

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD-074-3085; FRL-7089-1]

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: Final rule.

SUMMARY: EPA is approving the attainment demonstration for the one-hour ozone national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington-Trenton severe nonattainment area (the Philadelphia area) as a revision to the Maryland State Implementation Plan (SIP). This control strategy plan was submitted by the Maryland Department of the Environment (MDE). The measures that have been adopted by the State which comprise the control strategy of the one-hour ozone attainment demonstration have and will result in significant emission reductions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) in the Philadelphia area. 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. The intended effect of this action is to approve this SIP revision as meeting the requirements of the Clean Air Act (CAA or the Act).

DATES: This final rule is effective on November 28, 2001.

ADDRESSES: 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, at EPA Region III office above or by e-mail at fernandez.cristina@epa.gov.

SUPPLEMENTARY INFORMATION: This **SUPPLEMENTARY INFORMATION** section is organized to address the following questions:

- A. What Action Is EPA Taking In This Final Rulemaking?
- B. What Previous Action Has Been Proposed on These SIP Revisions?
- C. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemakings for the Attainment Demonstration?
- D. What Amendments to the Attainment Demonstration SIP Did Maryland Submit

for the Philadelphia Area Since December 16, 1999?

E. What Did EPA's Supplemental Notices of Proposed Rulemaking Cover?

F. When Did EPA Make a Determination Regarding the Adequacy of the Motor Vehicle Emissions Budgets for the Maryland Portion of the Philadelphia Area?

G. What SIP Elements Did EPA Take Final Action on Concurrently or Before the Full Approval of the Attainment Demonstration Could Be Granted?

H. What Measures Are in the Control Strategy for the Attainment Demonstration?

I. What Are the Approved Transportation Conformity Budgets, and What Effect Does This Action Have on Transportation Planning?

J. What Happens to the Approved 2005 Budgets When States Change Their Budgets Using the MOBILE6 Model?

K. What Is the Status of Maryland's New Source Review (SIP)?

L. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Those?

I. Background

A. What Action Is EPA Taking In This Final Rulemaking?

EPA is approving the one-hour attainment demonstration submitted by Maryland for the Philadelphia area as fully meeting the requirements of CAA section 182(c)(2) and (d). The following table identifies submittal dates and amendment dates for the attainment demonstration:

TABLE 1.—SUMMARY OF ATTAINMENT DEMONSTRATION SUBMITTAL DATES

	Date	Content
Initial Submittal	April 29, 1998	Attainment Demonstration.
Amendment	August 18, 1998	Attainment Demonstration Revision Including Supplemental Regional Scale Modeling.
Amendment	December 21, 1999	Attainment Demonstration Revisions to Include Revised Motor Vehicle Emission Budgets.
Amendment	December 28, 2000	Attainment Demonstration Revision to Include Revised Motor Vehicle Emission Budgets to Reflect Tier 2 and Commitments.
Amendment	August 31, 2001	Attainment Demonstration Revision to Include Reasonably Available Control Measures Analysis.

B. What Previous Action Has Been Proposed on These SIP Revisions?

In a December 16, 1999 notice of proposed rulemaking (the December 16, 1999 NPR), we proposed approval of the attainment demonstration for the Philadelphia area (64 FR 70412).

On February 22, 2000 (65 FR 8703), EPA published a notice of availability on guidance memoranda relating to the ten one-hour ozone attainment demonstrations (including the Philadelphia area) proposed for approval or conditional approval on December 16, 1999. The guidance

memoranda are entitled: "Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations" dated November 3, 1999, and "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas" dated November 30, 1999.

On July 28, 2000, EPA published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration (65 FR 46383). In that supplemental notice, we clarified and

expanded on two issues relating to the motor vehicle emissions budgets in attainment demonstration SIP revisions. This supplemental notice is discussed in Section I.E. of this document.

On July 16, 2001, EPA published a SNPR on the attainment demonstration (66 FR 36964). In that supplemental notice, we proposed to approve the revised attainment demonstration that contains revised motor vehicle emissions budgets for the attainment year of 2005 which incorporate the benefits of the Federal Tier 2/Low Sulfur-in-fuel rule; and enforceable

commitments to (1) submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if additional measures affect the motor vehicle emissions inventory, (2) submit revised SIP and motor vehicle emissions budgets within one year after MOBILE6 is issued, and (3) perform a mid-course review by December 31, 2003. We received no comments on the July 16, 2001 SNPR.

On September 7, 2001, EPA published a SNPR on the attainment demonstration (66 FR 46758). In that supplemental notice, we proposed to approve Maryland's analysis and determination, submitted on August 20, 2001, that there are no additional RACM for the area. We received no comments on that September 7, 2001 SNPR.

Comments received on the December 16, 2001 and July 28, 2000 proposed notices listed in this section relevant to the Philadelphia area attainment demonstration are discussed in Sections I.L. and II. of this document.

C. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemaking for the Attainment Demonstration?

On December 16, 1999 (64 FR 70412) we proposed approval of the attainment demonstration submitted by the State of Maryland for the Philadelphia area. Our approval was contingent upon certain actions by Maryland. These actions were to:

(1) Adopt and submit adequate motor vehicle emissions budgets.

(2) Submit a list of control measures that, when implemented, would be expected to provide sufficient additional emission reductions to further reduce emissions to support the attainment test and a commitment that these measures would not involve additional limits on highway construction beyond those that could be imposed under the submitted motor vehicle emissions budget.

(3) Adopt and submit a rule for the regional NO_x reductions consistent with the modeling demonstration.

(4) Adopt and submit an enforceable commitment, or a reaffirmation of existing enforceable commitment to do the following:

(a) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and for additional emission reduction measures developed through the regional process; 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 regional process does not recommend measures that produce emission reductions.

(b) Submit a revised SIP and motor vehicle emissions budget by October 31, 2001 if additional measures affect the motor vehicle emissions inventory.

(c) Submit revised SIP and motor vehicle emissions budgets one year after MOBILE6 is issued.

(d) Perform a mid-course review by December 31, 2003.

D. What Amendments to the Attainment Demonstration SIP Did Maryland Submit for the Philadelphia Area Since December 16, 1999?

The following is a summary of such submittals which includes the submittal dates of revisions, the content of these submissions and other pertinent facts regarding these submissions:

(1) On December 21, 1999, Maryland submitted the "State Implementation Plan (SIP) Revision: Modification to the Phase II Attainment Plan for the Baltimore Nonattainment Area and Cecil County: Revising the Mobile Source Emission Budgets." This submittal contained the revised 2005 motor vehicle emission budgets for the Attainment Plans for the Baltimore Nonattainment Area and for Maryland's portion of the Philadelphia area, namely Cecil County.

(2) On December 28, 2000, Maryland submitted the "State Implementation Plan (SIP) Revision: Modification to the Phase II Attainment Plan for Cecil County: Revising the Mobile Source Emission Budgets, Adding Tier 2 Standards." This submittal contained the revised 2005 motor vehicle emissions budgets for the attainment demonstration that reflect the benefits of the Tier 2/Low Sulfur-in-fuel rule benefits and revised commitments to do the following:

(a) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets if the additional measures affect the motor vehicle emissions inventory,

(b) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued.

(c) Perform a mid-course review by December 31, 2003.

(3) On August 31, 2001, Maryland submitted the "State Implementation Plan (SIP) Revision: Reasonably Available Control Measures Analysis for the Baltimore Region." This submittal supplements the attainment

demonstration SIP for Cecil County by including a RACM analysis.

E. What Did EPA's Supplemental Notices of Proposed Rulemaking Cover?

(1) On July 28, 2000, EPA published a supplemental notice of proposed rulemaking (SNPR) on the attainment demonstration (65 FR 46383). In that supplemental notice, we clarified and expanded on two issues relating to the motor vehicle emissions budgets in this attainment demonstration SIP revision:

(a) First, we proposed a clarification of what occurs if we finalize conditional or full approval of this and certain other attainment demonstration SIP revisions based on a state commitment to revise the SIP's motor vehicle emissions budgets in the future. Under the proposal, the motor vehicle emissions budgets in the approved SIP will apply for transportation conformity purposes only until the budgets are revised consistent with the commitment and we have found the new budgets adequate. Once we have found the newly revised budgets adequate, then they would apply instead of the previous conditionally or fully approved budgets. Normally, revisions to approved budgets cannot be used for conformity purposes until we approve the revised budgets into the SIP. Therefore, we proposed to clarify that when our approval of this and certain other one-hour ozone attainment demonstrations is based on a commitment to future revisions to the budget, our approval of the budget lasts only until revisions to satisfy those conditions are submitted and we find them adequate.

(b) Second, we proposed that states may opt to commit to revise their emissions budgets one year after the release of the MOBILE6 model, as originally proposed on December 16, 1999; or states may commit to a new option, i.e., to revise their budgets two years following the release of the MOBILE6 model, provided that conformity is not determined without adequate MOBILE6-derived SIP budgets during the second year. This second option did not affect the Maryland's attainment demonstration SIP for the Philadelphia area because Maryland has submitted an enforceable commitment to revise the motor vehicle emissions budgets within one year after the official release of the MOBILE6 model. EPA is approving that commitment in this final rulemaking.

(c) In addition, we reopened the comment period to take comment on these two issues and to allow comment on any additional materials that were placed in the dockets for the proposed actions close to or after the initial

comment period closed on February 14, 2000 (65 FR at 46383, July 28, 2000). For many of the areas, additional information had been placed in the docket close to or since the initial comment period concluded. In general, these materials were identified as consisting of motor vehicle emissions budgets, and revised or additional commitments or reaffirmations submitted by the states (65 FR at 46383, July 28, 2000).

(2) On July 16, 2001, EPA published a SNPR on the attainment demonstration (66 FR 36964). In that supplemental notice, we proposed to approve:

(a) The revised attainment demonstration that contains revised motor vehicle emissions budgets for the attainment year of 2005 which incorporate the benefits of the Federal Tier 2/Low Sulfur-in-fuel rule, and,

(b) Enforceable commitments to submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, revise the SIP and motor vehicle emissions budgets by October 31, 2001 if additional measures affect the motor vehicle emissions inventory, submit revised SIP and motor vehicle emissions budgets within one year after MOBILE6 is issued, and to perform a mid-course review by December 31, 2003. In this final rulemaking, EPA is approving the attainment demonstration which contains the revised motor vehicle emissions budgets for the attainment year of 2005 which incorporate the benefits of the Federal Tier 2/Low Sulfur-in-fuel rule and all three of these commitments.

