will contribute to continued progress toward achieving attainment by the Act's mandated date of November 15, 2007 for the Milwaukee-Racine ozone nonattainment area.

#### *B. What Environmental Benefits Does the Post-1996 ROP Plan Provide?*

The Wisconsin post-1996 ROP plan shows reductions of VOC emissions. VOC emissions contribute to the formation of ground-level ozone in the atmosphere.

The post-1996 ROP plan demonstrates VOC emission reductions from sources within the Milwaukee-Racine ozone nonattainment area and several source categories within 100 kilometers of the nonattainment area boundary. Although some of the VOC reductions are from sources outside the nonattainment area, they are creditable towards the post-1996 ROP plan. These outside VOC emissions contribute to ozone formation in the Milwaukee-Racine area, and reducing such emissions will contribute to the Milwaukee-Racine area's progress towards attainment.

The reactivity of ozone causes health problems because it damages lung tissue, reduces lung function and sensitizes the lungs to other irritants. When inhaled, even at low levels, ozone can cause or aggravate a variety of respiratory problems, including shortness of breath, chest pain, wheezing, coughing, asthma, decreased lung capacity, and inflammation of lung tissue. Repeated exposure to ozone at elevated concentrations for several months may cause permanent structural damage to the lungs.

Ozone also affects vegetation and ecosystems, leading to reductions in agricultural and commercial forest yields, reduced growth and survivability of tree seedlings, and increased plant susceptibility to disease and pests.

#### *C. What Wisconsin Counties are in the Milwaukee-Racine Ozone Nonattainment Area?*

The Milwaukee-Racine ozone nonattainment area includes the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha.

#### *D. Who is Affected by the Wisconsin Post-1996 ROP Plan?*

Wisconsin's post-1996 ROP plan does not create any new control requirements. Instead, it demonstrates that existing state and federal regulations and control programs in the Milwaukee-Racine area will result in a 9 percent VOC emission reduction. The control measures in Wisconsin's plan affect a variety of industries, businesses, and motor vehicle owners. State regulations in the post-1996 ROP plan are federally enforceable through separate SIP revisions or through separate EPA promulgation. One exception is the state's motor vehicle inspection and maintenance program. We conditionally approved an enhanced motor vehicle inspection and maintenance program on January 12, 1995 (60 FR 2881). Subsequently, Wisconsin submitted a revision on December 30, 1998 and is expected to submit another revision in the near future. These revisions must be finally approved prior to final approval of the post-1996 ROP plan.

#### *E. What Public Review Opportunities Were Involved?*

Wisconsin afforded the public a 30 day opportunity for public comment on the post-1996 ROP plan from September 10, 1997 through October 10, 1997. Wisconsin also held a public hearing on the post-1996 ROP plan on October 10, 1997.

#### *F. What Criteria Must a Post-1996 ROP Plan Meet to be Approved?*

Section 182(c)(2)(B) establishes elements that a post-1996 ROP plan must contain for approval. These elements are: (1) an emission baseline; (2) an emission target level; (3) an emission reduction estimate to compensate for emission growth projections and to reach the ROP emission reduction goal; and (4) emission reduction estimates for the plan's control measures. Through these elements, the plan must illustrate that the nonattainment area will achieve a 9 percent VOC emission reduction by November 15, 1999.

We have issued several guidance documents for states to use in developing approvable post-1996 ROP plans. These documents address such topics as: (1) The relationship of ROP plans to other SIP elements required by the Act; (2) calculation of baseline emissions and emission target levels; (3) procedures for projecting emission growth; and (4) methodology for determining emission reduction

estimates for various control measures, including federal measures.

Our January 1994, policy document, *Guidance on the Post-1996 Rate-Of-Progress Plan and the Attainment Demonstration* (post-1996 policy), provides states with an appropriate method to calculate the emission reductions needed to meet the ROP emission reduction requirement. A complete list of ROP guidance documents is provided in the Technical Support Document (TSD) for this rulemaking. You can get the TSD for this proposed rulemaking from the Region 5 office at the address indicated above.

#### *G. What are the Special Requirements for Claiming VOC Reductions From Sources Outside the Nonattainment Area Boundary?*

On December 29, 1997, we issued a policy memorandum entitled, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS" (December 1997 policy) which provides additional guidance on the types of emission reductions that are creditable towards ROP. This guidance provides flexibility in terms of substituting of credits for ROP emission reductions, including expanding the geographic boundary of the area from which emission reductions may be obtained to meet the post-1996 ROP requirement. Specifically, areas may take credit for emission reductions obtained from sources outside the designated nonattainment area boundary for post-1996 plans. The geographic expansion for substitution of VOC emission reductions occurring outside the nonattainment area is limited to an area within 100 kilometers from the nonattainment area boundary. However, to take credit for VOC emission reductions outside the nonattainment area boundaries, the emissions from sources outside the nonattainment area that are involved must be included in the baseline ROP emissions and target ROP reduction calculation.

