Wilmington/Trenton and New York-Northern New Jersey-Long Island nonattainment areas included in New Jersey's October 16, 2001 State Implementation Plan revision is approved.

(7) The revisions to the State Implementation Plan submitted by New Jersey on August 31, 1998, October 16, 1998, and April 26, 2000 are approved. The revisions are for the purpose of satisfying the attainment demonstration requirements of section 182(c)(2)(A) of the Clean Air Act for the New Jersey portions of the Philadelphia/Wilmington/Trenton and New York-Northern New Jersey-Long Island severe ozone nonattainment areas. The revisions establish attainment dates of November 15, 2005 for the Philadelphia/Wilmington/Trenton nonattainment area and November 15, 2007 for the New York-Northern New Jersey-Long Island ozone nonattainment area. The revisions include the enforceable commitments for future actions associated with attainment of the 1-hour ozone national ambient air quality:

(i) To adopt additional control measures by October 31, 2001 to meet the level of reductions identified by EPA for attainment of the 1-hour ozone standard;

(ii) To submit revised State Implementation Plan and motor vehicle emissions budgets by October 31, 2001 if additional adopted measures affect the motor vehicle emissions inventory;

(iii) To revise State Implementation Plan and attainment year motor vehicle emissions budgets within one year after the MOBILE6 mobile emissions model is released;

(iv) To perform a mid-course review and submit the results to EPA by December 31, 2003.

[FR Doc. 02–1753 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY55–237, FRL–7132–5]

Approval and Promulgation of Implementation Plans; New York's Reasonable Further Progress Plans, Transportation Conformity Budgets, Reasonably Available Control Measure Analysis and 1-hour Ozone Attainment Demonstration State Implementation Plan

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Final rule.

SUMMARY: EPA is approving New York State Implementation Plan revisions involving the 1-hour Ozone Plan which is intended to meet several Clean Air Act requirements for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area. These requirements include the Reasonable Further Progress Plans, projection year inventories and transportation conformity budgets for milestone years 2002, 2005 and 2007, ozone contingency measures, Reasonably Available Control Measure Analysis, 1-hour Ozone Attainment Demonstration and enforceable commitments. The intended effect of this action is to approve programs required by the Clean Air Act which will result in emission reductions that will help achieve attainment of the 1-hour national ambient air quality standard for ozone in the New York-Northern New Jersey-Long Island nonattainment area.

EFFECTIVE DATE: This rule will be effective March 6, 2002.

ADDRESSES: Copies of the State's submittals are available at the following addresses for inspection during normal business hours:

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

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, 2nd Floor, Albany, New York 12233

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460

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

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking Today?

EPA is approving several State Implementation Plan (SIP) revisions submitted by New York to address Clean Air Act (CAA) requirements related to attainment of the 1-hour national ambient air quality standard (NAAQS) for ozone. These SIP submittals address the requirements for the New York-Northern New Jersey-Long Island ozone nonattainment area, which is classified as severe nonattainment. The New York portion of the New York-Northern New Jersey-Long Island Area is composed of New York City and the counties of Nassau, Suffolk, Westchester and Rockland and the towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick and Woodbury in Orange County (40 CFR 81.333). This nonattainment area will be referred to as the New York Metro Area.

Specifically, EPA is approving New York's:

—Emission inventories for 2002, 2005 and 2007 (referred to as projection year inventories);

—2002, 2005 and 2007 Reasonable Further Progress (RFP) Plans;

—Ozone contingency measures;

—2002, 2005 and 2007 transportation conformity budgets (also referred to as motor vehicle emissions budgets);

—A Reasonably Available Control Measure (RACM) Analysis; and,

—A 1-hour Ozone Attainment Demonstration including enforceable commitments

Table 1 identifies the submittal dates and amendment dates for the RFP Plans, RACM Analysis, conformity budgets and 1-hour Ozone Attainment Demonstration, which include the projection year inventories and the contingency measures:

TABLE 1.—SUMMARY OF SUBMITTALS RELEVANT TO NEW YORK'S 1-HOUR OZONE ATTAINMENT DEMONSTRATION SIP

November 27, 1998	Submittal of the 1-hour Ozone Attainment Demonstration SIP including the RFP plans, contingency measures, projection inventories, regional scale modeling and 2002 and 2005 transportation conformity budgets.
April 15, 1999	Supplement to the 1-hour Ozone Attainment Demonstration SIP containing response to comments documentation.
April 18, 2000	Supplement to the 1-hour Ozone Attainment Demonstration SIP containing measures to address the NO_X SIP Call, revised 2007 transportation conformity budgets and enforceable commitments for future actions.
June 15, 2001	Supplement to the 1-hour Ozone Attainment Demonstration SIP containing New York's proposed RACM Analysis.
October 1, 2001	Supplement to the 1-hour Ozone Attainment Demonstration SIP containing New York's final RACM Analysis.

II. What Are the Details of EPA's Specific Actions?

A. 2002, 2005 and 2007 Projection Year Emission Inventories

On November 27, 1998, New York submitted a SIP revision which contained the 2002, 2005 and 2007 ozone projection year emission inventories for the New York Metro Area. These emission inventories contained information on both volatile organic compounds (VOCs) and nitrogen oxides (NO_X). EPA proposed approval of the inventories on August 13, 2001 (66 FR 42479) and extended the comment period for this proposal on October 16, 2001 (66 FR 53560).

B. 2002, 2005 and 2007 Reasonable Further Progress Plans

On November 27, 1998, New York submitted a SIP revision which contained the 2002, 2005 and 2007 RFP Plans for the New York Metro Area. New York has identified the control measures necessary to achieve the required emission reductions and all the measures have been adopted and implemented. These plans identify the control measures which will be generating the emission reductions needed to achieve the three percent per year reduction averaged over each consecutive three-year period until the area reaches attainment. EPA proposed approval on August 13, 2001 (66 FR 42479) and extended the comment period for this proposal on October 16, 2001 (66 FR 53560).

C. Ozone Contingency Measures

On November 27, 1998, New York submitted a SIP revision which contained the ozone contingency measures for the New York Metro Area necessary to fulfill the RFP and ozone attainment requirements of section 172(c)(9) of the CAA. Contingency measures are control measures that must be implemented should an ozone nonattainment area fail to achieve RFP or to attain the NAAQS within the timeframes specified under the CAA. Consistent with EPA guidance, New York used a combination of excess VOC and NO_X emission reductions (0.3 percent VOC and 2.7 percent NO_X), resulting from the implementation of adopted State control programs, which will occur by each milestone and the attainment year which in both cases are 2002, 2005 and 2007. EPA proposed approval of the contingency measures on August 13, 2001 (66 FR 42479) and extended the comment period for this proposal on October 16, 2001 (66 FR 53560).

D. Conformity Budgets

On November 27, 1998, New York submitted a SIP revision which contained the 2002, 2005 and 2007 transportation conformity budgets for the New York Metro Area. On November 16, 1999 (64 FR 62194) EPA found the 2002 and 2005 budgets for RFP adequate for conformity purposes. On April 18, 2000, New York revised the 2007 budgets to reflect the 1-hour Ozone Attainment Demonstration SIP for the New York Metro Area. On June 9, 2000 (65 FR 36690), EPA found the revised 2007 budget for RFP and attainment adequate for conformity purposes. EPA proposed approval of the conformity budgets on August 13, 2001 (66 FR 42479) and extended the comment period for this proposal on October 16, 2001 (66 FR 53560).

These conformity budgets (see Table 2), which EPA is approving today, are consistent with the measures in New York's RFP and attainment plans that are also being approved today. It is important to note that New York has committed to revise the 2007 transportation conformity emissions budget that EPA is approving today within one year of the official issuance of the MOBILE6 motor vehicles emissions model for regulatory purposes. Therefore, EPA is approving these budgets only until New York meets its commitments and submits new 2007 budgets, and EPA finds those budgets adequate. Accordingly, once the revised budgets are submitted by the State and found adequate by EPA, they will replace the 2007 emissions budgets being approved today for conformity purposes.