(3) On September 7, 2001, EPA published a SNPR on the attainment demonstration (66 FR 46758). In that supplemental notice, we proposed to approve Maryland's analysis and determination, submitted on August 20, 2001, that there are no additional RACM for the area. We received no comments on that September 7, 2001 SNPR. In this final rule, EPA is approving Maryland's 2005 attainment demonstration plan for the Philadelphia area including this RACM analysis.

F. When Did EPA Make a Determination Regarding the Adequacy of the Motor Vehicle Emissions Budgets for the Maryland Portion of the Philadelphia Area?

Maryland submitted a revision to the attainment plan SIP for the Philadelphia area on December 28, 2000. This revision contained revised motor vehicle emissions budgets for the attainment year of 2005 that reflected

the benefits of the Federal Tier 2/Low Sulfur rule.¹

We began our adequacy review process on the budgets in the December 28, 2000 submittal under our adequacy process with a posting on EPA's Web site (www.epa.gov/otaq/transp/conform/adequacy.htm) that started a public comment period on the adequacy of the motor vehicle emissions budgets in the December 28, 2000 SIP revision submitted by Maryland for the Philadelphia area. We then prepared a technical support document for our adequacy determination that included responses to any public comments received during the adequacy process comment period. In an April 12, 2001 **Federal Register** notice we announced that we had determined the budgets contained in the December 28, 2000 submission were adequate (66 FR 18928). (The proposed approval of the budgets in the December 28, 2000 submission is discussed in Section I.E. of this document and the response to any comments received on the proposed approval are in Section II.) Our findings of adequacy and responses to comments can be accessed at www.epa.gov/otaq/traq (once there, click on the "conformity" button). As stated previously, Maryland has made an enforceable commitment to revise the attainment year motor vehicle emissions budgets using the MOBILE6 model within one year after the release of the MOBILE6 model, and EPA is approving that commitment in this final rulemaking.

G. What SIP Elements Did EPA Take Final Action on Concurrently or Before the Full Approval of the Attainment Demonstration Could Be Granted?

In the December 16, 1999 NPR for the Philadelphia attainment demonstration SIP, EPA noted in Table 4, the status of many of the control measures or SIP elements that are required under part D of the Act for serious and severe areas. The following provides the status of those SIP elements which are prerequisites for approval of the attainment demonstration but which were not fully approved on December

¹ In December 16, 1999 NPR, we proposed to disapprove the attainment demonstration if Maryland did not submit motor vehicle emissions budgets for this area that EPA could find adequate by May 31, 2000 (See 64 FR 70417). The budgets subject to this May 31, 2000 deadline did not necessary have to account for Federal Tier 2/Low Sulfur rule reductions. On December 21, 1999, Maryland submitted a SIP revision that included motor vehicle emissions budgets for the 2005 attainment year that did not include the benefits of the Federal Tier 2/Low Sulfur rule. EPA had determined that these budgets were adequate by the May 31, 2000 deadline (65 FR 36441, June 8, 2000).

16, 1999 or not listed as fully approved in Table 4 of the December 16, 1999 NPR:

(1) On July 29, 1997 (62 FR 40457), EPA approved Maryland's 15 percent VOC Reduction Plan for the Cecil County as a revision to the Maryland SIP.

(2) On October 29, 1999, EPA approved Maryland's enhanced vehicle inspection and maintenance program as a SIP revision (64 FR 58340).

(3) On December 28, 1999, EPA approved Maryland's national low emission vehicle (NLEV) program as a SIP revision (64 FR 72564).

(4) On December 15, 2000, EPA approved Maryland's NO_x budget rule, which is consistent with the Ozone Transport Commission's (OTC) NO_x Memorandum of Understanding (MOU) Phase II as a SIP revision (65 FR 78416).

(5) On January 10, 2001, EPA approved Maryland's NO_x trading rule which complies with the NO_x SIP Call as a revision to the Maryland SIP (66 FR 1866).

(6) On February 8, 2001, EPA approved Maryland's NO_x RACT rule as a SIP revision (66 FR 9522).

(7) On September 19, 2001, EPA approved Maryland's Post-1996 Rate-of-Progress (ROP) plan (from 1996 through the 2005 attainment year) for the Philadelphia area, namely, Cecil County (66 FR 48209).

To comply with the VOC RACT requirements, Maryland has developed source category rules. Sources of VOC in the Maryland portion of the Philadelphia area, namely Cecil County, which emit more than 25 tons per year (TPY) and that are not subject to any specific source category rule are then subject to Maryland's SIP-approved regulation COMAR 26.11.06.06—Volatile Organic Compounds. Such sources may apply on a case-by case basis for an alternative RACT under COMAR 26.11.19.02G—Control of Major Stationary Sources of Volatile Organic Compounds. But until such a case-by-case RACT determination is made by the MDE and approved by EPA as a SIP revision, the source remains subject to COMAR 26.11.06.06. The following provides the status of those VOC source category rules which are prerequisites for approval of the attainment demonstration but which were not fully approved, as of December 16, 1999, as revisions to the Maryland SIP:

(1) On August 19, 1999, EPA approved Maryland's Fiberglass Manufacturing Rule (64 FR 45182).

(2) On January 14, 2000, EPA approved Maryland's Flexographic Printing and Plastic Bottle Coating Rule (65 FR 2334).

(3) On May 7, 2001, EPA approved Maryland's Bread and Snack Food Drying Operations and Expandable Polystyrene Operations Rules (66 FR 22924).

(4) On September 5, 2001, EPA approved Maryland's Marine Vessel Coating Rule (66 FR 46379).

(5) On September 20, 2001, EPA approved Maryland's Synthetic Organic Chemicals Rule (66 FR 37914).

(6) On October 5, 2001, the Regional Administrator of EPA Region III signed a final rule approving Maryland's VOC RACT rules for Iron & Steel Operations. That action has been or soon will be published in the **Federal Register**.

(7) On October 9, 2001, the Regional Administrator of EPA Region III signed a final rule approving Maryland's VOC RACT rules for Aerospace Coating, Kraft

Pulp Mills, and Distilled Spirits Facilities. That action has been or soon will be published in the **Federal Register**.

H. What Measures Are in the Control Strategy for the Attainment Demonstration?

TABLE 2.—CONTROL MEASURES IN THE ONE-HOUR OZONE ATTAINMENT DEMONSTRATION FOR THE PHILADELPHIA NONATTAINMENT AREA

Control measure	Type of measure	Credited in attainment plan
Enhanced Inspection & Maintenance	SIP Approved	Yes.
Federal Motor Vehicle Control Program	Federal	Tiers 1 and 2.
NLEV ¹	SIP Approved	Yes.
Reformulated Gasoline (Phases 1 & 2)	Federal	Phase 2.
Federal Non-road Gasoline Engine Standards	Federal	Yes.
Federal Non-road Heavy Duty Diesel Engine Standards	Federal	Yes.
Rail Road Locomotive Controls	Federal	Yes.
Stage II Vapor Recovery & On-board Refueling Vapor Recovery (ORVR)	SIP Approved; Federal	Yes.
AIM Surface Coatings	Federal	Yes.
Consumer & Commercial Products	Federal	Yes.
Autobody Refinishing	SIP Approved	Yes.
Surface Cleaning/Degreasing Controls	SIP Approved	Yes.
Open Burning Ban	SIP Approved	Yes.
Marine Engine Emission Standards	Federal	Yes.
Stage I Vapor Recovery	SIP Approved	Yes.
Graphic Art Controls	SIP Approved	Yes.
Heavy Duty Diesel Engines (On-road)	Federal	Yes.
VOC RACT to 25 tpy	SIP Approved	Yes.

Notes:

¹ To the extent NLEV not superceded by Tier 2.

I. What Are the Approved Transportation Conformity Budgets, and What Effect Does This Action Have on Transportation Planning?

(1) What Are the Approved Transportation Conformity Budgets in the Attainment Demonstration?

EPA has determined that the budgets in the attainment demonstration are

adequate. The approved motor vehicle emissions budgets of the attainment demonstration are listed in Table 3. Table 3 also provides the amounts by pollutant in tons per day (TPD), the year associated with the budgets, and the effective date of EPA's adequacy determination.

TABLE 3.—TRANSPORTATION CONFORMITY BUDGETS FOR THE MARYLAND PORTION OF THE PHILADELPHIA AREA

Control strategy SIP	Year	VOC (TPD)	NO _x (TPD)	Date of adequacy determination
Attainment Demonstration	2005	2.6	5.6	April 27, 2001 (See 66 FR 18928, published on April 12, 2001).

EPA has concluded that Maryland's 2005 attainment demonstration SIP for the Philadelphia area, including its associated budgets for Cecil County, meets the requirements of the CAA. EPA has also determined that Maryland's SIP contains the measures necessary to support these budgets. In this final action, EPA is approving these budgets which were submitted on December 28, 2000 by the State of Maryland as a

formal revision to its attainment demonstration SIP for the Philadelphia area.

(2) Is a Requirement to Redetermine Conformity Within 18 months Under Section 93.104 of the Conformity Rule Triggered?

Our conformity rule establishes the frequency by which transportation plans and transportation improvement

programs must be found to conform to the SIP and includes trigger events tied to both submittal and approval of a SIP [40 CFR 93.104(e)]. Both initial submission and initial approval trigger a redetermination of conformity. This final rule approves motor vehicle emissions budgets contained in the attainment demonstration. We are advising affected transportation planning agencies that this final

approval of the budgets is listed in Table 3 will require a redetermination that existing transportation plans and TIPs conform within 18 months of the effective date listed in the **DATES** section of this document. See 40 CFR 93.104(e).