Wisconsin claimed emission reduction credits for the following source categories: autobody refinishing, traffic markings, and organic solvents. Wisconsin included the emissions from these source categories outside the nonattainment area in the baseline ROP emissions and target ROP reduction calculation. The outside nonattainment counties included are: Brown, Calumet, Columbia, Dane, Dodge, Fond du Lac, Green, Green Lake, Jefferson, Marquette, Outagamie, Rock, Waushara, and Winnebago. These counties are within 100 kilometers of the Milwaukee-Racine ozone nonattainment area boundary.

**IV. Wisconsin's Calculation of the Needed ROP Reduction.**

*A. How did Wisconsin Calculate the Needed ROP and Contingency Measure Reduction?*

The following table summarizes Wisconsin's post-1996 ROP calculations for determining the ROP emission reductions, as well as our adjustments to the calculations. We adjusted the

calculations by removing the traffic markings emissions for the 100 kilometer boundary area, which Wisconsin included in the 1990 base year emission inventory. Wisconsin claimed emission reductions from this category, which we found not to be approvable because they are not permanent and enforceable. Consequently, the emissions from this

category were removed from the 1990 base year emission inventory. The calculation of required emission reductions was based solely on VOC emission reductions and includes emissions from outside the Milwaukee-Racine ozone nonattainment area boundary but within 100 kilometers of the boundary for certain source categories.

REQUIRED VOC REDUCTION BY 1999

| Calculation of the VOC Reduction Needs by 1999   | Wisconsin's calculations tons of VOC/day | EPA's adjusted calculations tons of VOC/day |
|--|--|---|
| 1990 Milwaukee-Racine Area Total VOC Emissions .....   | 461.5                                    | 458.36                                      |
| 1990 ROP VOC Emissions (Anthropogenic only) .....  | 392.6                                    | 389.38                                      |
| 1990-99 Noncreditable Reductions .....   | 69.81                                    | 69.81                                       |
| 1990 Adjusted Base Year Emissions (1990 ROP Emissions minus Noncreditable Reductions) .....  | 322.79                                   | 319.57                                      |
| 9 percent of Adjusted Base Year Emissions .....  | 29.05                                    | 28.76                                       |
| 1999 Fleet Turnover Correction Factor .....  | 5.3                                      | 5.3   |
| 1996 Target Level .....  | 278.87                                   | 276.13                                      |
| 1999 Target Level (1996 Target Level minus 9 percent Reductions minus Fleet Turnover Correction Factor) .....                            | 240.02                                   | 237.57                                      |
| 1999 Projected VOC Emissions (1990 VOC Emissions Grown to 1999 plus Noncreditable Emission Reductions) .....                             | 405.74                                   | 402.5                                       |
| Required Reductions by 1999 to Meet the 9 Percent ROP Requirement Net-of-Growth (1999 Projected Emissions minus 1999 Target Level) ..... | 165.72                                   | 164.93                                      |

Using our post-1996 policy, the needed emissions reductions are calculated by taking the following steps:

- (1) Establish the emission baselines for VOC;
- (2) Calculate the emission target level to meet the overall 9 percent reduction by 1999;
- (3) Estimate the projected emission growth that would occur if no 9 percent emission reduction takes place;
- (4) Subtract the projected emission level from the emission target to determine the VOC emission reduction needed, net of growth.

Wisconsin's calculation methods are discussed below.

**1. Emission Baselines**

The Act requires that the baseline emissions represent 1990 anthropogenic emissions on a peak ozone season weekday basis. Peak ozone season weekday emissions represent the average VOC daily emissions that occur on weekdays during the peak 3-month ozone period of June through August.

Wisconsin used the Milwaukee-Racine area's 1990 base year emission inventory for the VOC baseline. We approved the Milwaukee-Racine area 1990 inventory as a SIP revision on June 15, 1994 (59 FR 30702). In addition, Wisconsin included the 1990 VOC emissions from certain source categories outside the nonattainment area boundary but within 100 kilometers of the boundary, namely for the Traffic Markings, Autobody Refinishing,

Degreasing and Organic Solvents categories. The 1990 emissions for the sources in the 100 kilometer area were extracted from a statewide emission inventory. These emissions were also used in the domain-wide modeling for the 1-hour attainment demonstration modeling performed by the Lake Michigan Air Director's Consortium and submitted separately as a SIP revision in December 2000. It should be noted, however, that because we determined that the emission reductions claimed by Wisconsin for the traffic markings category for the 100 kilometer area were not approvable, we excluded these emissions from the 1990 baseline inventory. These emissions amounted to 3.17 tpd. We then recalculated the post-1996 ROP plan requirement, including the 1999 target level, 1999 projections and required emission reductions as illustrated in the table above.

The Act requires that the ROP baseline be "adjusted" to exclude emissions eliminated by the Federal Motor Vehicle Control Program (FMVCP), Federal Reid Vapor Pressure (RVP) regulations promulgated before November 15, 1990, state regulations required to correct deficiencies in existing VOC RACT regulations, and state regulations required to correct deficiencies in existing I/M programs. Because these regulations were promulgated or required before the 1990 amendments to the Act, the Act prohibits states from claiming ROP

reductions from these regulations. To achieve an accurate ROP target, the state must subtract these noncreditable reductions from the baseline to reflect the impact of these reductions on 1999 emissions. The resulting inventory is called the "adjusted base year inventory."