TABLE 2.—EMISSION BUDGETS FOR CONFORMITY PURPOSES

[Tons per day]

County	2002		2005		2007	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
Bronx	11	17	10	16	9	12
Kings	17	22	16	21	15	17
Nassau	38	50	36	48	36	44
New York	15	15	13	14	12	11
Lower Orange County Metro Area	4	8	4	8	3	6
Queens	23	31	21	29	19	23
Richmond	7	10	6	10	7	9
Rockland	9	15	8	15	7	11
Suffolk	35	56	33	55	34	51
Westchester	22	41	20	39	21	37
Total	*179	*266	*167	*254	*161	*221

*The totals represent the actual motor vehicle conformity emissions budgets for VOC and NO_X. New York subdivided the county budget numbers from the totals and rounded off to the nearest whole number, therefore, a sum of the county budget numbers identified in Table 2 may be slightly different from the total budget numbers identified in Table 2. New York did not adopt subregional budgets, the county breakdowns are only for informational purposes in explaining how New York established the totals.

E. New York's Reasonably Available Control Measure (RACM) Analysis

On June 15, 2001 and supplemented on October 1, 2001, New York submitted to EPA its assessment of whether any additional RACM are available to advance the 1-hour ozone attainment date from 2007 to an earlier year for the New York Metro Area. On September 11, 2001 (66 FR 47139) EPA proposed approval of New York's RACM Analysis and EPA extended the comment period for that proposal on October 16, 2001 (66 FR 53560). EPA is approving New York's RACM Analysis and has determined that there are no additional RACM's beyond those measures already included in the New York SIP that, when implemented, would advance the attainment date in the New York Metro Area from 2007 to an earlier year. However, EPA does believe that the control strategies considered in New York's RACM analysis may have potential for reducing ozone levels over the longer term, and we recommend that New York and other states in the Ozone Transport Region revisit these control strategies when they begin implementation of the 8-hour ozone standard.

F. 1-Hour Ozone Attainment Demonstration State Implementation Plan (SIP) Including Enforceable Commitments

On December 16, 1999 (64 FR 70364)), EPA proposed approval of New York's 1-hour Ozone Attainment Demonstration SIP. EPA's December 16, 1999 proposed approval of New York's 1-hour Ozone Attainment Demonstration SIP was contingent upon New York submitting the following:

- The adopted NO_X SIP Call program as a SIP revision;
- The adopted CAA required measures for severe nonattainment areas and adopted measures relied on in the modeled 1-hour Ozone Attainment Demonstration SIP;
- Enforceable commitments to:

—Adopt additional control measures to meet that level of reductions identified by EPA for attainment of the 1-hour ozone standard;

—Work through the Ozone Transport Commission (OTC) to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA;

—Adopt and submit intrastate measures for the emission reductions (Backstop) in the event the OTC process does not recommend measures that produce emission reductions;

—Submit revised SIP and motor vehicle emissions budget if additional adopted measures affect the motor vehicle emissions inventory;

—Revise SIP and motor vehicle emissions budget within 1 year after MOBILE6 is issued;

—Perform a mid-course review and submit the results to EPA by December 31, 2003.

On April 18, 2000, New York submitted a revision to the 1-hour Ozone Attainment Demonstration SIP for the New York Metro Area which addressed the requirements identified above. How New York fulfilled these requirements is discussed in more detail below.

(1) NO_X SIP Call Submittal

On November 15, 1999, New York adopted Part 204, ''NO_X Budget Trading Program,'' of New York's Code of Rules and Regulations (NYCRR) in order to strengthen its 1-hour Ozone Attainment Demonstration SIP and to comply with the NO_X SIP Call. On May 22, 2001 (66 FR 28059), EPA approved New York's regulations as complying with the NO_X SIP Call. It is important to note that New York is implementing its NO_X SIP Call rules requiring source compliance by 2003, even though an order from the DC Circuit Court allowed that full implementation could be rolled back to 2004.

(2) Clean Air Act Measures and Control Measures Relied on in the Modeled 1-Hour Ozone Attainment Demonstration SIP

New York has adopted the control measures already required under section 182 of the CAA for the New York Metro Area. Table 3 presents a summary of the control measures that are relied on in the 1-hour Ozone Attainment Demonstration SIP, including Rate of Progress (ROP—plans which require emission reductions from 1990 through 1996) and RFP plans (plans which require emission reductions from 1996 through the attainment year of 2007) for the New York Metro Area. The reader is referred to EPA's November 3, 1999 (64 FR 59706) and August 13, 2001 (66 FR 42479) proposed approvals of New York's ROP and RFP Plans for a more detailed discussion of the control measures identified.

TABLE 3.—SUMMARY OF CONTROL MEASURES

Control measures	Type of measure
Non-Road Mobile Source:	
Reformulated Gasoline (Phases I & II)	Federal.
New Engine Standards	Federal.
On-Road Mobile Source:	
Reformulated Gasoline (Phases I & II)	Federal.
Tier I—New Vehicle Standards	Federal.
Low Emission Vehicle	State adopted and SIP approved.
Enhanced Inspection and Maintenance (I/M)	State adopted and SIP approved.
2004 NO_X Emission Standards	Federal.
Stationary Source control measures:	
VOC Reasonably Available Control Technology (RACT) —Control Techniques Guidelines (CTG) major sources —Non-CTG major sources	State adopted and SIP approved.
MACT (Federal Air Toxics Measures)	Federal.
Ozone Transport Commission (OTC) Phase II Baseline	State adopted and SIP approved.
NO_X RACT	State adopted and SIP approved.
NO_X SIP Call	State adopted and SIP approved.
Large Municipal Waste Combustors	State adopted and SIP approved.
Area Source control measures:	
Architectural and Industrial Maintenance Coatings	State adopted and SIP approved.
Auto Body Refinishing	Federal.
Commercial Bakeries	State adopted and SIP approved.
Consumer Products	Federal.
Graphic Art Facilities	State adopted and SIP approved.
Hospital Sterilizers	State adopted and SIP approved.
Municipal Solid Waste Landfills	State adopted and SIP approved.
Stage II gasoline vapor recovery	State adopted and SIP approved.
Transit/Loading Losses	State adopted and SIP approved.
Surface Cleaning	State adopted and SIP approved.

(3) Enforceable Commitments

Additional Measures To Further Reduce Emissions

On April 18, 2000 New York submitted an enforceable commitment to adopt additional control measures to meet that level of reductions identified by EPA in its December 16, 1999 (64 FR 70364) proposed approval of New York's 1-hour Ozone Attainment Demonstration SIP and to submit those measures by October 31, 2001.

In addition, as a backstop, New York committed to adopt intrastate measures sufficient to achieve the additional reductions if the regional measures are not adopted by the relevant states, and to submit such rules by October 31, 2001.

New York also committed to work through the OTC process to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA. In fact, New York has taken a leadership role in the OTC process of identifying and developing regional control strategies that would achieve the necessary additional reductions to attain the 1-hour ozone standard. New York plans to implement regulations consistent with the OTC recommendations, which include a consumer products rule, an architectural and industrial coatings rule, a mobile equipment refinishing rule, a solvent cleaning rule, controls on portable fuel containers as well as the NO_X model rule (NO_X reductions from sources that are neither included in the 1994 OTC NO_X Memorandum of Understanding for regional NO_X reductions or covered by EPA's NO_X SIP Call). New York has begun its regulatory development process for these measures. EPA believes that New York is making sufficient progress to support approval of the commitment, because New York will adopt and implement the additional measures within a time period fully consistent with the New York Metro Area attaining the standard by November 15, 2007. In a letter dated December 31, 2001, New York provided additional information on their progress in addressing the shortfall in emission reductions. See also section III. D. for an expanded discussion on New York's commitment.