J. What Happens to the Approved 2005 Budgets When States Change Their Budgets Using the MOBILE6 Model?

All states whose attainment demonstration includes the effects of the Tier 2/Low Sulfur program have committed to revise and resubmit their motor vehicle emissions budgets after EPA releases the MOBILE6 model. On December 28, 2000, Maryland submitted a commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. In this action, EPA is approving this commitment to revise the 2005 motor vehicle budgets in the attainment demonstration within one year of EPA's release of the MOBILE6 model. If Maryland fails to meet its commitment to submit revised budgets using the MOBILE6 model, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Act.

As we proposed in our July 28, 2000 SNPR (65 FR 46383), today's final approval of the budgets contained in the 2005 attainment plan will be effective for conformity purposes only until such time as revised motor vehicle emissions budgets are submitted (pursuant to the commitment to submit revised budgets using the MOBILE6 model within one year of EPA's release of that model) and we have found those revised budgets adequate. We are only approving the attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions. Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as any such revised

budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.

K. What Is the Status of Maryland's New Source Review (SIP)?

EPA approved Maryland's NSR program on February 12, 2001 (66 FR 9766). As stated in the proposed (65 FR 62675, October 19, 2000) and final rulemaking notices, EPA granted limited approval of Maryland's NSR regulations as they apply in the Baltimore area and the Maryland portion of the Philadelphia area, and granted full approval throughout the remainder of Maryland. EPA's sole reason for granting limited approval in the Baltimore area and in Cecil County rather than full approval was that Maryland's NSR regulations do not contain certain restrictions on the use of emission reductions from the shutdown and curtailment of existing sources or units as NSR offsets. These restrictions, however, only apply in nonattainment areas without an approved attainment demonstration [See 40 CFR section 51.165(a)(ii)(C)]. As EPA today is taking final action to approve Maryland's attainment demonstration SIPs for the Baltimore and Philadelphia areas, Maryland's SIP-approved NSR program's lack of restrictions on the use of emission reductions from the shutdown and curtailment of existing sources or units as NSR offsets, applicable only in nonattainment areas without an approved attainment demonstration, is moot. Now that we have approved Maryland's attainment demonstration SIPs for the Baltimore and Philadelphia areas, we intend to remove the limited nature of our approval of the State's NSR program in those areas of Maryland as well.

L. What Comments Were Received on the Proposed Approvals and How Has EPA Responded to Them?

EPA received comments from the public on the Notice of Proposed Rulemaking (NPR) published on December 16, 1999 (64 FR 70412) for Maryland's ozone attainment demonstration for the Philadelphia area. Comments were received from Robert E. Yuhnke on behalf of Environmental Defense and Natural Resources Defense Council; the Midwest Ozone Group; and from the University of Maryland Law School on behalf of 1000 Friends of Maryland.

EPA also received comments from the public on the supplemental notice of proposed rulemaking published on July 28, 2000 (65 FR 46383), in which EPA

clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs. Comments were received from Environmental Defense and from ELM Packaging Co.

II. Response to Comments

The following discussion summarizes and responds to the comments received on the December 16, 1999 (64 FR 70412) and July 28, 2000 (65 FR 46383) proposed actions summarized in Sections I.B. and I.E.

A. Attainment Demonstration—Weight of Evidence

Comment: The weight of evidence approach does not demonstrate attainment or meet CAA requirements for a modeled attainment demonstration. Commenters added several criticisms of various technical aspects of the weight of evidence approach, including certain specific applications of the approach to particular attainment demonstrations. These comments are discussed in the following response.

Response: Under section 182(c)(2) and (d) of the CAA, serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the one-hour standard. Section 182(c)(2)(A) provides that "[t]his attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective." As described in more detail below, EPA allows states to supplement their photochemical modeling results, with additional evidence designed to account for uncertainties in the photochemical modeling, to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration "be based on photochemical grid modeling," because the modeling results constitute the principal component of EPA's analysis, with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, "The

adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models)."² 40 CFR 51.112(a)(1). However, the regulations further provide, "Where an air quality model specified in Appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment. * * *" Appendix W, in turn, provides that, "The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas," but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. See 40 CFR part 51 Appendix W section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted one-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: the deterministic test or the statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (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 not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) one-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted

under certain conditions (depending on the severity of the episode modeled).³

In 1996, EPA issued guidance⁴ to update the 1991 guidance referenced in 40 CFR part 51 Appendix W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that 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 air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. 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 to be achieved. 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 in addition to the results of the modeled attainment test, other factors such as other modeled output (e.g., changes in the predicted frequency and pervasiveness of one-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (i.e. analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance⁵ that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be

approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the one-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be "no exceedances" in the future model predictions.

The method outlined in EPA's 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three "design values" represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

In the event that the attainment year design value is above the standard, the 1999 guidance provides a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between ozone and the precursors.

² The August 12, 1996 version of "Appendix W to part 51—Guideline on Air Quality Models" was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

³ Guidance on the Use Of Modeled Results to Demonstrate Attainment of the Ozone NAAQS. EPA-454/B-95-007, June 1996.

⁴ Ibid.

⁵ "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>.

A commenter criticized the 1999 guidance as flawed on grounds that it allows the averaging of the three highest air quality sites across a region, whereas EPA's 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site. This has the effect of allowing lower air quality concentrations to be averaged against higher concentrations thus reducing the total emission reduction needed to attain at the higher site. The commenter does not appear to have described the guidance accurately. The guidance does not recommend averaging across a region or spatial averaging of observed data. The guidance does recommend determination of the highest site in the region for each of the three-year periods, determined by the base year modeled. For example, if the base year is 1990, it is the amount of emissions in 1990 that must be adjusted or evaluated (by accounting for growth and controls) to determine whether attainment results. These 1990 emissions would contribute to three design value periods (1988–90, 1989–91 and 1990–92).

Under the approach of the guidance document, EPA determined the design value for each of those three-year periods, and then averaged those three design values, to determine the base design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the three design values. Averaging the three years is beneficial for another reason: It allows consideration of a broader range of meteorological conditions—those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Furthermore, EPA relied on three-year averaging only for purposes of determining one component, *i.e.*—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to attain.

A commenter criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that states must model all control measures being implemented.

Moreover, a component of this technique—the estimation of future design value—should be considered a model-predicted estimate. Therefore, results from this technique are an extension of “photochemical grid” modeling and are consistent with section 182(c)(2)(A). Also, a commenter believes that EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rule. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

A commenter states that application of the method of attainment analysis used for the December 16, 1999 NPRs will yield a lower control estimate than if we relied entirely on reducing maximum predictions in every grid cell to less than or equal to 124 ppb on every modeled day. However, the commenter's approach may overestimate needed controls because the form of the standard allows up to 3 exceedances in 3 years in every grid cell. If the model over predicts observed concentrations, predicted controls may be further overestimated. EPA has considered other evidence, as described above through the weight of evidence determination.

When reviewing a SIP, EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the states and available to EPA. This information includes model results for the majority of the control measures. Although not all measures were modeled, EPA reviewed the model's response to changes in emissions as well as observed air quality changes to evaluate the impact of a few additional measures, not modeled. EPA's decision was further strengthened by each state's commitment to check progress towards attainment in a mid-course review and to adopt additional measures, if the anticipated progress is not being made.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a “rollback” modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR part 51 Appendix W section 6.2.1.e. provides, “Proportional (rollback/forward) modeling is not an

acceptable procedure for evaluating ozone control strategies.” Section 14.0 of Appendix W defines “rollback” as “a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately.” Under this approach if 20 percent improvement in ozone is needed for the area to reach attainment, it is assumed a 20 percent reduction in VOC would be required. There was no approach for identifying NO_x reductions.

The “proportional rollback” approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone.

For example, if monitoring or modeling results indicate that ozone was reduced by 25 ppb during a particular period, and that VOC and NO_x emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO_x. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a “proportional rollback” technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies.

This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: It obviates the need to expend more time and resources to perform additional modeling. In

addition, the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which is more consistent with recommendations referenced by Appendix W and does not assume a direct proportional relationship between ozone and its precursors. Lastly, the requirement that areas perform a mid-course review (a check of progress toward attainment) provides a margin of safety.

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51 Appendix W, without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely upon a proportional rollback technique in this rulemaking, but used UAM to evaluate the core control strategies and then applied its WOE guidance. Therefore, because EPA did not use an "alternative model" to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose the use of the November 1999 guidance "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled" in the December 16, 1999 NPR and has responded to all comments received on that guidance elsewhere in this document.

A commenter also expressed concern that EPA applied unacceptably broad discretion in fashioning and applying the WOE determinations. For all of the attainment submittals proposed for approval in December 1999 concerning serious and severe ozone nonattainment areas, EPA first reviewed the UAM results. In all cases, the UAM results did not pass the deterministic test. In two cases—Milwaukee and Chicago—the UAM results passed the statistical test; in the rest of the cases, the UAM results failed the statistical test. The UAM has inherent limitations that, in EPA's view, were manifest in all these cases. These limitations include: (1) Only selected time periods were modeled, not the entire three-year period used as the definitive means for determining an area's attainment status; (2) inherent uncertainties in the model formulation and model inputs such as hourly emission estimates, emissions growth projections, biogenic emission estimates, and derived wind speeds and directions. As a result, for all areas, even Milwaukee and Chicago, EPA examined additional analyses to indicate whether additional SIP controls would yield meaningful reductions in ozone values.

These analyses did not point to the need for additional emission reductions for Springfield, Greater Connecticut, Metropolitan Washington DC, Chicago and Milwaukee, but did point to the need for additional reductions, in varying amounts, in the other areas. As a result, the other areas submitted control requirements to provide the indicated level of emissions reductions. EPA applied the same methodology in these areas, but because of differences in the application of the model to the circumstances of each individual area, the results differed on a case-by-case basis.

As another WOE factor, for areas within the NO_x SIP call domain, results from the EPA regional modeling for NO_x controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

The commenter also complained that EPA has applied the WOE determinations to adjust modeling results only when those results indicate nonattainment, and not when they indicate attainment. First, we disagree with the premise of this comment: EPA does not apply the WOE factors to adjust model results. EPA applies the WOE factors as additional analysis to compensate for uncertainty in the air quality modeling. Second, EPA has applied WOE determinations to all of the attainment demonstrations proposed for approval in December 1999. Although for most of them, the air quality modeling results by themselves indicated nonattainment, for two metropolitan areas—Chicago and Milwaukee, including parts of the States of Illinois, Indiana, and Wisconsin, the air quality modeling did indicate attainment on the basis of the statistical test.

The commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 continue to exceed the NAAQS by

margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter. The 1999 monitor values do not constitute substantial evidence indicating that the SIPs will not provide for attainment. These values do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, these controls are expected to lower emissions and thereby lower ozone values. Moreover, there is little evidence to support the statement that ozone levels in many cities during 1999 continue to exceed the NAAQS by margins as wide or wider than those predicted by the UAM. Since areas did not model 1999 ozone levels using 1999 meteorology and 1999 emissions which reflect reductions anticipated by control measures, that are or will be approved into the SIP, there is no way to determine how the UAM predictions for 1999 compare to the 1999 air quality. Therefore, we can not determine whether or not the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

In addition, the commenter argued that in applying the WOE determinations, EPA ignored factors showing that the SIPs under-predict future emissions, and the commenter included as examples certain mobile source emissions sub-inventories. EPA did not ignore possible under-prediction in mobile emissions. EPA is presently evaluating mobile source emissions data as part of an effort to update the computer model for estimating mobile source emissions. EPA is considering various changes to the model, and is not prepared to conclude at this time that the net effect of all these various changes would be to increase or decrease emissions estimates. For attainment demonstration SIPs that rely on the Tier 2/Low Sulfur program for attainment or otherwise (i.e., reflect these programs in their motor vehicle emissions budgets), states have committed to revise their motor vehicle emissions budgets after the MOBILE6 model is released. 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. If analysis indicates additional measures are needed, EPA will take the appropriate action.

B. Reliance on the NO_x SIP Call and Tier 2

Comment: Several commenters stated that given the uncertainty surrounding the NO_x SIP Call at the time of EPA's proposals on the attainment demonstrations, there is no basis for the conclusion reached by EPA that states should assume implementation of the NO_x SIP Call, or rely on it as a part of their demonstrations. One commenter claims that there were errors in the emissions inventories used for the NO_x SIP Call Supplemental Notice (SNPR) and that these inaccuracies were carried over to the modeling analyses, estimates of air quality based on that modeling, and estimates of EPA's Tier 2 tailpipe emissions reduction program not modeled in the demonstrations. Thus, because of the inaccuracies in the inventories used for the NO_x SIP Call, the attainment demonstration modeling is also flawed. Finally, one commenter suggests that modeling data demonstrates that the benefits of imposing NO_x SIP Call controls are limited to areas near the sources controlled.

Response: These comments were submitted prior to several court decisions largely upholding EPA's NO_x SIP Call. *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000), *cert. denied*, U.S., 121 S. Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power v. EPA*, 251 F.3d 1026 (D.C. Cir. 2001). In those cases, the court largely upheld the NO_x SIP Call. Although a few issues were vacated or remanded to EPA for further consideration, these issues do not concern the accuracy of the emission inventories relied on for purposes of the NO_x SIP Call. Moreover, contrary to the commenter's suggestion, the NO_x SIP Call modeling data bases were not used to develop estimates of reductions from the Tier 2 program for the severe-area one-hour attainment demonstrations. Accordingly, the commenter's concerns that inaccurate inventories for the NO_x SIP Call modeling lead to inaccurate results for the severe-area one-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the states to achieve the full level of the SIP Call reductions by May 2003. First, the court vacated the rule as it applied to two states—Missouri and Georgia—and also remanded the definition of a co-generator and the assumed emission limit for internal combustion engines. EPA has informed the states that until EPA addresses the remanded issues, EPA will accept SIPs that do not include those small portions of the emission

budget. However, EPA is planning to propose a rule shortly to address the remanded issues and ensure that emission reductions from these states and the emission reductions represented by the two source categories are addressed in time to benefit the severe nonattainment areas. Also, although the court in the *Michigan* case subsequently issued an order delaying the implementation date to no later than May 31, 2004, and the *Appalachian Power* case remanded an issue concerning computation of the electric generating units (EGU) growth factor, it is EPA's view that states should assume that the SIP Call reductions will occur in time to ensure attainment in the severe nonattainment areas. Both EPA and the states are moving forward to implement the NO_x SIP Call.

Finally, contrary to the commenter's conclusions, EPA's modeling to determine the region-wide impacts of the NO_x SIP Call clearly shows that regional transport of ozone and its precursors is impacting nonattainment areas several states away. This analysis was upheld by the court in *Michigan*.

C. Approval of Demonstrations That Rely on State Commitments or State Rules for Emission Limitations to Lower Emissions in the Future Not Yet Adopted by a State and/or Approved By EPA

Comment: Several commenters disagreed with EPA's proposal to approve states' attainment demonstrations because: (a) Not all of the emissions reductions assumed in the demonstrations have actually taken place, (b) are reflected in rules yet to be adopted and approved by a state and approved by EPA as part of the SIP, (c) are credited illegally as part of a demonstration because they are not approved by EPA as part of the SIP, or (d) the commenter maintains that EPA does not have authority to accept enforceable state commitments to adopt measures in the future in lieu of current adopted measures to fill a near-term shortfall of reductions.

Response: EPA disagrees with the comments, and believes—consistent with past practice—that the CAA allows approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.⁶ Once EPA

determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (1) Whether the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.

As an initial matter, EPA believes that present circumstances for the New York City, Philadelphia, Baltimore and Houston nonattainment areas warrant the consideration of enforceable commitments. The Northeast states that make up the New York, Philadelphia and Baltimore nonattainment areas submitted SIPs that they reasonably believed demonstrated attainment with fully adopted measures. After EPA's initial review of the plans, EPA recommended to these areas that additional controls would be necessary to ensure attainment. Because these areas had already submitted plans with many fully adopted rules and the adoption of additional rules would take some time, EPA believed it was appropriate to allow these areas to supplement their plans with enforceable commitments to adopt and submit control measures to achieve the additional necessary reductions. For Maryland's attainment demonstration for the Philadelphia area, EPA has determined that the submission of enforceable commitments in place of adopted control measures for this limited set of reductions will not interfere with the area's ability to meet its 2005 attainment obligations.

EPA's approach here of considering enforceable commitments that are limited in scope is not new. EPA has historically recognized that under certain circumstances, issuing full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. *See, e.g.*, 62 FR 1150, 1187, January 8, 1997 (ozone attainment demonstration for the South Coast Air Basin); 65 FR 18903, April 10, 2000 (revisions to attainment

1987), *aff'd*, 871 F.2d 319 (3rd Cir. 1989); *NRDC, Inc. v. N.Y. State Dept. of Env. Cons.*, 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't v. Deukmejian*, 731 F. Supp. 1448, *recon. granted in part*, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air v. South Coast Air Quality Mgt. Dist.*, No. CV 97—6916—HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under section 179(a) of the Act, which starts an 18-month period for the State to begin implementation before mandatory sanctions are imposed.

⁶ These commitments are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. *See, e.g., American Lung Ass'n of N.J. v. Kean*, 670 F. Supp. 1285 (D.N.J.

demonstration for the South Coast Air Basin); 63 FR 41326, August 3, 1998 (federal implementation plan for PM-10 for Phoenix); (48 FR 51472, state implementation plan for New Jersey). Nothing in the Act speaks directly to the approvability of enforceable commitments.⁷ However, EPA believes that its interpretation is consistent with provisions of the CAA. For example, section 110(a)(2)(A) provides that each SIP “shall include enforceable emission limitations and other control measures, means or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirement of the Act.” (Emphasis added). Section 172(c)(6) of the Act requires, as a rule generally applicable to nonattainment SIPs, that the SIP “include enforceable emission limitations and such other control measures, means or techniques . . . as may be necessary or appropriate to provide for attainment . . . by the applicable attainment date” (Emphasis added). The emphasized terms mean that enforceable emission limitations and other control measures do not necessarily need to generate reductions in the full amount needed to attain. Rather, the emissions limitations and other control measures may be supplemented with other SIP rules—for example, the enforceable commitments EPA is approving today—as long as the entire package of measures and rules provides for attainment.

As provided above, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do for the Philadelphia area—EPA would consider three factors in determining whether to approve the submitted commitments. First, EPA believes that the commitments must be limited in scope. In 1994, in considering EPA’s authority under section 110(k)(4) to conditionally approve unenforceable commitments, the Court of Appeals for the District of Columbia Circuit struck down an EPA policy that would allow States to submit (under limited circumstances) commitments for entire programs. *Natural Resources Defense Council v. EPA*, 22 F.3d 1125 (D.C. Cir. 1994). While EPA does not believe that case is directly applicable here, EPA agrees

with the Court that other provisions in the Act contemplate that a SIP submission will consist of more than a mere commitment. See *NRDC*, 22 F.3d at 1134.

In the present circumstances, the commitments address only a small portion of the plan. For the Philadelphia area, Maryland’s commitment addresses only 10.7 percent VOC and 0.7 percent NO_x of the emission reductions necessary to attain the standard. Please see Sections I.G. and I.H. of this document for a comprehensive description of all of the adopted control measures and other components of the Maryland attainment demonstration SIP’s control strategy for the Philadelphia area.

As to the second factor, whether the State is capable of fulfilling the commitment, EPA considered the current or potential availability of measures capable of achieving the additional level of reductions represented by the commitment. For the New York, Philadelphia and Baltimore nonattainment areas, EPA believes that there are sufficient untapped sources of emission reductions that could achieve the minimal levels of additional reductions that the areas need. This is supported by the recent recommendation of the OTC regarding specific controls that could be adopted to achieve the level of reductions needed for each of these three nonattainment areas. Thus, EPA believes that the States will be able to find sources of reductions to meet the shortfall. The States that comprise the New York, Philadelphia and Baltimore nonattainment areas are making significant progress toward adopting the measures to fill the shortfall. The OTC has met and on March 28, 2001 recommended a set of control measures. Currently, the States are working through their adoption processes with respect to those, and in some cases other, control measures.