Wisconsin determined the emission reductions associated with the noncreditable FMVCP and RVP programs by using the MOBILE emission factors program.

Wisconsin determined that its VOC RACT rule corrections were technical in nature and, therefore, did not require any adjustments to the 1990 emission inventory. Wisconsin was not required to implement an I/M program before the 1990 amendments, and thus did not make adjustments to the 1990 emission inventory for I/M corrections, either.

**2. 1999 Emission Target Level to Meet ROP Emission Reduction Requirement**

After the adjusted base year emission inventory is established, the next step is to calculate the VOC emission target level for 1999. Our post-1996 policy provides the method for calculating target levels. To calculate the VOC target, the previous milestone target must first be identified; in this case it is the 1996 target level. From the 1996 target level, subtract, (1) the percent reduction required to meet the ROP requirement, and (2) the fleet turnover correction factor.

For the Milwaukee-Racine area's post-1996 ROP plan, it would not be appropriate to use the 1996 target level from the 15 percent plan because the 15 percent plan covered a different geographic area than the post-1996 ROP plan. Thus, the 1996 target level must be recalculated by reducing the 1990 adjusted ROP base year inventory for 1996 for this geographic area by 15 percent.

The fleet turnover correction factor represents the emission reduction that has occurred under the pre-1990 Act FMVCP and RVP regulations between consecutive milestone years, for the post-1996 plan, from 1996 to 1999. Since the 1996 target level and the 9 percent ROP reduction do not factor in these reductions, the fleet turnover correction factor is necessary to accurately calculate the emission level that must be achieved by 1999.

Performing the 1999 target level calculations consistent with this methodology results in a 1999 target level of 242.07 tpd. However, Wisconsin used a different methodology to calculate the 1999 target level. Wisconsin calculated the 1999 target level by subtracting the fleet turnover correction factor from 76% (100%-15%-9%) of the 1990 adjusted ROP base year inventory for 1999. Wisconsin's methodology yields a 1999 target level of 237.57 tpd.

Wisconsin's calculation methodology is not consistent with the Act or our policy. However, we will accept the 1999 target level value resulting from application of Wisconsin's methodology, 237.57 tpd, because it is a value that is less than, and thus, more stringent, than what would otherwise be allowed based on the Act and our policy.

### 3. 1999 Projected Growth Level

To account for source emission growth between 1990 and 1999, the state must develop projected emission inventories for VOC. The projected emission inventories represent the expected emissions in 1999 if no post-1996 ROP control measures had been implemented.

Wisconsin established the projected emission inventories for point, area, and nonroad source categories by taking the 1990 emission inventories and applying either EPA growth factors, or state-derived growth factors. Projected vehicle emissions were established using the MOBILE model. Our TSD for this proposed rulemaking contains more details about the growth factors used in Wisconsin's post-1996 plan. You may obtain a copy of the TSD by contacting the Region 5 office as indicated above.

The projected VOC emissions for 1999 are 402.5 tpd for point, area, on-road mobile, and non-road mobile.

#### 4. Emission Reduction Needed for ROP Reduction Net-Of-Growth

Based on the emissions inventory and calculations, a 164.93 TPD VOC emission reduction is needed for the Milwaukee-Racine ozone nonattainment area to meet the 9 percent requirement.

### V. Wisconsin's Post-1996 ROP Plan Control Strategies

#### A. What are the Criteria for Acceptable Control Strategies?

Under section 182(b)(1)(C) of the Act, emission reductions claimed for ROP must be creditable to the extent that the reductions have actually occurred before the applicable ROP milestone date, in this case November 15, 1999.

To meet this requirement, our policy provides that all credited emission reductions must be real, permanent, and enforceable. In addition, the plan's control measures must be adopted and implemented before November 15, 1999.

The post-1996 plan must also adequately document the methods used to calculate the emission reduction for each control measure. Our policy as described in the General Preamble to the Act (April 16, 1992, 57 FR 13567) provides that, at a minimum, the methods should meet the following four principles: (1) Emission reductions from control measures must be quantifiable; (2) control measures must be enforceable; (3) interpretation of the control measures must be replicable; and, (4) control measures must be accountable.

Section 182(b)(1)(D) of the Act prescribes limits on what control measures states can include in ROP plans. All permanent and enforceable control measures occurring after 1990 are creditable with the following exceptions: (1) FMVCP requirements promulgated by January 1, 1990; (2) RVP regulations promulgated by November 15, 1990; (3) Reasonably Available Control Technology (RACT) "Fix-Up" regulations required under section 182(a)(2)(A) of the Act; and (4) Inspection and Maintenance (I/M) program "Fix-Ups" as required under section 182(a)(2)(B) of the Act.