Conformity Budgets

a. On April 18, 2000, New York committed to recalculate and submit a revised motor vehicle emissions budget if any of the additional emission reductions pertain to motor vehicle measures.

b. All states whose attainment demonstration includes the effects of the Tier 2/sulfur program have committed to revise and re-submit their motor vehicle emissions budgets after EPA issues MOBILE6. On April 18, 2000, New York submitted an enforceable commitment to revise its attainment year transportation conformity budgets within one year after MOBILE6 is issued.

As we proposed in the July 28, 2000 supplemental notice of proposed rulemaking (65 FR 46383), the final approval action we are taking today will be effective for conformity purposes only until revised motor vehicle emissions budgets are submitted and EPA has found them adequate. EPA is limiting the duration of its approval in this manner because it was only approving the attainment demonstrations and their budgets contingent on the states commitment to revise them after EPA issues MOBILE6. Therefore, once EPA has confirmed that the revised budgets are adequate, they will be more accurate to be used for conformity purposes than the budgets EPA is approving today.

In addition, EPA reopened the comment period to allow comment on the 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, including New York, 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 46387, July 28, 2000).

Mid-Course Review

On April 18, 2000, New York submitted an enforceable commitment to perform a mid-course review and submit the results of this review to EPA by December 31, 2003.

III. What Comments Were Received in Response to EPA's Proposals and How Has EPA Responded to Those Comments?

EPA received comments from the public on the Notice of Proposed Rulemaking published on December 16, 1999 (64 FR 70364) for New York's 1-hour Ozone Attainment Demonstration SIP.

In addition, EPA received comments from the public on the supplemental notice of proposed rulemaking published on July 28, 2000 (65 FR 46383) on the attainment demonstrations, in which EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs.

EPA also received comments on the August 13, 2001 (66 FR 42479) proposed approval of the New York RFP plans and transportation conformity budgets for 2002, 2005 and 2007 and the September 11, 2001 (66 FR47139) proposed approval of the New York RACM Analysis.

A. Attainment Demonstration

1. General Comments

Comment: Several commenters urged EPA to disapprove the attainment plan because they believe the plan does not include complete modeling, enforceable versions of all RACM and a control strategy sufficient to achieve attainment. One commenter went on to say that because they believe the plan should be disapproved under the consent decree in *NRDC* v. *Browner,* Civ. No. 99–2976, EPA must commence promulgation of a Federal Implementation Plan (FIP). One commenter supported the proposed approval.

Response: In the following responses, we address the specific concerns raised by the commenters in more detail. We believe the plan provided by the State of New York is fully approvable under the CAA and will provide for attainment as expeditiously as practicable which is by November 15, 2007, and that the plan includes all RACMs. Therefore, we are finalizing our approval in this action. Furthermore, because we are fully approving the plan as meeting the requirements of 182(c)(2) and (d) of the CAA, it is unnecessary to commence development of a FIP.

Comment: New York has not provided modeling that shows attainment in 2007. A commenter also states that there is no demonstration of maintenance of the ozone standard below the 0.12 parts per million (ppm) one-hour standard beyond 2007.

Response: EPA has taken the position that for nonattainment areas subject to the requirements of subpart 2 of part D of the CAA, the area needs to demonstrate that in the attainment year, the area will have air quality such that the area could be eligible for the two one-year extensions provided under section 181(a)(5) of the CAA. Under section 181(a)(5), an area that does not have three-years of data demonstrating attainment of the ozone NAAQS, but has complied with all of the statutory requirements and has no more than one exceedance of the NAAQS in the attainment year, may receive a one-year extension of its attainment date. Assuming those conditions are met the following year, the area may receive an additional one-year extension. If the area has no more than one exceedance in this final extension year, then it will have three-years of data indicating that it has attained the ozone NAAQS.

This position is consistent both with EPA's modeling guidance and with the structure of subpart 2 of the CAA. Under EPA's modeling guidance, states model air quality for the attainment year—they do not model air quality for the three-year period preceding the attainment year. As a function of how the model operates, the data produced only predicts the air quality for one year. EPA's modeling guidance has existed for many years and has been relied on by numerous nonattainment areas for demonstrating attainment of the ozone standard. Moreover, EPA believes this approach is consistent with the statutory structure of subpart 2. Under subpart 2, many of the planning obligations for areas were not required to be implemented until the attainment year. Thus, Congress did not assume that all measures needed to attain the standard would be implemented three years prior to the area's attainment date. For example, areas classified as marginal—which had an attainment date of three years following enactment of the 1990 Clean Air Act amendments were required to adopt and implement RACT and I/M ''fix-ups'' that clearly could not be implemented three years prior to their attainment date. Similarly, moderate areas were required to implement RACT by May 1995, only 18 months prior to their attainment date of November 1996. Also, the ROP requirement for moderate and above areas, including the 15 percent ROP plan for reductions by November 1996, applies through the attainment year. Thus, EPA believes that Congress did not intend that these additional mandatory reductions be in excess of what is needed to achieve three-years of ''clean data.''

For the reasons provided above, EPA does not agree with the commenter that the State's attainment demonstration needs to demonstrate that the area will have three-years of data showing attainment in the attainment year. However, EPA does believe that the CAA requires and that it is prudent for states to implement controls as expeditiously as practicable. EPA also believes that for the New York Metro Area, all measures are being implemented as expeditiously as practicable and that the area has demonstrated attainment consistent with EPA's modeling guidance.

A plan for maintenance of the standard is not necessary for the attainment demonstration to be approved. A state is not required by the CAA to provide a maintenance plan until the state petitions for an area to be redesignated to attainment which will not occur until the New York Metro Area has three-years of data showing compliance with the 1-hour ozone standard. While it is not necessary for the State to provide for maintenance of the standard at this time, we do believe emissions in the New York Metro Area will continue to decrease after 2007 due to on- and off-road vehicle emission control programs that will continue to provide additional reductions as the fleet continues to turnover after 2007. So there is reason to believe that air quality will continue to improve after the attainment date.

2. 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 1-hour standard. Section 182(c)(2)(A) provides that ''this 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).'' [1] 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. 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 1-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 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) 1-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).[2]

In 1996, EPA issued guidance [3] 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, a 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 1-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 guidance [4] 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 1-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

[1] 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.

[2] Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS. EPA–454/B–95–007, June 1996.

[3] Ibid.

[4] ''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.*

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.

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 reach attainment 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 reach attainment.

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 proposals 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 parts per billion (ppb) on every modeled day. However, the commenter's approach may overestimate needed controls because the form of the standard allows up to three exceedances in three 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 WOE determination.

When reviewing a SIP, the 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.

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 in order 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 parts per billion 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: (1) it obviates the need to expend more time and resources to perform additional modeling; (2) it is more consistent with recommendations referenced by Appendix W because the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which does not assume a direct proportional relationship between ozone and its precursors; (3) 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 to use the November 1999 guidance ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled'' in the December 16, 1999 proposal 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) There are 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 of these limitations, 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 and has determined that the 1999 monitor values do not constitute substantial evidence indicating that the SIPs will not provide for attainment. The values given do not reflect either the local or regional control programs which are scheduled for implementation in the next several years. Once implemented, the local or regional control programs 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/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 issued. 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.

Comment: The NAAQS require that in order to demonstrate attainment of the 1-hour NAAQS that no more than 4 ambient ozone concentrations exceed 0.12 ppm (235 micrograms per cubic meter) within any three-year period. That standard was based on the evidence needed to establish a margin of safety for ozone. Unlike the 8-hour standard, the 1-hour standard contains no ''rounding convention.'' No provision of the rule provides authority for EPA to approve SIPs that will only achieve 124 ppb (242.6 grams per cubic meter). Thus even if EPA has authority to adopt WOE criteria as a substitute for modeled demonstrations of attainment, which we dispute, then the New York SIP submission does not demonstrate attainment of the 1-hour NAAQS because it only proposes to reduce ambient ozone to 124 ppb.