Although EPA has evidence that the State may not make the submission on or before the date to which it has committed, EPA believes that it is making sufficient progress to support approval of the commitment. The State of Maryland has indicated that it would adopt, submit and implement the measures within a time period fully consistent with the Philadelphia area attaining the standard by its 2005 attainment date.

The third factor, EPA has considered in determining to approve limited commitments for the Philadelphia area attainment demonstrations is whether the commitment is for a reasonable and appropriate period. EPA recognizes that

both the Act and EPA have historically emphasized the need for submission of adopted control measures in order to ensure expeditious implementation and achievement of required emissions reductions. Thus, to the extent that other factors—such as the need to consider innovative control strategies—support the consideration of an enforceable commitment in place of adopted control measures, the commitment should provide for the adoption of the necessary control measures on an expeditious, yet practicable, schedule.

As provided above, for the New York, Baltimore and Philadelphia areas, EPA proposed that these areas have time to work within the framework of the OTC to develop, if appropriate, a regional control strategy to achieve the necessary reductions and then to adopt the controls on a state-by-state basis. In the proposed approval of the attainment demonstrations, EPA proposed that these areas would have approximately 22 months to complete the OTC and state-adoption processes—a fairly ambitious schedule—i.e., until October 31, 2001. As a starting point in suggesting this time frame for submission of the adopted controls, EPA first considered the CAA “SIP Call” provision of the CAA—section 110(k)(5)—which provides States with up to 18 months to submit a SIP after EPA requests a SIP revision. While EPA may have ended its inquiry there, and provided for the States to submit the measures within 18 months of its proposed approval of the attainment demonstrations, EPA further considered that these areas were all located with the Northeast Ozone Transport Region and determined that it was appropriate to provide these areas with additional time to work through the OTR process to determine if regional controls would be appropriate for addressing the shortfall. EPA believed that allowing these States until 2001 to adopt these additional measures would not undercut their attainment dates of November 2005 or 2007. EPA still believes that this a reasonable schedule for the states to submit adopted control measures that will achieve the additional necessary reductions. The enforceable commitments submitted by Maryland for the Philadelphia nonattainment area, in conjunction with the other SIP measures and other sources of emissions reductions, constitute the required demonstration of attainment. EPA believes that the delay in submittal of the final rules is permissible under section 110(k)(3) because the State has obligated itself to submit the rules by

⁷ Section 110(k)(4) provides for “conditional approval” of commitments that need not be enforceable. Under that section, a State may commit to “adopt specific enforceable measures” within one-year of the conditional approval. Rather than enforcing such commitments against the State, the Act provides that the conditional approval will convert to a disapproval if “the State fails to comply with such commitment.”

specified short-term dates, and that obligation is enforceable by EPA and the public. Moreover, as discussed in the December 16, 1999 proposal, its TSD, other rulemaking actions (cited herein) taken by EPA since December 16, 1999, and in this document; the SIP submittal approved today contains major substantive components submitted as adopted regulations and enforceable orders.

D. RACM (Including Transportation Control Measures)

Comment: Several commenters have stated that there is no evidence in several states that they have adopted reasonably available control measures (RACM) or that the SIPs have provided for attainment as expeditiously as practicable. Specifically, the lack of Transportation Control Measures (TCMs) was cited in several comments, but commenters also raised concerns about potential stationary source controls. One commenter stated that mobile source emission budgets in the plans are by definition inadequate because the SIPs do not demonstrate timely attainment or contain the emissions reductions required for all RACM. That commenter claims that EPA may not find adequate motor vehicle emission budget (MVEB) that is derived from a SIP that is inadequate for the purpose for which it is submitted. The commenter alleges that none of the MVEBs submitted by the states that EPA is considering for adequacy is consistent with the level of emissions achieved by implementation of all RACM; nor are they derived from SIPs that provide for attainment. Some commenters stated that for measures that are not adopted into the SIP, the states must provide a justification for why they were determined to not be RACM.

Response: EPA reviewed the initial SIP submittals for the Maryland portion of the Philadelphia area, namely Cecil County, and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA consequently issued policy guidance memorandum to have these states address the RACM requirement through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: "Additional Submission on RACM from States with Severe One-Hour Ozone Nonattainment Area SIPs").

On August 20, 2001, Maryland submitted its proposed analysis and determination that there are no additional reasonably available control

measures (RACM) for the area and requested that EPA approve it as a SIP revision using a form of Federal rulemaking known as parallel-processing. On September 7, 2001 (66 FR 46758), EPA published a SNPR proposing to approve this supplement to the SIP as meeting the RACM requirements. We received no comments on that September 7, 2001 SNPR.

That proposed approval was done under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its SIP. If the final, adopted revision is substantially changed from the version EPA proposed to approve, and which was available for public review during EPA's comment period, EPA will evaluate those changes and may publish another supplemental notice of proposed rulemaking. If no substantial changes are made, EPA will publish a final rulemaking notice on the revision. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the state and submitted formally to EPA for incorporation into the SIP.

On August 31, 2001, the State of Maryland supplemented its original attainment demonstration SIP with a formal submittal of an analysis of RACM. EPA has determined that there are no changes between Maryland's formally submitted RACM analysis and the proposed version for which we proposed approval on September 7, 2001. Based upon this SIP supplement, EPA concluded that Maryland's attainment demonstration SIP for the Philadelphia area meets the requirement for adopting RACM. In this final rule, EPA is approving Maryland's 2005 attainment demonstration plan for the Philadelphia area including this RACM analysis.

Section 172(c)(1) of the Act requires SIPs to contain RACM and provides for areas to attain as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures

considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM. Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs. EPA also issued a recent memorandum reconfirming the principles in the earlier guidance, entitled, "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: www.epa.gov/ttn/oarpg/t1pgm.html.

As stated previously, the analysis submitted by Maryland on August 31, 2001 as a supplement to its attainment demonstration SIP for the Philadelphia area, addresses the RACM requirement. Maryland has considered a variety of potential stationary/area source controls such as limits on area source categories not covered by a control technique guideline (e.g., motor vehicle refinishing, and surface/cleaning degreasing); rule effectiveness improvements; controls on major stationary sources of NO_x that are beyond that required under reasonably available control technology (RACT); and other potential measures. Maryland considered a variety of potential mobile source control measures such as alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; congestion pricing for low occupancy vehicles; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based program; low emission vehicle standards; and other measures such as trip reduction ordinances, value pricing and highway ramp metering.

The State has implemented measures which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. Maryland has adopted and submitted rules for the following categories of area sources which go beyond the Federally mandated controls. The State has implemented measures which went beyond the Federally mandated controls, which were found to be cost effective and technologically feasible. Maryland has

adopted and submitted rules for the following categories of area sources which go beyond the Federally mandated controls. The following are examples and not an exhaustive list:

(1) Maryland has adopted, and EPA has SIP approved, a rule for motor vehicle refinishing. The rule includes volatile organic compound (VOC) content limits for motor vehicle refinishing coatings, application standards and storage and house keeping work practices. This rule goes beyond the Federal rule in content limits, and sets application and work practices standards.

(2) Maryland has adopted, and EPA has approved, a rule for control of VOC emissions from screen printing on plywood used for signs, and untreated sign paper.

(3) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from screen printing, lithographic printing, drying ovens, adhesive application, and laminating equipment used to produce a credit card or similar plastic card product.

(4) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from "digital imaging"—printers that use a computer driven machine to transfer an electronically stored image onto the substrate through the use of inks, toners, or other similar color graphic materials via ink jet, electrostatic, and spray jet technologies.

(5) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from cold and vapor degreasing that includes requirements that go beyond the applicable CTG. Maryland restricts the vapor pressure of solvents used to 1 mm Hg at 20 C (0.019 psia) or less for and cold degreasing, including cold or vapor degreasing at: service stations; motor vehicle repair shops; automobile dealerships; machine shops; and any other metal refinishing, cleaning, repair, or fabrication facility.

(6) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC and NO_x emissions by banning open burning activities from June 1 through August 31 of each year.

(7) Maryland has adopted, and EPA has SIP approved, a rule for control of VOC emissions from lithographic printing.

(8) Maryland has adopted, and EPA has SIP approved, a rule to implement Phase II NO_x controls under the OTC's MOU. This rule established a fixed cap on ozone-season NO_x emissions from specified major point sources of NO_x. The rule grants each source a fixed number of NO_x allowances, applies state-wide, and required compliance

starting during the 2000 ozone season. It reduces NO_x emissions both inside and outside the Philadelphia area.

(9) Maryland has adopted, and EPA has SIP approved, a rule to implement the NO_x SIP Call. The Maryland rule requires compliance commencing with the start of the 2003 ozone season. (This measure is identified as Phase II/III control under the OTC MOU on NO_x control in the attainment demonstration).

(10) Maryland has also adopted, and EPA has SIP approved, a rule requiring the sale of vehicles under the national low-emission vehicle program (NLEV).

Maryland has considered a variety of potential mobile source control measures such as alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; congestion pricing for low occupancy vehicles; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based program; and other measures such as trip reduction ordinances, value pricing and highway ramp metering. The Maryland portion of the Philadelphia area, Cecil County, has unique local characteristics that affect the effectiveness of many mobile source measures. The first is that the majority of the vehicle travel occurs on the Interstate 95 highway; much of this traffic is through traffic that would not be affected by locally adopted transportation control measures. Cecil County is a rural area without much of the mass transit infrastructure found in Maryland's other major nonattainment areas (Baltimore, Metropolitan Washington, DC). The area has few point sources of VOC emissions and no major sources of NO_x. Most of the area source VOC emissions are already subject to regulation. Maryland determined that many of the considered measures were not to be RACM due to the potential for substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. A large number of the considered measures were rejected on these grounds or on the grounds that they could not be implemented by 2005 much less any earlier. Some were rejected because they would not advance attainment because the measure had benefits outside the ozone season or would be sporadically implemented (not episodically) such as the "try transit week" items. These explanations are provided in further detail in the docket for this rulemaking.