#### B. What are the Control Measures in the Wisconsin Post-1996 ROP Plan?

##### 1. Point/Area Sources

###### a. Wood Furniture Coating.

Wisconsin's rule (NR 422.125) limits the VOC emissions from wood furniture finishing operations in the Milwaukee-Racine area as well as Sheboygan,

Manitowoc and Kewaunee Counties. The rule was effective on September 1, 1995 with a compliance date of September 1, 1996. The rule will achieve a control efficiency of 20% and 0.26 tpd in emission reductions through 1999.

###### b. Yeast Manufacturing.

Wisconsin's rule (NR 424.05) limits the VOC emissions from yeast manufacturing operations in the Milwaukee-Racine area. The rule was effective on July 1, 1994 with compliance dates of May 31 and November 30, 1995. The rule will achieve a control efficiency of 47% and 0.36 tpd in emission reductions through 1999.

###### c. Screen Printing.

Wisconsin's rule (NR 422.145) limits VOC emission from screen printing units at screen printing facilities. The rule was effective on July 1, 1994 with compliance dates of July 1, 1994 and May 31, 1995. The rule will achieve a control efficiency of 4.5% and 0.5 tpd in emission reductions through 1999.

###### d. Gray Iron and Steel Foundries.

Wisconsin's rule (NR 419.08) limits VOC emissions at facilities that manufacture cores or molds for use at iron and steel foundries. The rule was effective on July 1, 1994 with a compliance date of May 31, 1995. The rule will achieve a control efficiency of 7% and 0.07 tpd in emission reductions through 1999.

###### e. Industrial Adhesives.

Wisconsin's rule (NR 422.127) limits VOC emissions from processes using adhesives or adhesive primers on wood furniture, office partitions, or wood entry/passage doors. The rule was effective on September 1, 1995 with a compliance date of June 30, 1996. The rule will achieve a control efficiency of 4.5% and 0.02 tpd in emission reductions through 1999.

###### f. Lithographic Printing.

Wisconsin's rule (NR 422.142) limits VOC emissions from lithographic printing presses. The rule was effective on July 1, 1995 with a compliance date of July 1, 1996. The rule will achieve a control efficiency of 11.2% in the graphic arts category and 8.8% for the printing and publishing category with a total of 0.64 tpd in emission reductions through 1999. In addition, Wisconsin included 4.7 tpd of VOC reductions achieved at a Quad Graphics facility in Dodge County whose emissions in 1990 were 6.7 tpd. Permitted changes to the facility's rotogravure presses in 1994 achieved a 4.7 tpd emission reduction. Thus, the total emission reduction for this category is 5.34 tpd.

###### g. Degreasing.

Wisconsin's rule (NR 423.03) further limits VOC emissions from the four main types of degreasing equipment used in Wisconsin, namely, cold cleaners, open top vapor degreasers (OTVD), conveyORIZED vapor degreasers and conveyORIZED non-vapor degreasers. The revised rule was effective on September 1, 1994 with a compliance date of May 15, 1995. The rule will achieve a control efficiency of 30% in the degreasing category and 2.7 tpd in emission reductions through 1999. However, Wisconsin also includes emission reductions from the organic solvents category due to the Federal Consumer and Commercial Products rule. Wisconsin assumes a 25% control efficiency and 1.12 tpd of emission reductions for a total of 3.82 tpd of reductions for the degreasing category. However, our current policy only allows a 20% control efficiency assumption for that category based on the national rule for consumer products. Consequently, Wisconsin's emission reduction credit of 1.12 tpd is not approvable. We will, however, approve a 20% emission reduction yielding a 0.9 tpd reduction. In total, the emission reductions approvable for the degreasing category is 3.6 tpd.

h. Federal Architectural and Industrial Maintenance (AIM) Coating (Industrial).

This federal rule applies to commercial coatings which are applied in the field by industry, contractors, businesses, and homeowners. VOC emissions are limited by product reformulation to lower VOC content, product substitution and consumer education in using techniques for application, storage and disposal.

Wisconsin's December 1997 submittal estimated that the anticipated federal rule for architectural coatings would provide for a 20% control from 1990-1996 and a 25% control from 1996 to 1999. The state's supplemental submittal, however, now estimates a 20% control through 1999. This is consistent with our policy memorandum which allows a 20% control assumption. The emission reductions from this category from industrial sources is estimated at 1.1 tpd.

i. Federal AIM Coating.

Again, this federal rule applies to commercial coatings which are applied in the field by industry, contractors, businesses, and homeowners. VOC emissions are limited by product reformulation to lower VOC content, product substitution and consumer education in using techniques for application, storage and disposal.

The state's December 1997 submittal estimated that the anticipated federal rule for architectural coatings would provide for a 20% control from 1990-1996 and a 25% control from 1996 to 1999. The state's supplemental submittal, however, now estimates a 20% control through 1999. This is consistent with our policy memorandum which allows a 20% control assumption. The emission reductions from this category are 2.91 tpd for sources other than industrial which are accounted for above.

j. Autobody Refinishing.