Response: Although the 1-hour NAAQS itself includes no discussion of specific data handling conventions similar to that of the 8-hour NAAQS, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard. EPA has clearly communicated the data handling conventions for the 1-hour ozone NAAQS in regulation and guidance documents. In the 1990 Amendments to the CAA, Congress expressly recognized the continuing validity of EPA guidance.

As early as 1977, two years before EPA promulgated the 1-hour ozone NAAQS, EPA provided in guidance that the level of the standard dictates the number of significant figures to be used in determining whether the standard was exceeded (Guidelines for the Interpretation of Air Quality Standards, OAQPS No. 1.2–008, February 1977). In addition, the regulations governing the reporting of annual summary statistics from ambient monitoring stations for use by EPA in determining national air quality status clearly indicate the rounding convention to be used for 1-hour ozone data (40 CFR Part 58, Appendix F). In 1979, EPA issued additional guidance specific to ozone in which EPA provided that ''the stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard.'' (Guideline for the Interpretation of Ozone Air Quality Standards, EPA–450/4–79–003, at p. 6.) EPA's guidance on air quality modeling is consistent with those Guidelines. *See e.g.*, Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, July 1996.

The level of the 1-hour ozone NAAQS is defined in 40 CFR 50.9 as 0.12 ppm, not 120 ppb as implied by the commenter. In other words, the 1-hour ozone NAAQS is specified as two significant digits and the data handling approach employed to compare ambient air quality data to the 1-hour ozone standard is to round to two decimal places as per the regulations and guidance referenced above.

In the 1990 Amendments to the CAA, Congress expressly provided that ''[e]ach regulation, standard, rule, notice, order and *guidance* promulgated or issued by the Administrator under this Act, as in effect before the date of the enactment of the CAA Amendments of 1990 shall remain in effect according to its terms * * *'' Thus, under the amended CAA, Congress expressly carried forth EPA interpretations set forth in guidance such as the guideline documents interpreting the NAAQS.

B. Reliance on the NO_X SIP Call and the Tier 2/Sulfur Rule

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. *United States Env. Prot. Agency*, 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). 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/Sulfur program for the severe area 1-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 1-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the states to achieve the full level of the NO_X SIP Call reductions by May 2004. 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 court in the *Appalachian Power* case remanded an issue concerning computation of the electric generating unit growth factor, it is EPA's view that states should assume that the NO_X 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*.

Comment: New York State Department of Environmental Conservation (NYSDEC) commented that EPA is proposing that the State submit the NO_X SIP Call prior to EPA's taking final action on the December 16, 1999 proposal. However, the State agency believes that it cannot submit a SIP until EPA publishes a correction to its ''Technical Amendment to the Finding of Significant Contribution and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone.''

Response: New York submitted this comment in early 2000, prior to the time EPA published a technical amendment (*see* 65 FR 11222, March 2, 2000), which revised the NO_X statewide emissions budget for New York and other affected states. Since that time, New York submitted its rule in response to the NO_X SIP Call rule and EPA approved the rule (66 FR 28059).

Comment: New York has decided to commit to the California Low Emission Vehicle Program (CA LEV II), rather than meeting EPA's Tier 2 tailpipe emissions program. The Department recommends that EPA's final rulemaking permit New York the option of modeling CA LEV II.

Response: EPA has permitted New York the option of modeling CA LEV II. On June 9, 2000 (65 FR 36690) EPA notified the public that EPA has found that the motor vehicle emissions budget for VOC's and NO_X, in the submitted 2007 1-hour Ozone Attainment Demonstration SIP for the New York Metro Area, is adequate for conformity purposes. New York's motor vehicle emissions budget reflects the results of a modeled CA LEV II program.

C. Comments on RACM

1. General RACM Comments

Comment: Several commenters have stated that there is no evidence that New York has adopted RACM or that the SIP provides 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 a motor vehicle emission budget that is derived from a SIP that is inadequate for the purpose for which it is submitted. The commenter alleges that none of the motor vehicle emissions budgets 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 State must provide a justification for why the measures were determined to not be RACM.

Response: EPA reviewed the initial SIP submittals for the New York Metro Area 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 1-hour Ozone Nonattainment Area SIPs'').

However, New York supplemented its original SIP with an analysis of RACM (request to parallel process submitted on June 15, 2001 and adopted revision submitted on October 1, 2001). EPA proposed to approve this supplement to the SIP as meeting the RACM requirements on September 11, 2001 (66 FR 47139). Based on this supplement, EPA concluded that the SIP for the New York Metro Area meets the requirement for adopting RACM.

Section 172(c)(1) of the CAA requires SIPs to contain RACM and provides for areas to reach attainment as expeditiously as practicable. EPA 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. The EPA also issued a recent memorandum re-confirming 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: *http://www.epa.gov/ttn/oarpg/t1pgm.html.*

On June 15, 2001, New York submitted a proposed analysis of RACM for the New York Metro Area which was adopted after public hearing on October 1, 2001 without substantive changes. The RACM analysis included an evaluation of potential TCMs for on-road mobile sources, potential control measures for point, area and off-road sources, and other non-TCM on-road control measures.

New York determined that there are no additional control measures, above and beyond what the State is already implementing, that would advance the 2007 attainment date specified in the CAA for severe ozone nonattainment areas, because the reductions from any potential RACM measures in the short-term are small compared to the reductions that will be achieved by 2007 through measures that are already in place or through measures which the State has previously committed to implement. In fact, the New York 1-hour

Ozone Attainment Demonstration SIP for the New York Metro Area, the 15 percent ROP plan, and the continuing 3 percent per year RFP emission reductions, already require emission controls on a wide variety of sources. Nevertheless, New York clearly states that there is nothing within its RACM assessment that precludes it from adopting the measures discussed in the assessment for the purpose of meeting the requirements for motor vehicle transportation conformity, attainment of an 8-hour ozone standard or any other air quality standard, and control of certain air toxins, or for any other reason to protect public health. In fact, over the period beyond the attainment date, some of these strategies may provide significant benefit. In some instances, there are efforts already underway to implement some strategies.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for the New York Metro 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., http://www.epa.gov/otaq/transp.htm.* In order to demonstrate that they will attain the 1-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures—including the kind that New York 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 CAA'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.

EPA previously responded to comments concerning the adequacy of motor vehicle emissions budgets when EPA took final action determining the budgets adequate and does not address those issues again here. The responses are found at *http://www.epa.gov/otaq/transp/conform/reg2sips.htm#ny.*

Comment: A commenter stated that New York State's submission fails to demonstrate how implementation of the two RACM it considered (referring to a construction/ozone action day program and alternate fuel program) and the other RACM is summarily dismissed from consideration, when taken together, would not advance the ozone attainment date. The commenter states that New York uses an arbitrary threshold value for screening individual control measures.

Response: New York's analysis of potential RACM considered information from the following sources:

1. Section 108(f) of the CAA
2. A list of control measures completed by the State and Territorial Air Pollution Program Administrators (STAPPA)/Association of Local Air Pollution Control Officials (ALAPCO)
3. Ozone attainment suggested shortfall measures developed by the Ozone Transport Commission (OTC)
4. Control measures implemented through the California Federal Implementation Plan
5. Control measures implemented in other serious and severe ozone nonattainment areas
6. Control measures suggested by commenters during public comment periods on New York's attainment SIP, and
7. Transportation Control Measures analyzed by the New York State Department of Transportation (NYSDOT) in a document entitled, ''NYSDOT Conformity Measure Analysis''

New York's analysis summed the VOC and NO_X potential emission reductions from the numerous possible measures, including all the reductions from all the measures identified in the NYSDOT study. New York's analysis of TCM's examined the potential emissions reductions from measures included in the documents listed previously. Although, New York did establish a threshold value for screening individual control measures, EPA in its review for approvability, reanalyzed the measures identified by New York as having potential emission reductions and supplemented New York's rationale on why we believed certain measures could be rejected as RACM. In its review of the potential emission reductions identified by New York, EPA, as did New York, rejected measures as not being RACM because they either would not advance the attainment date (when combined would produce only a negligible amount of emission reductions), 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.