On September 7, 2001, EPA published an SNPR proposing to approve the RACM analysis submitted by Maryland on August 31, 2001 as a supplement to its 2005 attainment demonstration SIP for the Philadelphia area. We received no comments on that SNPR. In this final rule, EPA is approving Maryland's 2005 attainment demonstration plan for the Philadelphia area including this RACM analysis.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for the Maryland portion of the Philadelphia area, this conclusion is not necessarily valid for other areas. Thus, a determination of RACM is necessary on a case-by-case basis and will depend on the circumstances for the individual area. In addition, if in the future EPA moves forward to implement another ozone standard, this RACM analysis would not control what is RACM for these or any other areas for that other ozone standard.

Also, EPA has long advocated that states consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. See, e.g., www.epa.gov/otaq/transp.htm. In order to demonstrate that they will attain the one-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures—including the kind that the Maryland portion of the Philadelphia area, Cecil County itself evaluated in its RACM analysis—that even collectively do not result in many emission reductions. Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term—even if such measures do not advance the attainment date—since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

Because EPA is finding that the SIP meets the Clean Air Act's requirement for RACM and that there are no additional reasonably available control measures that can advance the attainment date, EPA concludes that the attainment date being approved is as expeditious as practicable.

E. Adequacy of the Motor Vehicle Emissions Budgets

Comment 1: We received a number of comments about the process and substance of EPA's review of the adequacy of motor vehicle emissions budgets for transportation conformity purposes.

Response 1: EPA's adequacy process for these SIPs has been completed, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We have already responded to any comments related to adequacy when we issued our adequacy findings, and therefore we are not listing the individual comments or responding to them here. Our findings of adequacy and responses to comments can be accessed at www.epa.gov/otaq/traq (once there, click on the "conformity" button). At the Web site, EPA regional contacts are identified.

Comment 2: We received comments that assert that EPA cannot approve Maryland's motor vehicle emissions budgets because Maryland has not submitted the latest periodic inventory which the comments claim was due three years after June 30, 1997, and because there is no demonstration that Maryland is meeting rate of progress requirements.

Response 2: EPA believes the milestone compliance demonstration requirements of CAA section 182(g) and the periodic inventory requirements under section 182(a)(3)(A) each are independent requirements from the attainment demonstration requirements under CAA sections 172(c)(1) and 182(c)(2)(A). The periodic emissions inventory and milestone compliance demonstration requirements have no bearing on whether a state has submitted a SIP that projects attainment of the ozone NAAQS. EPA acknowledges that milestone compliance demonstration and periodic emission inventory requirements are an independently required action, but does not believe that these have any bearing on whether Maryland has submitted an approvable attainment demonstration SIP. EPA certainly expects that the periodic emissions inventory for 1999 would reflect the 1999 fleet data used in the final motor vehicle emissions budgets found in the final attainment demonstration SIP.

F. MOBILE6 and the Motor Vehicle Emissions Budgets (MVEBs)

Comment 1: One commenter generally supports a policy of requiring motor vehicle emissions budgets to be recalculated when revised MOBILE models are released.

Response 1: The Phase II attainment demonstrations that rely on Tier 2 emission reduction credit contain commitments to revise the motor vehicle emissions budgets after MOBILE6 is released.

Comment 2: The revised budgets calculated using MOBILE6 will likely be submitted after the MOBILE5 budgets have already been approved. EPA's policy is that submitted SIPs may not replace approved SIPs.

Response 2: This is the reason that EPA proposed in the July 28, 2000, SNPR (65 FR 46383) that the approval of the MOBILE5 budgets for conformity purposes would last only until MOBILE6 budgets had been submitted and found adequate. In this way, the MOBILE6 budgets can apply for conformity purposes as soon as they are found adequate.

Comment 3: If a State submits additional control measures that affect the motor vehicle emissions budget, but does not submit a revised motor vehicle emissions budget, EPA should not approve the attainment demonstration.

Response 3: EPA agrees. The motor vehicle emissions budgets in Maryland's 2005 attainment demonstration SIP for the Philadelphia area reflect the motor vehicle control measures in the attainment demonstration. In addition, Maryland has committed to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions.

Comment 4: EPA should make it clear that the motor vehicle emissions budgets to be used for conformity purposes will be determined from the total motor vehicle emissions reductions required in the SIP, even if the SIP does not explicitly quantify a revised motor vehicle emissions budget.

Response 4: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The Maryland attainment demonstration for the Philadelphia area contains explicitly quantified motor vehicle emissions budgets.

Comment 5: If a state fails to follow through on its commitment to submit the revised motor vehicle emissions budgets using MOBILE6, EPA could make a finding of failure to submit a portion of a SIP, which would trigger a sanctions clock under section 179.

Response 5: If a state fails to meet its commitment, EPA could make a finding of failure to implement the SIP, which would start a sanctions clock under section 179 of the Clean Air Act.

Comment 6: If the budgets recalculated using MOBILE6 are larger than the MOBILE5 budgets, then attainment should be demonstrated again.

Response 6: As EPA proposed in its December 16, 1999 notices, we will work with States on a case-by-case basis if the new emissions estimates raise issues about the sufficiency of the attainment demonstration.

Comment 7: If the MOBILE6 budgets are smaller than the MOBILE5 budgets, the difference between the budgets should not be available for reallocation to other sources unless air quality data show that the area is attaining, and a revised attainment demonstration is submitted that demonstrates that the increased emissions are consistent with attainment and maintenance. Similarly, the MOBILE5 budgets should not be retained (while MOBILE6 is being used for conformity demonstrations) unless the above conditions are met.

Response 7: EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 versus MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. In addition, Maryland will be submitting new budgets based on MOBILE6, so the MOBILE5 budgets will not be retained in the SIP indefinitely.

G. MOBILE6 Grace Period

Comment 1: We received a comment on whether the grace period before MOBILE6 is required in conformity determinations will be consistent with the schedules for revising SIP motor vehicle emissions budgets within 1 or 2 years of MOBILE6's release.

Response 1: This comment is not germane to this rulemaking, since the MOBILE6 grace period for conformity determinations is not explicitly tied to EPA's SIP policy and approvals. However, EPA understands that a longer grace period would allow some areas to better transition to new MOBILE6 budgets. EPA is considering the maximum two-year grace period allowed by the conformity rule, and EPA will address this in the future when the final MOBILE6 emissions model and policy guidance is released.

Comment 2: One commenter asked EPA to clarify in the final rule whether MOBILE6 will be required for conformity determinations once new MOBILE6 budgets are submitted and found adequate.

Response 2: This comment is not germane to this rulemaking. However, it is important to note that EPA intends to clarify its policy for implementing MOBILE6 in conformity determinations when the final MOBILE6 model is released. EPA believes that MOBILE6 should be used in conformity determinations once new MOBILE6 budgets are found adequate.

H. Two-Year Option To Revise the MVEBs

Comment: One commenter did not prefer the additional option for a second year before the state has to revise the conformity budgets with MOBILE6, since new conformity determinations and new transportation projects could be delayed in the second year.

Response: EPA proposed the additional option to provide further flexibility in managing MOBILE6 budget revisions. The supplemental proposal did not change the original option to revise budgets within one year of MOBILE6's release. State and local governments can continue to use the one-year option, if desired, or submit a new commitment consistent with the alternative two-year option. EPA expects that state and local agencies have consulted on which option is appropriate and have considered the impact on future conformity determinations. Maryland has committed to revise its budgets within one year of MOBILE6's release.

I. Motor Vehicle Emissions Inventory

Comment: Several commenters stated that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix. Commenters stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. Also, a commenter stated that EPA and states have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. For these reasons, commenters recommend disapproving the SIPs.

Response: All of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was submitted. The SIPs use the same vehicle fleet characteristics that were used in the most recent periodic inventory update. Maryland used 1999

vehicle registration data in the final motor vehicle emissions budgets found in its attainment demonstration SIP for the Philadelphia area. EPA requires the most recent available data to be used, but we do not require it to be updated on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest that SIPs should be disapproved on this basis. Nevertheless, we do expect that revisions to these SIPs that are submitted using MOBILE6 (as required in those cases where the SIP is relying on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6.

J. VOC Emission Reductions

Comment: For States that need additional VOC reductions, one commenter recommends a process to achieve these VOC emission reductions, which involves the use of HFC-152a (1,1 difluoroethane) as the blowing agent in manufacturing of polystyrene foam products such as food trays and egg cartons. The commenter states that HFC-152a could be used instead of hydrocarbons, a known pollutant, as a blowing agent. Use of HFC-152a, which is classified as VOC exempt, would eliminate nationwide the entire 25,000 tons/year of VOC emissions from this industry.

Response: EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC-152a (1,1 difluoroethane), which is a VOC exempt compound, as a blowing agent. Since the HFC-152a is VOC exempt, its use would give a VOC reduction compared to the use of VOCs such as pentane or butane as a blowing agent. However, EPA has not studied this technology exhaustively. It is each State's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC-152a, States may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. This is a technology which States may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions

reductions must be made by each affected State. Finally, EPA notes that under the significant new alternatives policy (SNAP) program, created under CAA section 612, EPA has identified acceptable foam blowing agents many of which are not VOCs (www.epa.gov/ozone/title6/snap/).

K. Credit for Measures Not Fully Implemented

Comment: States should not be given credit for measures that are not fully implemented. For example, the States are being given full credit for Federal coating, refinishing and consumer product rules that have been delayed or weakened.

Response: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum⁸ that provided that States could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, States relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR part 59 subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum.

In accordance with EPA's final regulation, States have assumed a 20 percent reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to "use up existing label stock" and "adjust inventories" to conform to the rule. (63

⁸ "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules," March 22, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to Air Division Directors, Regions I-X.

FR 48848, September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the Fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the States to take credit for a 20 percent emission reduction in their SIPs.

Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy⁹, many States claimed a 37 percent reduction from this source category based on a proposed rule.

However, EPA's final rule, "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings," published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide. The 37 percent emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36 percent for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately 1 percent difference between the 37 percent estimate of reductions assumed by States, following EPA guidance based on the proposal, and the 36 percent reduction actually achieved by the final rule for previously unregulated areas. EPA's best estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled "Emissions Calculations for the Automobile Refinish Coatings Final Rule" from Mark Morris to Docket No. A-95-18.