Our policy allows a 37% emission reduction from this category. The state's December 1997 post-1996 ROP plan submittal assumed a 30% emission reduction based on a state-adopted rule, NR 422.095, which was effective on September 1, 1995 and a compliance date of September 1, 1995. Wisconsin's rule limits VOC emissions from motor vehicle refinishing operations. However, the state's supplemental submittal applies a control efficiency of 67.4% to emissions from within the nonattainment area based on the state's analysis of the rule's control efficiency for a resulting emissions reduction of 6.64 tpd. Furthermore, a control efficiency of 37% was applied to emissions for this category within the 100 kilometer area as allowed by our policy for an emission reduction of 2.91 tpd. The total emissions reduction from this category are 9.55 tpd.

k. Stage 2 Vapor Recovery.

Wisconsin's rule (NR 420.045) limits VOC emissions from gasoline dispensing facilities during vehicle refueling. The rule was effective on February 1, 1993 with a full compliance date of March 31, 1995. The emission reduction for this category is 6.61 tpd.

l. Traffic Markings.

Wisconsin's rule (NR 422.17) limits the VOC emissions of traffic markings on any paved surface during the ozone season in the ozone nonattainment area. The rule was effective on August 1, 1994 with a compliance date of April 30, 1996. The rule will achieve a control efficiency of 75.9% and 3.11 tpd in emissions reduction through 1999 in the ozone nonattainment area. Wisconsin also applied the same control efficiency to VOC emissions from traffic marking coating used within in the 100 km area resulting in an additional 2.46 tpd of emission reductions. Wisconsin provided documentation that the Wisconsin Department of Transportation was employing NR 422.17 compliant traffic markings in counties within the 100 kilometers. The Act requires that creditable emission reductions be permanent and

enforceable. Since NR 422.17 does not cover the counties within the 100 kilometers, the emission reductions resulting from that rule as applied to emissions in the 100 kilometer area cannot be approved into the SIP. We acknowledge that emissions reductions have likely occurred as a result of the state's decision to employ compliant traffic marking coatings outside the nonattainment area. However, these emission reductions are not creditable towards the post-1996 ROP plan.

Consequently, the total creditable emission reduction from this category is 3.11 tpd.

m. Underground Gasoline Tank Vent Valves.

The state rule (NR 420.035) requires gasoline dispensing facilities with gasoline storage tanks with a capacity of 2000 gallons or more all ensure that each pressure vacuum valve installed on a storage tank vent pipe is certified by the California air resources board and is maintained in good working order. The rule was effective on August 1, 1994 with a compliance date of March 31, 1995. The rule will achieve 0.67 tpd in emissions reduction through 1999 as determined by the MOBILE5a model.

n. Federal Commercial and Consumer Solvents.

We promulgated this federal rule on September 11, 1998, which has a compliance date of December 10, 1998.

Our policy allows for a 20% emission reduction assumption for this category, which results in a 3.06 tpd emission reduction in Wisconsin's post-1996 ROP plan.

o. Reformulated Gasoline-Area Petroleum Sources.

Reformulated gasoline is discussed below. These emissions reductions come from using reformulated gasoline at area sources, namely, underground tank breathing, automobile refueling, Stage I and Gasoline Truck Transport activities. The emission reduction estimates for this category is 2.73 tpd.

## 2. Mobile Sources.

a. Federal Tier I Vehicle Tailpipe Standards.

Section 202 of the Act sets new Tier 1 emission standards for motor vehicles. We have promulgated standards for 1994 and later model year light-duty cars and light-duty trucks (56 FR 25724, June 5, 1991). For passenger cars and light-duty vehicle trucks weighing up to 6,000 pounds, the implementation of the standards was to be phased in over three years: 40 percent of the manufactured vehicles for model year 1994, 80 percent of the manufactured vehicles in model year 1995, and 100 percent of the manufactured vehicles in

model years 1996 and later. For gasoline and diesel powered light-duty trucks weighing more than 6,000 pounds, the Tier 1 standards were to be met in 50 percent of the manufactured vehicles in model year 1996 and in 100 percent of the manufactured vehicles thereafter.

Wisconsin used the MOBILE5a emission factor model to calculate the VOC emission reductions for this control measures. Wisconsin's emission reduction estimates are adequately documented and acceptable for credit towards the post-1996 ROP plan. A total of 5.17 tpd of emission reductions will be achieved from the program through 1999.

b. Reformulated Gasoline.

The Act requires EPA to adopt and enforce a reformulated gasoline program for severe and worse ozone areas by the 1995 ozone season. The RFG regulations will further reduce gasoline volatility.

Wisconsin used the MOBILE5a emission factor model to calculate the VOC emission reductions for this control measure. Wisconsin's emission reduction estimates are adequately documented and acceptable for credit towards the post-1996 ROP plan. A total of 14.77 tpd of emission reductions will be achieved from the program through 1999.

c. Enhanced Motor Vehicle Inspection/Maintenance Program.