The combination of measures examined by New York indicate potential reductions, but it is important to note that the estimate did not consider practical limitations in their implementation prior to 2007. Unfortunately, many of the actions needed to bring these measures to full fruition cannot be fully implemented in time to advance the attainment date from 2007 to an earlier year. For the NYSDOT study in particular, the measures are currently under interagency review and represent values at the maximum potential emissions reduction range and not values that could potentially be achieved before 2007. For instance, the NYSDOT study estimated significant potential emission reductions associated with a construction/ozone action day program. However, NYSDOT in estimating the emission reductions, did not consider significant issues which need to be addressed before it can be considered a RACM for the 1-hour ozone standard. These include analyses of: (1) Quantity of night-time construction that already takes place to ensure that emission reduction benefits are not ''double counted;'' (2) air quality impacts to ensure that the night-time emissions for New York are not contributing to ozone problems in downwind nonattainment areas; (3) air pollutant emissions from generators needed for lighting and supporting night-time activities; (4) costs associated with implementing the construction/ozone action day program; and (5) the estimated number of ozone action days based on exceedances of the 1-hour ozone standard and not an 8-hour standard. These considerations would substantially reduce the emission reductions for a construction/ozone action day program.

On a related note, New York's analysis of the impact of alternate fuel-consuming vehicles examined the benefits associated with conversion of all government vehicles in the New York Metro Area, regardless of vehicle weight, age or function, to use fuels which exhibit fewer emissions than gasoline-consuming vehicles. While New York identified significant potential reductions associated with an alternate fuels program, there is a lack of sufficient infrastructure currently in place for supply of alternate fuel for all government fleets. In addition, the analysis double counts reductions from vehicles that have already been converted. The New York City Department of Transportation currently only has two compressed natural gas (CNG) bus refueling stations capable of handling 200 buses each, with plans to convert five more stations by 2005. This would give a total capacity of seven stations for 1400 buses, out of a fleet of 3000 buses available for conversion. Moreover, the analysis does not recognize that existing non-CNG buses may have a useful life that extends beyond 2007 and that it may not be economically feasible to replace these buses before completion of their useful life. The promise of substantial emission reductions associated with this measure is contingent on a phase-in period for fleet vehicle turnover and further infrastructure development, which can be achievable, but not in time to advance attainment by 2006 or sooner. Therefore, this measure cannot be considered a RACM for the 1-hour ozone standard. Nevertheless, EPA believes alternate fuels for government vehicle fleets does offer potential emissions reductions to help achieve long-term environmental benefits.

New York's RACM Analysis and EPA's evaluation of their analysis did look at all measures in various categories at a reasonable level of implementation and concluded that as a whole these categories of measures taken together would not advance attainment or would otherwise not be reasonably available.

2. RACM Requirements (Comments on EPA's October 16, 2000 Notice of Availability)

The following comments are similar to comments EPA received in response to its October 16, 2000 Notice of Availability (65 FR 61134). Notice was given that EPA performed an analysis to evaluate emission levels of NO_X and VOC and their relationships to the application of current and anticipated control measures expected to be implemented in four serious 1-hour ozone nonattainment areas. Although the New York Metro severe ozone nonattainment area was not included in EPA's October 16, 2000 Notice of Availability, the commenter resubmitted these comments in response to EPA's September 11, 2001 (66 FR 47139) proposed approval of New York's RACM analysis because they believe that the comments are appropriate to New York's RACM analysis.

Comment: Inappropriate grounds for rejecting RACM. The commenter claims that EPA's bases for rejecting measures as RACM are inappropriate considerations: (a) The measures are ''likely to require an intensive and costly effort for numerous small area sources''; or (b) the measures ''do not advance the attainment dates'' for the areas, 65 FR 61134. Neither of these grounds are legally or rationally sufficient bases for rejecting control measures. The commenter further states that motor vehicle Inspection and Maintenance (I/M) requires intensive and costly effort and Congress mandated it.

Response: The EPA's approach toward the RACM requirement is grounded in the language of the CAA. Section 172(c)(1) states that a SIP for a nonattainment area must meet the following requirement, ''In general. Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.'' [Emphasis added.] The EPA interprets this language as tying the RACM requirement to the requirement for attainment of the national primary ambient air quality standard. The CAA provides that the attainment date shall be ''as expeditiously as practicable but no later than * * * '' the deadlines specified in the CAA. EPA believes that the use of the same terminology in conjunction with the RACM requirement serves the purpose of specifying RACM as the way of expediting attainment of the NAAQS in advance of the deadline specified in the CAA. As stated in the ''General Preamble'' (57 FR 13498 at 13560, April 16, 1992), ''The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the area's attainment demonstration.'' [Emphasis added.] In other words, because of the construction of the RACM language in the CAA, EPA does not view the RACM requirement as separate from the attainment demonstration requirement. Therefore, EPA believes that the CAA supports its interpretation that measures may be determined to not be RACM if they do not advance the attainment date. In addition, EPA believes that it would not be reasonable to require implementation of measures that would not in fact advance attainment. See 57 FR 13560. EPA has consistently interpreted the CAA as requiring only such RACM as will provide for expeditious attainment since the Agency first addressed the issue in guidance issued in 1979. See 44 FR 20,372, 20,375 (April 4, 1979).

The term ''reasonably available control measure'' is not actually defined in the definitions in the CAA. Therefore, the EPA interpretation that potential measures may be determined not to be RACM if they require an intensive and costly effort for numerous small area sources is based on the common sense meaning of the phrase, ''reasonably available.'' A measure that is reasonably available is one that is technologically and economically feasible and that can be readily implemented. Ready implementation also includes consideration of whether emissions from small sources are relatively small and whether the administrative burden, to the states and regulated entities, of controlling such sources was likely to be considerable. As stated in the General Preamble, EPA believes that states can reject potential measures based on local conditions including cost. 57 FR 13561.

Also, the time needed to develop rules will vary. Such development will likely take much longer for a large number of very different source categories of small sources for which little control information may exist, than for source categories for which control information exists or that comprise a smaller number of larger sources. The longer the time it takes a state to develop rules the less likely the possibility that the emission reductions from the rules would advance the attainment date. New York has determined and we agree that such additional measures in the New York Metro Area could not be developed soon enough to advance the attainment date.

In reference to I/M, Congress never mandated it as RACM but rather required it separately and EPA disagrees that I/M is not economically feasible, in fact we think it is relatively cheap for the resulting emission reductions.

Comment: Congress ratified EPA's 1979 RACM guidance as interpreted in the *Delaney* v. *EPA*, 898 F.2d 687 (1990) case. This decision indicates Congress' intent that states should include control measures in a SIP unless the state determines that such measures are not reasonably available.

Response: EPA changed that guidance in the 1992 ''General Preamble'' to remove the presumption that section 108(f) of the CAA measures were RACM and to clarify that areas only need such RACM as will advance attainment, see 57 FR 13498, 13560–61.

Comment: Although EPA does not articulate a dividing line between its perception of ''small'' and ''not small'' reductions, it does assert that the range of reductions it predicts from the RACMs analyzed in the October policy proposal are ''relatively small.'' These ranges are 2.03 to 29.7 tons per day of VOC and 3.56 to 17.07 tons per day for NO_X. EPA has granted (or proposed to grant) emission reduction credit of comparable or even smaller magnitude for other measures that are included in these SIPs.

Response: EPA has approved emission reduction credits of comparable or even smaller magnitude where New York has adopted certain measures and submitted them as part of SIP revisions, however, EPA has never said that those measures were required as RACM.

Comment: The mandate that nonattainment area SIPs contain all RACM is set out as a separate and distinct requirement in the CAA from the requirement that SIPs provide for attainment of ozone standards as expeditiously as practicable. Congress intended that the RACM requirement serve objectives beyond merely attaining the NAAQS. Plans are also required by section 110(a)(1) of the CAA to maintain the NAAQS.