Consumer Products Rule: Consistent with a June 22, 1995 EPA guidance¹⁰, States claimed a 20 percent reduction from this source category based on EPA's proposed rule. The final rule, "National Volatile Organic Compound Emission Standards for Consumer Products," (63 FR 48819), published on September 11, 1998, has resulted in a 20 percent reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the Fall of 1999. In the consumer products rule, EPA determined and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to State regulations and in anticipation of the final rule (63 FR 48819). That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the Fall of 1999. It was appropriate for the States to take credit for a 20 percent emission reduction for the consumer products rule in their SIPs.

L. Enforcement of Control Programs

Comment: The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit.

Response: In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the Clean Air Act. Once approved by EPA, there is no need for states to re-adopt and resubmit these programs with each and every SIP revision generally required by other sections of the Act. Maryland had previously received approval of their section 110(a)(2) SIPs. In a final rulemaking action published on March 8, 1984 (49 FR 8610), EPA approved Maryland's financial and manpower resource commitments, after having proposed approval of these commitments on February 3, 1983 (48 FR 5048, 5052). In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules

that are not enforceable are generally not approved by EPA. To the extent that the ozone attainment demonstration and ROP plan depend on specific state emission control regulations these individual regulations have undergone review by EPA in past approval actions.

M. Maryland's NO_x Measures Are Not Approved

Comment: We received comments that objected to crediting the attainment plan with reductions from measures not approved into the SIP. The comments specifically mentioned the NO_x RACT rule and the Phase II NO_x controls under the OTC MOU. We also received comments on these programs which stated that the applicability of the NO_x RACT requirement should extend down to sources with emissions of 25 tons per year or more.

Response: These comments are no longer germane to Maryland's attainment plan for the Philadelphia area. On, February 8, 2001, EPA fully approved Maryland's NO_x RACT rule (66 FR 9522). On December 15, 2000, EPA fully approved Maryland's rule that implements the Phase II controls under the OTC MOU to control NO_x (65 FR 78416). The comment regarding extending the applicability of RACT down to 25 ton per year sources is moot because the applicability threshold for NO_x RACT in Maryland's SIP-approved rule for the Philadelphia severe nonattainment area is 25 tons per year or more as required by the Act.

N. Attainment and Post-1999 Rate of Progress Demonstrations

Comment: One commenter claims that the plans fail to demonstrate emission reductions of 3 percent per year over each 3-year period between November 1999 and November 2002; and November 2002 and November 2005; and the 2-year period between November 2005 and November 2007, as required by 42 U.S.C. section 7511a(c)(2)(B). The states have not even attempted to demonstrate compliance with these requirements, and EPA has not proposed to find that they have been met. EPA has absolutely no authority to waive the statutory mandate for 3 percent annual reductions. The statute does not allow EPA to use the NO_x SIP call or 126 orders as an excuse for waiving rate-of-progress (ROP) deadlines. The statutory ROP requirement is for emission reductions—not ambient reductions. Emission reductions in upwind states do not waive the statutory requirement for 3 percent annual emission reductions within the downwind nonattainment area.

⁹ "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule," November 29, 1994, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I-X.

¹⁰ "Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act," June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I-X.

Response: Under no condition is EPA waiving the statutory requirement for 3 percent annual emission reductions. For many areas, EPA did not propose approval of the post-99 ROP demonstrations at the same time as EPA proposed action on the area's attainment demonstration. On July 13, 2001 (66 FR 36717), EPA published a NPR for the State of Maryland. The NPR proposed approval of the post 1996 ROP plans for milestone years 1999, 2002 and 2005 for the Cecil County portion of the Philadelphia ozone nonattainment area submitted by the State of Maryland on December 24, 1997, as revised on April 24, 1998, August 18, 1998, December 21, 1999 and December 28, 2000. We received no comments on that NPR. EPA has approved Maryland's Post 1996 ROP plans for this area for all years after 1996 through the attainment year of 2005. See 66 FR 48209, September 19, 2001.

As provided in EPA's final action on the Maryland's ROP plan (66 FR 48209), the state is relying on emission reductions achieved in its portion of the Philadelphia area from fully promulgated Federal and fully adopted, SIP-approved NO_x and VOC measures for meeting the ROP requirement.

O. Specific Point Source Measures

Comment 1: We received comments in response to the December 16, 1999 NPR that asserted NO_x emission reduction estimates claimed by Maryland are unreliable for Maryland's Phase II and Phase III control under the OTC NO_x MOU. The comments note that in February 1999, a Maryland Court remanded the implementation schedule in Maryland's regulation and thus claim without definitive emission reduction schedules from one of the largest NO_x producing utilities in the state, the SIP reduction estimates are unreliable.

Response 1: Regarding the Phase II reductions under the OTC NO_x MOU, Maryland has reached settlement agreements with the pertinent utilities. The settlements indicate that the estimated NO_x reductions projected for the years 2002 and 2005 will not be affected. Maryland has provided copies of those agreements to EPA. EPA fully approved the Maryland NO_x Budget Rule to implement the Phase II controls as a SIP revision. See 65 FR 78416, December 15, 2000. This approval includes these agreements. By the ozone season of the year 2002, under the terms of those settlement agreements, both utilities are required to be in compliance with the Maryland's NO_x Budget Program under all circumstances.

Regarding the Phase III reductions, EPA disagrees with the comments because the comments were based upon a Maryland rule has been superseded by a SIP approved rule that applies to all years after 2003 and that contains none of the alleged defects identified in the comments. On January 10, 2001, EPA approved Maryland's SIP to address EPA's NO_x SIP Call rule into the Maryland SIP (66 FR 1866). This rule requires reductions of NO_x from major stationary sources equivalent to EPA's NO_x SIP Call regulation and requires sources to achieve compliance with the final seasonal NO_x allocations commencing with the 2003 ozone season. This rule contains no provisions which allow sources to avoid compliance in the event that the NO_x allowance market fails to materialize or if the price of these allowances is unreasonable. EPA has determined that this rule substantively provides for the NO_x reductions that Maryland modeled in their local scale modeling submitted to EPA in support of Maryland's attainment demonstration for the Philadelphia Area.

Comment 2: We received comments asserting that on December 17, 1999, EPA granted section 126 petitions filed by four states to reduce ozone through reductions in NO_x emissions from other states, and that under those petitions, fifteen (15) facilities located in Maryland will have to reduce NO_x emissions by a total of 19,466 tons by May 1, 2003. The comments express concerns about the accountability of these reductions as compared to those assumed in the attainment demonstration. The comments assert that EPA's decision on the 126 petitions will clearly change state and Ozone Transport Group implementation schedules and should be addressed by the state prior to SIP approval.

Response 2: As noted in the December 16, 1999 proposal, Maryland's attainment demonstration plan assumed NO_x reductions consistent with those called for by EPA's NO_x SIP Call. In consideration of recent court decisions on the NO_x SIP Call described in this document and as explained in EPA's response to comments on "Reliance on NO_x SIP Call and Tier 2 Modeling," EPA believes it is appropriate to allow states to continue to assume the reductions from the NO_x SIP Call. The fact that EPA has granted section 126 petitions does not remove the obligations of states subject to the NO_x SIP Call to reduce NO_x emissions as called for in that rule. Furthermore, implementation of either the section 126 rules (described in this document) or the NO_x SIP Call achieves emission

reductions prior to the applicable attainment deadline, 2005. Under recent rulings by the U.S. Court of Appeals for the District of Columbia Circuit both the 126 rule and the NO_x SIP Call must be implemented early in the ozone season in 2004. Therefore, EPA does not agree that there is a need for the states to address its implementation schedule in light of the section 126 petition action.

On August 14–15, 1997, we received petitions submitted individually by eight Northeastern states under section 126 of the CAA. Each petition requested us to make a finding that sources in certain categories of stationary sources in upwind states emit or would emit NO_x in violation of the prohibition in section 110(a)(2)(D)(i) on emissions that contribute significantly to nonattainment, or interfere with maintenance, in the petitioning states. On May 25, 1999, we promulgated a final rule (May 1999 Rule) determining that portions of the petitions are approvable under the one-hour and/or eight-hour ozone NAAQS based on their technical merit (64 FR 28250). Based on the affirmative technical determinations for the one-hour ozone NAAQS made in the May 1999 Rule, we promulgated a final rule on January 18, 2000 (January 2000 Rule) making section 126 findings that a number of large electric generating units (EGUs) and large industrial boilers and turbines named in the petitions emit in violation of the CAA prohibition against significantly contributing to nonattainment or maintenance problems in the petitioning states (65 FR 2674). In the January 2000 Rule, we also finalized the Federal NO_x Budget Trading Program as the control remedy for sources affected by the rule. This requirement replaces the default remedy in the May 1999 Rule. The January 2000 Rule establishes Federal NO_x emissions limits that sources must meet through a cap-and-trade program by May 1, 2003. The January 2000 rule affects sources located in the District of Columbia, Delaware, Maryland, North Carolina, New Jersey, Ohio, Pennsylvania, Virginia, West Virginia, and parts of Indiana, Kentucky, Michigan, and New York. All of the affected sources are located in states that are subject to the NO_x SIP Call.

On October 27, 1998 (63 FR 57356), EPA promulgated the "Finding of Significant Contribution and Rulemaking for Certain s in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," commonly referred to as the NO_x SIP Call. On March 3, 2000, the D.C. Circuit issued its decision on the NO_x SIP Call

regarding the one-hour ozone NAAQS ruling in favor of EPA on all the major issues. *Michigan v. EPA*, *supra*. On June 22, 2000, the Court ordered that we allow the states and the District of Columbia 128 days from June 22, 2000 to submit their SIPs. Accordingly, 19 states and the District of Columbia were required to submit SIPs in response to the NO_x SIP Call by October 30, 2000.¹¹ On August 30, 2000, the D.C. Circuit ordered that the June 22, 2000 Order be amended to extend the deadline for implementation of the NO_x SIP Call from May 1, 2003 to May 31, 2004. In a separate rulemaking, we are addressing the Court's remand of the definition of electricity generating units, the control level for large stationary internal combustion engines and the SIP submittal and compliance dates for these actions, which affect less than 10 percent of the total emission reductions called for by the NO_x SIP Call.