The Enhanced I/M program began operation in the Milwaukee-Racine area

in December 1995. The program is a biennial testing program which requires two years of testing to complete one test cycle. The program achieved its full emissions reduction potential upon completion of a cycle in December 1997.

Wisconsin used the MOBILE5a emission factor model to calculate the VOC emission reductions for this control measure. Wisconsin's emission reduction estimates are adequately documented and acceptable for credit towards the post-1996 ROP plan.

Wisconsin's initial emission reduction claim of 24.09 tpd was adjusted to account for the pressure test correction amounting to 4.01 tpd. Thus, a total of 20.08 tpd of emission reductions will be achieved from the program through 1999.

d. Federal Gasoline Detergent Additive.

Beginning January 1, 1995, federal regulations required that gasoline sold nationwide contain additives to prevent accumulation of deposits in engines and fuel systems. Preventing such deposits maintains the efficiency of engine systems and reduces VOC emissions.

The state used our guidance to determine that the use of gasoline containing the required additives will reduce vehicle VOC emissions by 0.52 tpd.

e. Federal On-Board Vapor Recovery Canisters.

In 1994, we published regulations that require vehicles to capture vehicle

refueling emissions. These regulations require that 40 percent of 1998 passenger cars meet Onboard Refueling Vapor Recovery (ORVR or OVR) emission standards. Eighty percent of 1999 model year cars and 100 percent of 2000 and later model year cars must meet ORVR requirements.

Emissions reduction from this category are 1.41 tpd.

f. Reformulated Gasoline—Off-Road Source.

Reformulated gasoline is discussed above. The emission reduction estimates resulting from reformulated gasoline use in off road mobile sources is 1.4 tpd.

g. Federal Off-Road Engine Standards.

Federal standards for non-road engines were promulgated on July 3, 1995 (60 FR 34582). States may take credit for this measures in their ROP plans pursuant to our policy memoranda, "Guidance on Projection of Nonroad Inventories to Future Years," dated February 4, 1994, and "Future Nonroad Emission Reduction Credits for Court-Ordered Nonroad Standards," dated November 28, 1994. Based on these policies, Wisconsin concluded that the emission reductions that would occur by 1999 were 5.58 tpd.

*C. What are the Federal Register Citations for the Federal Approval or Promulgation of the Control Measures?*

FEDERAL APPROVAL OR PROMULGATION OF CONTROL MEASURES IN THE MILWAUKEE-RACINE AREA 9 PERCENT RATE-OF-PROGRESS PLAN

| Control measure  | Date of EPA SIP approval or promulgation  |
|--|---|
| Wood Furniture Coating .....                                   | April 4, 1996 (61 FR 14972).  |
| Yeast Manufacturing .....                                      | June 30, 1995 (60 FR 34170).  |
| Screen Printing .....  | July 28, 1995 (60 FR 38722), Technical Correction on February 12, 1996 (61 FR 5307).  |
| Gray Iron and Steel Foundries .....                            | February 13, 1996 (61 FR 5514).   |
| Industrial Adhesives .....                                     | April 25, 1996 (61 FR 18257).   |
| Lithographic Printing .....                                    | April 9, 1996 (61 FR 15706).  |
| Degreasing .....   | April 29, 1996 (61 FR 18681).   |
| Federal Tier 1 Vehicle Tailpipe Standards .....                | Federal Regulation, 40 CFR 86, June 5, 1991 (56 FR 25724).  |
| Reformulated Gasoline .....                                    | Federal Regulation, 40 CFR 80, Subpart D, February 16, 1994 (59 FR 7716).   |
| Motor Vehicle Inspection and Maintenance .....                 | Conditional Approval on January 12, 1995 (60 FR 2881). Revision submitted on December 30, 1998. EPA must finally approve prior to full and final approval of this post-1996 ROP plan.   |
| Federal Gasoline Detergent Additives .....                     | Federal Regulation, 40 CFR 80, Subpart G, November 1, 1994 (59 FR 54706).   |
| Federal Architectural and Industrial Maintenance Coating ..... | Federal Regulation, 40 CFR Part 59 Subpart D, and September 11, 1998 (63 FR 48848). Also see "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Maintenance Architectural and Industrial Maintenance Coatings Rule," 3/22/95, and "Update on the Credit for the 15% Rate-of- progress Plans for Reductions from Architectural and Industrial Maintenance Coatings Rule," 3/7/96. |
| Autobody Refinishing .....                                     | February 12, 1996 (61 FR 5306).   |
| Stage 2 Vapor Recovery .....                                   | August 13, 1993 (58 FR 43082).  |
| Federal On-Board Vapor Recovery Canisters .....                | Federal Regulation, 40 CFR 86, 88 and 600, April 16, 1994 (59 R 16262).   |
| Traffic Marking .....  | April 29, 1996 (61 FR 18681).   |
| Underground Gas Tank Vent Valves .....                         | April 29, 1996 (61 FR 18681).   |