Response: Areas, including the New York Metro Area, have met the ROP and RFP requirements and will have to show maintenance if they request redesignation. The SIP being approved today is designed to show attainment of the 1-hour ozone standard and the RACM requirement is keyed to expeditious attainment not ROP or maintenance.

Comment: Failure to quantify reductions needed to reach attainment sooner: Even if advancement of the attainment date were a relevant test for RACM, EPA has failed to rationally justify its claim that additional control measures would not meet that test. To begin with, neither the Agency nor the states have quantified, in a manner consistent with EPA rules and guidance, the emission reductions that would be needed to attain the standard prior to achievement of emission reductions required under the NO_X SIP Call. Nowhere is there an analysis that shows what it would take to attain in 2004, 2005, 2006 or 2007. This comment generally repeats a comment provided on EPA's October 12, 2000 Notice of Availability proposing EPA's RACM action for the three areas of Atlanta, Washington DC and Springfield, MA.

Response: First, note that while the commenter makes reference to the NO_X SIP Call, on November 15, 1999, New York adopted Part 204, ''NO_X Budget Trading Program,'' of New York's Code of Rules and Regulations (NYCRR) in order to strengthen its 1-hour Ozone Attainment Demonstration SIP and to comply with the NO_X SIP Call. On May 22, 2001 (66 FR 28059) EPA approved New York's regulations to comply with the NO_X SIP Call. It is important to note that New York is implementing its NO_X SIP Call rules with full compliance by 2003, even though a decision by the DC Circuit Court allowed that full implementation could be rolled back to 2004. These NO_X control measures in New York are thus being implemented on a more expeditious schedule and as expeditiously as is practicable.

Further, it would be futile for New York to attempt to quantify the emission reductions that could be possible for the New York Metro Area to attain prior to the 2007 deadline. With all of the adopted control measures, and with the enforceable commitments to achieve the additional 85 tons/day of NO_X emission reductions needed for attainment in the New York-Northern New Jersey-Long Island severe ozone nonattainment area, plus the necessary reliance upon Federal measures, including the amount of cleaner on-and off-road vehicles that will enter the fleet in years prior to 2007, there are simply no additional measures that EPA is aware of that are reasonably available or economically feasible that could be implemented, much less implemented in time, to achieve attainment in advance of when the measures are being implemented in this plan. Thus, EPA does not believe that any additional measures could advance the attainment date.

Comment: Inadequate RACM analysis: The commenter states that EPA's RACM analysis is grossly inadequate in several key respects. This comment has several components which are summarized and addressed in (a) through (c) below.

Comment (a): EPA's analysis fails to provide the technical basis and calculations by which it developed its emission reduction estimates for various measures. EPA failed to provide citations to the literature regarding estimates of emission reductions for various TCMs. EPA failed to specify the level of implementation assumed for some of the TCMs in the analysis. The proposal published for New York suffers from the same deficiency. EPA identifies no analysis of the emissions reductions benefits achievable from the eight evaluated measures, does not discuss any emissions reduction estimates in the proposal, and cites no technical support document for the proposal.

Response (a): EPA's RACM analysis (found at *www.epa.gov/ttn/rto*) did provide the technical basis and calculations for its emission reduction estimates for control possible for the source categories in the emission inventory. The commenter apparently believes EPA's analysis is insufficient, however. The technical basis for the analyses and the assumptions used in the calculation of estimated emission reductions were derived from a review of the literature on the implementation and effectiveness of TCM's.[5] The TCMs evaluated depend on the level of implementation. Implementation variables, representing levels of implementation effort, are implicit in the range of effectiveness for each category of TCM. EPA does not believe it is necessary, or even possible, to evaluate every explicit variation of TCMs in order to adequately determine if it is reasonably available. EPA believes that using the midpoint level of effectiveness represents a level of implementation effort that is not so high as to be economically infeasible, nor so low as to be ineffective. EPA reviewed all potential TCMs at a mid-level of implementation and concluded that together they would not advance the attainment date.

In reference to the RACM analysis performed by New York, EPA evaluated New York's technical basis and estimates of potential emission reduction benefits for controls possible for all of the source categories. Regarding the TCM category, we provided an additional technical evaluation when reviewing New York's analysis for approvability. In conclusion, we determined that at a reasonable level of implementation, all potential categories of TCMs taken

[5] Transportation Control Measures: State Implementation Plan Guidance, US EPA 1992; Transportation Control Measure Information Documents, US EPA 1992; Costs and Effectiveness of Transportation Control Measures: A Review and Analysis of the Literature, National Association of Regional Councils 1994.

together would not be sufficient to advance the attainment date.

Comment (b): EPA's analysis looks at only a small universe of potential measures, and does not evaluate all of the measures identified in public comment and other sources.

Response (b): EPA's RACM analysis was intended to address all categories of stationary and mobile sources that could potentially provide additional emission reductions that might be considered RACM. The EPA believes that all identified measures were included in the categories addressed in the analysis, and EPA concluded on this basis that all measures together would not advance attainment.

Comment (c): EPA's analysis also completely fails to consider the additional benefits likely from combined implementation of complementary TCMs e.g., parking management along with transit improvements. It is arbitrary and irrational for EPA to assume that these measures can and will be implemented in complete isolation from one another.

Response (c): EPA recognizes that many control measures—particularly TCMs—are more effective if done in conjunction with others. EPA maintains, however, that it would be impossible to analyze a seeming infinite set of combinations of measures for possible benefits. The EPA's analysis did look at all measures in various categories at a reasonable level of implementation and concluded that as a whole these categories of measures taken together would not advance attainment or would otherwise not be reasonably available.

Comment: Transportation Control Measures as RACM: EPA gives virtually no consideration to the emission reduction benefits of transportation programs, projects and services contained in adopted regional transportation plans (RTPs), or that are clearly available for adoption as part of RTPs adopted for a nonattainment area. In addition, it is arbitrary and capricious for EPA not to require as RACM economic incentive measures that are generally available to reduce motor vehicle emissions in every nonattainment area.

Response: EPA's notice of availability of the RACM analysis (65 FR 61134, October 16, 2000) does consider transportation programs, projects and services that are generally adopted, or available for inclusion in a nonattainment area's regional transportation plan (RTP) and Transportation Improvement Program (TIP). The RACM analysis includes seven broad categories and twenty-seven subcategories of TCMs that represent a range of programs, projects and services that can be included in RTP's and TIP's. The inclusion of a TCM in an RTP or TIP does not necessarily mean that it meets EPA's criteria for RACM and must be included in the SIP.

Some of these TCMs, such as parking cashout, transit subsidies, and parking pricing, are explicitly economic incentive programs. Furthermore, these categories of TCMs, as well as most of the others, could be infinitely differentiated according to criteria, such as the method of implementation, level of promotional effort or market penetration, stringency of enforcement, etc. The application of economic incentives to increase the effectiveness of a TCM is one such criterion. These implementation variables, representing levels of implementation effort, are implicit in the range of effectiveness for each category of TCM. EPA does not believe it is necessary, or even possible, to evaluate every explicit variation of TCMs in order to adequately determine if it is reasonably available. EPA believes that using the mid-level of effectiveness represents a level of implementation effort that is not so high as to be economically infeasible, nor so low as to be ineffective.

Also, there are many important reasons why a state, regional, or local planning agency might implement TCMs in an integrated traffic management plan beyond whatever air quality benefits the TCMs might generate, including preserving open space, watershed protection, avoiding sprawl, mitigating congestion, toll collection efficiency, and ''smart growth'' planning. So the fact that TCMs are being implemented in certain ozone nonattainment areas does not necessarily lead one to the conclusion that those TCMs represent mandatory RACM measures when they are analyzed primarily for the purpose of determining whether they would advance the ozone attainment date.