Furthermore, as noted above in response to the previous comment in this document, Maryland has a state regulation in place to implement the SIP Call requirements. This state rule is in the approved Maryland SIP and requires compliance commencing May 1, 2003.

Comment 3: We received comments in response to the December 16, 1999 NPR asserting that the NO_x Phase II/III emissions reduction estimates asserted by the Maryland Department of the Environment are unreliable because the NO_x trading rule may not work. The comments raise the following concerns: If a NO_x allowance market "fails to materialize" or if the price of these allowances is "unreasonable" the "safe harbor provision" will allow a utility to avoid purchasing credits. Without definitive emission reduction schedules from one of the largest NO_x producing utilities in the state, the SIP reduction estimates are unreliable, at best, and misleadingly optimistic at worst. There is no guarantee that the OTC NO_x Budget Program will function and achieve its emissions target. The price of allowances may be prohibitively high allowing Maryland sources to avoid purchasing credits.

Response 3: EPA disagrees with the comments and maintains that cap-and-trade programs are an effective remedy for achieving emissions reductions in a cost-effective manner. Under cap-and-trade programs, total emissions are limited at the regional level. Sources are then given individual emissions limits expressed in the form of allowances, i.e., tradable permits equal to one ton of NO_x. A source has the option of

reducing its emissions to or beyond its initial allowance level or of reducing to less than its initial allocation level and purchasing allowances from another source. Regardless of the compliance strategy a source employs, the environmental integrity of the program and of the emissions reductions remain intact because the total number of allowances remains capped. Every allowance available on the allowance market represents a ton of NO_x another plant did not emit.

The Acid Rain Program is a similar cap-and-trade program which has been in effect since 1995. Each year since 1995, emissions have been reduced beyond the required level and sources have achieved 100 percent compliance. The experience of the Acid Rain Program has been that the larger, higher emitting units reduced the most because they had the most cost-effective reductions to make.

Regarding comments that the OTC NO_x Budget Program will fail to function and achieve its emissions target, EPA disagrees for the following reasons: In 1999, the initial year of the Phase II, the OTC NO_x Budget Program was a success. According to EPA's OTC NO_x compliance report, 99 percent of the sources achieved full compliance. Furthermore, sources in the OTC over controlled during the 1999 ozone season, reducing their emissions 20 percent beyond the required control level. These allowances may be traded on the allowances market in future years and used for compliance.

Moreover, a viable NO_x allowances market was created; during the 15 months between the onset of allowance trading and 1999 reconciliation (December 30, 1999), 138,790 allowances were transferred. Of these transactions, EPA estimated that nearly 40 percent of them (53,563) were transferred between non-affiliated parties. Over 28 percent of the allowances traded were future year allowances (2000–2002 vintage years) not available for compliance in 1999; another indication that the NO_x allowance market is strong.

EPA notes that the concerns about the price of allowances did not materialize. During the first year of the OTC NO_x Budget Program, there was significant price volatility. Before the start of the program allowance prices generally fluctuated between \$1500 and \$3000 and peaked at \$7500/ton in February, 1999. However, once it became apparent that there would be more than enough allowances available for compliance in 1999, allowance prices dropped steadily. Since October 1999, the prices have been more or less steady at \$600-

\$800 a ton. As the second control period begins, there is no indication that either allowance prices or price volatility are on the rise again.

P. Specific Area and Mobile Source Measures

Comment 1: We received comments asserting that Maryland appears to have relied upon an EPA memorandum dated November 28, 1994 when calculating emission reduction credits for control measures for nonroad small gasoline engines (NSGE). The comments state that because the NSGE Phase II rules were not published until 1998, the accuracy of the emissions reductions anticipated in the 1994 guidance is questionable and that the memorandum upon which MDE appears to have relied suggests that states include a safety margin in their emission reduction estimates for NSGE. The comments conclude that there is no evidence in the SIP that MDE incorporated a safety margin into the reductions.

Response 1: The State of Maryland acted consistent with guidance provided by EPA. However, in a December 28, 2000 revision, Maryland updated its attainment demonstration and ROP plans to include the benefits expected to accrue from the final Federal rules and thus is no longer relying on the guidance cited by the comments when determining the benefits for the Federal NSGE rule. (The cited guidance does provide guidance based upon final rules for one category of nonroad sources.)

Comment 2: We received comments asserting that Maryland needs to produce up-to-date emissions reduction calculations for surface cleaning/degreasing and automobile refinishing. The comments claim that the MDE asserts that new state rules for these source categories will result in 70 percent and 45 percent reductions in VOC from degreasing and automobile refinishing products, respectively, and that these claims are not supported with reliable data and it is impossible for the public to evaluate the reliability of these predictions.

Response 2: The Maryland degreasing regulation went beyond the draft-CTG requirements (which are estimated to be around 60 percent reduction) and so should generate deeper reductions when compared to reductions anticipated from the CTG. EPA estimates the efficiency of the automobile refinishing national rule to be around 36 percent in areas which did not previously have a rule. Maryland's autobody reductions are based upon a state rule which has state limits and additional requirements such as application equipment requirements discussed in a previous

¹¹ October 30, 2000 is the first business day following the expiration of the 128-day period.

response to a previous comment in Section II.K.

Q. Measures for the One-Hour NAAQS and for Progress Requirements Toward the Eight-Hour NAAQS

Comment: One commenter notes that EPA has been working toward promulgation of a revised eight-hour ozone National Ambient Air Quality Standard (NAAQS) because the Administrator deemed attaining the one-hour ozone NAAQS is not adequate to protect public health. Therefore, EPA must ensure that measures be implemented now that will be sufficient to meet the one-hour standard and that make as much progress toward implementing the eight-hour ozone standard as the requirements of the CAA and implementing regulations allow.

Response: The one-hour standard remains in effect for all of these areas and the SIPs that have been submitted are for the purpose of achieving that NAAQS. Congress has provided the States with the authority to choose the measures necessary to attain the NAAQS and EPA cannot second guess the states' choice if EPA determines that the SIP meets the requirements of the CAA. EPA believes that the SIPs for the severe areas meet the requirements for

attainment demonstrations for the one-hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the eight-hour standard. However, EPA generally believes that emission controls implemented to attain the one-hour ozone standard will be beneficial towards attainment of the eight-hour ozone standard as well. This is particularly true regarding the implementation of NO_x emission controls resulting from EPA's NO_x SIP Call.

Finally, EPA notes that although the eight-hour ozone standard has been adopted by EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The states and EPA have yet to define the eight-hour ozone nonattainment areas and EPA has yet to issue guidance and requirements for the implementation of the eight-hour ozone standard.

III. Final Action

A. Attainment Demonstration

EPA is fully approving Maryland's attainment demonstration SIP revisions for the Philadelphia area, namely Cecil

County, which was submitted on April 29, 1998, and revised on August 18, 1998, December 21, 1999, December 28, 2000, and August 31, 2001 including its analysis and determination of RACM.

B. Commitments

EPA is approving the enforceable commitments made to the Maryland's attainment plan for the Philadelphia severe ozone nonattainment area, which were submitted on December 28, 2000. The enforceable commitments are to:

- (1) Submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory,
- (2) Revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued, and
- (3) Perform a mid-course review by December 31, 2003.

C. Mobile Budgets of the Attainment Plan for the Philadelphia Area

EPA is approving the following mobile budgets of the Maryland's attainment plan for the Philadelphia area:

TRANSPORTATION CONFORMITY BUDGETS FOR THE MARYLAND PORTION OF THE PHILADELPHIA AREA

Control Strategy SIP	Year	VOC (TPD)	NO _x (TPD)	Date of adequacy determination
Attainment Demonstration	2005	2.6	5.6	April 27, 2001 (See 66 FR 18928, published on April 12, 2001).

We are only approving the attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are approving for conformity purposes for the time being.

Similarly, EPA is only approving the 2005 attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the new additional control measures affect on-road motor vehicle emissions. Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as any such revised

budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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). This action 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. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the states to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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 the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 28, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve the ozone attainment demonstration SIP revision for the Philadelphia-Wilmington-Trenton area submitted by Maryland may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: October 15, 2001.

James W. Newsom,
Regional Administrator, Region III.

CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart V—Maryland

2. Section 52.1076 is amended by revising the section heading and by adding paragraphs (h) and (i) to read as follows:

§ 52.1076 Control strategy plans for attainment and rate-of-progress: ozone.

* * * * *

(h) EPA approves the attainment demonstration for the Philadelphia area submitted as a revision to the State Implementation Plan by the Maryland Department of the Environment on April 29, 1998, August 18, 1998, December 21, 1999, December 28, 2000, and August 31, 2001 including its RACM analysis and determination. EPA is also approving the revised enforceable commitments made to the attainment plan for the Baltimore severe ozone nonattainment area which were submitted on December 28, 2000. The enforceable commitments are to submit measures by October 31, 2001 for additional emission reductions as required in the attainment demonstration test, and to revise the SIP and motor vehicle emissions budgets by October 31, 2001 if the additional measures affect the motor vehicle emissions inventory; to revise the SIP and motor vehicle emission budgets using MOBILE6 within one year after it is issued; and to perform a mid-course review by December 31, 2003.

(i) EPA approves the following mobile budgets of Maryland's attainment plan for the Philadelphia area:

TRANSPORTATION CONFORMITY BUDGETS FOR THE MARYLAND PORTION OF THE PHILADELPHIA AREA

Control Strategy SIP	Year	VOC (TPD)	NO _x (TPD)	Date of Adequacy Determination
Attainment Demonstration	2005	2.6	5.6	April 27, 2001 (See 66 FR 18928, published on April 12, 2001).

(1) We are only approving the attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to revise the budgets using the MOBILE6 model within one year of EPA's release of that model. Therefore, we are limiting the duration of our approval of the current budgets only until such time as the revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets we are

approving for conformity purposes for the time being.

(2) Similarly, EPA is only approving the 2005 attainment demonstration and its current budgets because Maryland has provided an enforceable commitment to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the new additional control measures affect on-road motor vehicle emissions.

Therefore, EPA is limiting the duration of its approval of the current budgets only until such time as any such revised budgets are found adequate. Those revised budgets will be more appropriate than the budgets EPA is approving for conformity purposes for the time being.