FEDERAL APPROVAL OR PROMULGATION OF CONTROL MEASURES IN THE MILWAUKEE-RACINE AREA 9 PERCENT RATE-OF-PROGRESS PLAN—Continued

| Control measure  | Date of EPA SIP approval or promulgation  |
|--|---|
| Federal Commercial and Consumer Solvents .....                 | Federal Regulation, 40 CFR Part 59 Subpart C, September 11, 1998 (63 FR 48791). Also see "Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act," 6/22/95. |
| Reformulated Gasoline (area source petroleum activities) ..... | Federal Regulation, 40 CFR 80, Subpart D, February 16, 1994 (59 FR 7716).   |
| Reformulated Gasoline (off-road) .....                         | Federal Regulation 40 CFR 80, Subpart D, February 16, 1994 (59 FR 7716).  |
| Federal Off-Road Engine Standards .....                        | Federal Regulation, 40 CFR 90, July 3, 1995 (60 FR 34582).  |

*D. How did Wisconsin Calculate the Emission Reductions for the Control Strategies?*

We have issued several policy documents, listed in the TSD for this proposed rulemaking, which provide assumptions for states to use in quantifying emission reductions. We have also developed the MOBILE model for the states to calculate emission reductions from mobile sources.

Wisconsin appropriately used our policy documents and MOBILE model for calculating emission reductions. Wisconsin obtained the necessary data for quantifying the source baselines and emission reductions from its 1990 emission inventory, permit information, and emissions reporting data from affected industries. Where Wisconsin had to develop its own assumptions regarding emission reductions, the assumptions were adequately justified based on existing data.

The Wisconsin post-1996 ROP plan does not contain any new state rules, it merely accounts for the emission reductions achieved from existing

creditable state and federal measures occurring from 1990–1999. Many of the point, area, on-road and off-road source measures for which Wisconsin is claiming post-1996 ROP credit were part of the 15 percent ROP plan, including Tier 1, reformulated gasoline for on-road and off-road mobile and area sources, off-road small engine standards, federal detergent additive, wood furniture coating, yeast manufacturing, screen printing controls, gray iron and steel foundries, industrial adhesives, lithographic printing, degreasing, AIM, autobody refinishing, Stage II, traffic markings, gas station tank breathing, and consumer and commercial products.

*E. What Amount of Emission Reduction Does Each Control Strategy Achieve?*

The following table summarizes the state's VOC reduction claims for the post-1996 ROP control measures, and the amount of reductions we find approvable.

There are two categories for which emission reductions claimed by the

state are determined not to be approvable. First, the state claims a 25% control efficiency for the organic solvents category based on the Federal Consumer and Commercial Products rule. However, our more current policy only allows a 20% control efficiency assumption for that category based on the national rule for consumer products. Thus, Wisconsin's emission reduction credit of 1.12 tpd is not approvable. However, a 20% reduction yielding a 0.9 tpd reduction is approvable. Secondly, Wisconsin claims 75.9% control efficiency for the traffic markings category based on the state's rule (NR 422.17) for emissions within the ozone nonattainment area boundary and the 100 kilometer area. However, Wisconsin's rule 422.17 is not applicable and enforceable in the 100 kilometer area. Thus, Wisconsin's emission reduction credit of 5.57 tpd is not approvable, although emission reductions for this category within the nonattainment area boundary of 3.11 tpd are approvable.

| Control measure                                 | VOC Reduction State Claimed Tons/Day | VOC Reduction Credit Approvable Tons/Day |
|---|--------------------------------------|--|
| <b>Mobile source measures:</b>                  |                                      |  |
| Federal Tier 1 Vehicle Tailpipe Standards ..... | 5.17                                 | 5.17                                     |
| Reformulated Gasoline .....                     | 14.77                                | 14.77                                    |
| Motor Vehicle Inspection and Maintenance .....  | 20.08                                | 20.08                                    |
| Federal Gasoline Detergent Additive .....       | 0.52                                 | 0.52                                     |
| Reformulated Gasoline (off-road) .....          | 1.4                                  | 1.4                                      |
| Federal Off-Road Engine Standards .....         | 5.58                                 | 5.58                                     |
| Subtotal .....                                  | 47.52                                | 47.52                                    |
| <b>Industrial source measures:</b>              |                                      |  |
| Yeast Manufacturing .....                       | 0.36                                 | 0.36                                     |
| Screen Printing .....                           | 0.5                                  | 0.5                                      |
| Gray Iron and Steel Foundries .....             | 0.07                                 | 0.07                                     |
| Industrial Adhesives .....                      | 0.02                                 | 0.02                                     |
| Lithographic Printing .....                     | 5.34                                 | 5.34                                     |
| Subtotal .....                                  | 6.29                                 | 6.29                                     |
| <b>Area source measures:</b>                    |                                      |  |
| Wood Furniture Coating .....                    | 0.26                                 | 0.26                                     |
| Degreasing .....                                | 3.82                                 | 3.6                                      |
| Federal AIM Coating (Industrial) .....          | 1.1                                  | 1.1                                      |
| Federal AIM Coating .....                       | 2.91                                 | 2.91                                     |
| Autobody Refinishing .....                      | 9.55                                 | 9.55                                     |