3. Point Source NO_X Controls

Comment: A commenter suggested energy efficiency improvements are not just for residential and commercial buildings and suggested savings could be achieved by more efficient motor and drive systems.

Response: EPA agrees that improved energy efficiency is a desirable method of reducing air emissions. NYSDEC and the New York State Energy Research and Development Authority (NYSERDA), are pursuing energy efficiency programs for residential and commercial buildings, and for other sources, such as electric and hybrid vehicles, industrial source process improvements, high efficiency display lighting and motor control efficiency upgrades. NYSDEC has also set aside allowances in 6 NYCRR Part 204 (NO_X Budget Trading Program) for energy efficiency/renewable energy, to encourage such projects.

Comment: Just as Integrated Resource Planning (IRP) for electric utilities resulted in demand side management programs that conserved electricity, IRP for natural gas utilities will have the same impact on conserving natural gas usage and resulting emissions. A number of states have effectively implemented IRP for natural gas.

Response: EPA agrees that improved energy conservation—regardless of the form of energy—is a desirable method of reducing air emissions. Since such measures would likely have to rely on voluntary efforts, the State would have to estimate the effect on emission reductions that would result. Putting in place even a voluntary effort to conserve natural gas that could be quantified in terms of its emission reduction benefits would likely require a significant amount of time. EPA believes it is unlikely—given the time spent on the bulk of the SIP—that the State would have had the time to develop such a quantifiable voluntary program that would have yielded enough NO_X reductions to advance the attainment date. Furthermore, it appears unlikely that such a quantifiable program could be put into place in sufficient time to advance the attainment date given the resources that the State will have to spend over the next several years simply developing and adopting the emission controls to make up the NO_X emission reduction shortfall. Therefore, EPA believes that this measure is not a reasonably available control measure at this time for the New York Metro Area.

Comment: The NYSDEC should establish the same requirements for new and existing stationary diesel engines in the New York Metro Area that are not used exclusively during infrequent emergency or backup situations.

Response: New York's 6 NYCRR 227–2 (Reasonably Available Control Technology for Oxides of Nitrogen), establishes RACT for all major sources of NO_X, including stationary diesel engines and peak shaving units. NYSDEC is currently revising this regulation to apply stricter controls on existing and new engines. EPA will review these stricter controls after New York submits them to EPA as a SIP revision.

4. Mobile Source Control Measures

Comment: A key presumptive RACM that New York has overlooked is diesel retrofits. Heavy-duty on-road and non-road diesel vehicles can be readily retrofit to reduce emissions of NO_X. Retrofit technologies are proven to be cost-effective, can be implemented on a fairly short timeframe and can reduce NO_X by as much as 90 percent. The Carl Moyer program in California and EPA's own voluntary diesel retrofit program have achieved impressive and cost-effective NO_X reductions. New York's failure to even consider or analyze the reasonableness of diesel retrofit measures is unlawful.

A similar comment made stated that retrofit controls on construction equipment could produce emission reductions that amount to ⅔ to ¾ of the 6.2 tons per day (tpd) VOC and 29 tpd NO_X reductions associated with construction stoppages on ozone action days and day time work bans in the NYSDOT Conformity Measure Analysis.

Another similar comment was made concerning control of construction equipment. The commenter pointed out that as stated in an ENVIRON report for the NYSDEC (Pollack, Tran and Lindhjem, 1999), more than half of all construction projects in Texas are completed to provide public infrastructure (*i.e.*, road building, public works, etc.). Most of these federally and state-funded projects are managed by state agencies. Given this, the NYSDEC should incorporate an environmental standard into contract specifications for construction projects managed by state agencies.

Response: Retrofit of heavy duty diesel vehicles is already an ongoing practice in the New York Metro Area, specifically with regard to the transit bus fleet of the Metropolitan Transportation Authority (MTA). To date, the MTA has retrofitted several hundred diesel buses with advanced catalyst particulate filter systems and has plans to retrofit the remainder of its fleet in the future. While MTA has found that its retrofit project is successful in reducing certain pollutants of concern such as particulate matter, the technology it is employing is not effective in reducing emissions of NO_X. Although retrofit technology exists which can be effective in reducing NO_X, it is not as cost effective or as demonstrated as other established diesel retrofit technologies. EPA agrees that while there is promise for this technology to be used effectively in the future, for example, as a measure which may be effective in helping the State meet the future 8-hour ozone standard, highway diesel retrofit technology to reduce NO_X, because it is not cost effective, can be dismissed at this time as a potentially available RACM by the State.

Regarding the 29 tpd NO_X reduction cited in the above comment, the State's calculation was based on a program of increased purchase and phase-in of construction equipment/engines that are less polluting. All information with regard to feasibly available diesel retrofit equipment gathered by the State indicated no reductions in NO_X and a maximum of 50 percent reduction in VOCs that could be associated with this potential measure. The NYSDOT Conformity Measure Analysis, in which this potential RACM was analyzed, did not assume complete participation for the entire New York Metro Area because of the inherent difficulties and uncertainties in voluntary compliance with a retrofit program which would make it infeasible on such a comprehensive basis. Even with the maximum potential VOC reduction associated with the technology as determined by the State, the estimated VOC reductions suggested in the above comment could not be approached without full participation of all private as well as publicly owned equipment, which as noted, New York did not consider reasonable. Additionally, the suggestion of incorporating an environmental standard into contract specifications for construction projects managed by state agencies would not increase the estimated benefits because New York already assumed retrofit of all equipment used in government projects in its analysis. Based on the State's analysis, EPA is in agreement with the State that retrofit of construction equipment can be rejected as a RACM because at a reasonable level of implementation it would not produce significant NO_X reductions.

Comment: Widespread implementation of time of day tolls would produce reduced air pollution emissions both by reducing vehicle miles of travel and reducing congestion delays for the remaining traffic. The SIP should include as a reasonably available transportation control measure value or congestion pricing and toll system automation. The toll authorities in the region have already demonstrated the potential for these measures by steps that include:

- Achieving more than 75 percent market penetration among regular commuters in the use of the electronic EZ-Pass transponder for non-stop toll collection on a number of major bridges, tunnels, and toll highways in the New York/New Jersey region.
- The full automation of truck tolls at Spring Valley on the New York Thruway,
- The successful introduction of time-of-day tolls on trans-Hudson bridges and tunnels and the New Jersey Turnpike in 2000–2001, resulting in reduced peak period traffic
- The dedication of a significant portion of revenues from bridge and tunnel tolls to pay for enhancements to transit services and related travel options in the tolled corridors.

The full automation of existing toll booths could provide further emission reductions. For congestion pricing to be most effective on major bridges and tunnels in the metro area the Port Authority and other facility operators should reinstate two-way tolling, which was abandoned in the past because toll booths were major congestion points. Now with EZ-pass this is no longer the case for the large majority of commuters who have the EZ-pass tags.

In the wake of the September 11, 2001, tragedy and the subsequent traffic delays caused by increased security measures, New York City Mayor Giuliani ordered a ban on the entry of solo drivers of non-commercial vehicles into Manhattan on bridges and tunnels south of 63rd Street during morning rush hours. This has led to a significant drop in traffic entering Manhattan. The Manhattan carpool rule has dramatically cut congestion and traffic entering Manhattan, cutting air pollution and proving popular with most city residents and workers. The SIP should consider continuation of this rule as a transportation control measure. The SIP should consider opportunities to relax the rule by allowing solo motorists entry to Manhattan on the affected bridges and tunnels if they pay a premium time-of-day toll which would generate revenue to pay for enhanced transit options.