| Control measure   | VOC Reduction State Claimed Tons/Day | VOC Reduction Credit Applicable Tons/Day |
|---|--------------------------------------|--|
| Stage 2 Vapor Recovery .....  | 6.61                                 | 6.61                                     |
| Federal On-Board Vapor Recovery Canisters .....                     | 1.41                                 | 1.41                                     |
| Traffic Marking .....   | 5.57                                 | 3.11                                     |
| Underground Gas Tank Vent Valves .....                              | 0.67                                 | 0.67                                     |
| Federal Commercial and Consumer Solvents .....                      | 3.06                                 | 3.06                                     |
| Reformulated Gasoline (area petroleum activities) .....             | 2.73                                 | 2.73                                     |
| Subtotal .....  | 36.72                                | 35.01                                    |
| Total FMVCP non-creditable emissions reductions grown to 1999 ..... | 81.6                                 | 81.6                                     |
| Total RVP non-creditable emissions reductions grown to 1999 .....   | 1.5                                  | 1.5                                      |
| Total 1999 VOC reductions .....                                     | 173.63                               | 171.92                                   |

**VI. EPA Review of Wisconsin's Post-1996 ROP Plan**

*A. Why is the Wisconsin post-1996 ROP Plan Approvable?*

We reviewed the documentation submitted with the Wisconsin post-1996 ROP plan. From this review, we find that the plan is approvable.

Wisconsin provided sufficient justification that the nonattainment area VOC emission reductions in conjunction with the VOC emission reductions from certain sources outside the ozone nonattainment area boundary but within 100 kilometers of that boundary will reduce ozone precursor emissions and, therefore, ozone concentrations in the Milwaukee-Racine ozone nonattainment area. Although Wisconsin did not calculate the emissions reduction needed to meet the 9 percent ROP reduction requirement consistent with our guidance, we will accept Wisconsin's reduction requirement because it is more stringent than what would otherwise be allowable under our guidance.

The post-1996 plan's control measures are creditable because the emissions reductions achieved are real, permanent, and enforceable. All claimed emission reductions from the plan's control measures occurred by November 15, 1999, the Act's deadline by which creditable reductions are to occur.

The state's emission reduction estimates for the control strategies follow our guidance documents, where applicable, and are adequately documented with acceptable emission control assumptions.

Finally, the post-1996 ROP plan shows that it will achieve a reduction of ozone precursor emissions sufficient to achieve the required ROP toward attaining the 1-hour ozone NAAQS in the Milwaukee-Racine ozone nonattainment area.

**COMPARISON OF NEEDED AND CREDITABLE EMISSION REDUCTIONS**

|  | TPD    |
|--|--------|
| VOC Reduction Needed to Meet 9 percent ROP ..... | 164.93 |
| Total Creditable VOC Reduction .....             | 171.92 |

For these reasons, we are proposing approval of Wisconsin's Milwaukee-Racine area post-1996 ROP plan, as meeting the requirements of section 182(c)(2)(B).

**VII. What Action Are We Proposing Today?**

In this rulemaking action, we are proposing to approve Wisconsin's SIP revision, submitted on December 11, 1997, and subsequent supplemental information submitted on August 5, 1999, January 31, 2000, March 3, 2000, and February 2001, establishing a post-1996 ROP plan for the Milwaukee-Racine ozone nonattainment area. It should be noted that final approval of Wisconsin's post-1996 ROP plan is contingent on final approval of the motor vehicle I/M SIP revisions.

**VIII. 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 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 we have 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 proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or 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, 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 proposed 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 proposed rule.

#### D. 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 proposed 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, 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 Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

#### E. Regulatory Flexibility

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 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 Act, preparation of flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The 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).

#### 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 costs to state, local, or tribal governments in the aggregate; or to the 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 this proposed approval action does not include a federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action proposes to approve 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.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile Organic Compounds.

Dated: June 13, 2001.

David Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01–15619 Filed 6–21–01; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[OH148–1b; FRL–7001–5]

### Approval and Promulgation of Maintenance Plan Revisions; Ohio

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a May 31, 2001, request from Ohio for a State Implementation Plan (SIP) revision of the Cleveland/Akron/Lorain, Ohio ozone maintenance plan. The maintenance plan revision allocates a portion of the safety margin to the transportation conformity mobile source emissions budget for the year 2006. EPA is proposing to approve the allocation of 10 tons per day of volatile organic compounds (VOC) to the area's 2006 mobile source emissions budget for transportation conformity purposes. This allocation will still maintain the total emissions for the area at or below the attainment level required by the transportation conformity regulations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no written adverse comments in response to that direct final rule we plan to take no further activity in relation to this proposed rule. If EPA receives significant adverse comments, in writing, which have not been addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. **DATES:** Written comments must be received on or before July 23, 2001. **ADDRESSES:** Send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

You may inspect copies of the documents relevant to this action during