Response: Emission reduction estimates for congestion pricing, e.g., time of day tolls, reported in the State's RACM Analysis are necessarily based on existing sources of information (local or other area program results, studies, EPA documentation) which allow quantification of potential benefits. New York's analysis of congestion pricing as a potential RACM was based, in part, on the same information discussed by the commenter, *i.e.,* a 7 percent reduction in traffic on Port Authority bridges and tunnels in the 6–9am commuter rush hours. The State's analysis included an extrapolation to assume a 7 percent reduction in total vehicle miles traveled (VMT) in the entire New York Metro Area. The potential NO_X and VOC emission reduction estimated by the

State for this measure included an assumption used previously in other areas regarding the effects of shifting emissions out of one time period into another. Based on its analysis using available data and assumptions, the State concluded that potential emission reductions were not sufficient to advance the attainment date to 2006. EPA is in agreement with the State's methodology and consequent rejection of this measure as a RACM.

The commenter suggests that full automation of existing tolls such as EZ-pass technology could provide further emission reductions. The commenter points out that substantial market penetration among regular commuters has already been achieved. While New York is currently working with other states to increase the use of EZ-pass throughout the northeast region, full automation cannot be reasonably achieved since a certain fraction of the motoring public will choose not to purchase EZ-pass, and both New York and EPA conclude that 100 percent participation cannot be considered a reasonable or feasible goal for the program.

Regarding the commenter's suggestion that the current ban on entry of solo drivers of non-commercial vehicles into Manhattan south of 63rd street should be continued as a RACM, which was put in place subsequent to the terrorist attacks of September 11, 2001, that ban was not in place and thus could not be considered at the time the State performed its RACM analysis in June 2001. Furthermore, the ban is a direct result of problems the City encountered and is attempting to avoid as a result of the attacks and their aftermath, which were and are not normal or reasonable occurrences; therefore the State could not have been expected to consider it a reasonably available measure at the time it conducted the RACM analysis. However, in rebuilding lower Manhattan after the disaster, EPA expects that state and other regional agencies will give consideration to mass transit and roadway modifications which will better accommodate new traffic and commuting patterns which will ultimately result in reduced emissions in the future. These modifications may become an integral part of the State's plan to meet the future 8-hour ozone standard.

Comment: Two commenters suggested that 15 ppm sulfur gasoline and low sulfur diesel should be adopted in the New York Metro Area as a reasonably available control measure.

Response: The CAA preempts states from establishing state fuels under section 211(c)(4)(A). Waivers from preemption are possible under section 211(c)(4)(C) if the state can show necessity for that fuel to meet the NAAQS, and if no other reasonable or practicable non-fuel measures exist that could be implemented in place of a state fuel. For a state to obtain a waiver of preemption, an acceptable demonstration must be submitted to EPA that can justify the need for a particular state fuel. This provision of the CAA was included to discourage the development of a patchwork of fuel requirements from state to state. When other states, such as Texas, have considered implementing fuel programs which control sulfur levels such as 15 ppm sulfur gasoline, they determined that excessive costs when compared with the emissions benefit, the difficulties in producing a boutique fuel, and anticipated distribution problems made such a measure unreasonable. Furthermore, state-adopted gasoline and diesel sulfur control programs would directly conflict with on-going efforts to comply with the federal low-sulfur requirements for those fuels which will be implemented beginning in 2004 and 2006, respectively. When considering this measure, Texas only projected a 1.15 tpd of emission reduction from the institution of 15 ppm sulfur gasoline at an estimated cost of over $500,000 per ton to consumers. Because of the general preemption in the CAA and the low projected cost effectiveness, EPA does not consider this fuel requirement to be a RACM for New York at this time.

Comment: One commenter suggested that public and large commercial fleets be required to have low emitting vehicles.

Response: New York, in exercising its option under section 177 of the CAA, adopted the first and second phases of the California Low Emission Vehicle (LEV) program which affects all new light duty vehicles, specifically passenger cars and light duty trucks under 6,000 pounds gross vehicle weight rating for vehicle model years 1994 and later. Also as allowed under the CAA, New York chose to use a substitute measure to meet its clean fuel fleet requirements, and did so with the California LEV program. EPA approved New York's SIP revision using the LEV program as an opt out because it demonstrated that it would assure reductions of ozone-forming and air toxics emissions that are at least equivalent to those that would be realized from the federal clean fuel fleet program. Moreover, a clean vehicle program limited to large fleets would affect a much smaller subset of vehicles than the LEV program currently applicable in New York. New York's LEV program, which is already accounted for in its ozone SIP, is a statewide program affecting the sale of all light duty vehicles. New York's implementation of its LEV program and inclusion in the SIP precludes it from consideration of the suggested commercial LEV program as RACM.

Comment: One commenter suggested New York institute an auto license fee tied to actual vehicle NO_X emission rates.

Response: EPA is not aware of any area where this type of measure has been instituted or even thoroughly considered. This brings to mind a host of legal and implementation issues. Moreover, it is not clear how much emission reductions could be achieved and at what fee levels. Furthermore, there is a lack of information on the localized costs and benefits of this program. Consequently, EPA believes that this cannot be considered a RACM for New York.

Comment: One commenter suggested the following measures to achieve additional emission reductions from aircraft operations: (1) Mandatory Powering of Jets at gates with Electric Power (2) Reduced Idling on the runway (3) Congestion Pricing at Rush Hours at Airports.

Response: The Port Authority of New York/New Jersey is the jurisdictional agency and landlord for the New York City metropolitan airports. The State of New York alone does not have the authority to require airport gates to supply electricity to aircraft for powering. Therefore, while this measure has promise in the future as a potential important source of emissions reductions, the State can not consider gate electrification or other airport modifications which are under the control of the airport landlord agency as RACM available to it. Similarly, although planning of airline operations during rush hours to reduce idling on runways to reduce emissions may have merit, New York does not have the authority to impose regulations on airlines to require this planning. The Federal Aviation Administration has jurisdiction over airline operations once the aircraft leaves the gate and State regulation is pre-empted. Additionally, since the State has no authority to control airline operations, and congestion is a function of the higher level of operations during rush hours, congestion pricing is likely to place an unnecessary economic burden on the traveling public with no air quality benefits. State controls on pricing are expressly preempted by the Air Deregulation Act. Therefore, EPA

concludes that such measures are not reasonably available.

Comment: A number of specific TCMs and economic incentive programs to reduce VMT were identified by various commenters. These include: telecommuting, satellite offices, college/university traffic control measures, bike and walk pathways, increased government use of the web, voluntary no drive days, trip reduction ordinances, employer based transportation management, road pricing, ride share incentives, insurance pricing, commuter choice, parking cashout, taxes on paid parking, congestion pricing, incentives for transit oriented development and improved incident response.

Response: EPA does not believe it is necessary, or even practically possible, to evaluate every level of implementation of TCMs in order to adequately determine if they are reasonably available. EPA notes that the TCM measures listed above are either being encouraged or a similar measure is being implemented in the New York Metro Area as part of the commuter choice program such as telecommuting, ride share incentives, and employer based transportation management. New York has identified emission reductions from TCMs, however, New York determined that it is not feasible for these measures to advance the attainment date in the New York Metro Area. EPA agrees that the small amount of additional reductions that could reasonably be achieved would not advance attainment. Therefore, EPA agrees with New York's conclusion that such measures are not required as RACM.

Comment: The 2022 Metropolitan Transportation Plan and TIP devote an increasing share of scarce funds over time to projects that exacerbate sprawl, traffic, and pollution growth, while shortchanging projects to improve air quality and expand travel choices. Reallocating MTP/TIP funds could allow the region to meet CAA requirements for timely attainment of air quality while improving mobility for the citizens of the region.

Response: It is unclear whether or not the commenter is referring to a transportation plan in the New York area; the long range regional transportation plan (RTP) of the New York Metropolitan Transportation Council (NYMTC), which is the New York portion of the New York City region's federally designated metropolitan planning organization (MPO), terminates with the year 2020, not 2022 and it is referred to as ''Mobility for the Millennium,'' not the ''Metropolitan Transportation Plan.'' Only NYMTC, which is comprised of several government agencies and transportation providers in the region, has the authority and responsibility to allocate or reallocate funds for projects in its transportation plans; the State does not have this authority. As it works to conform its transportation improvement program with the State's SIP, NYMTC has and will continue to give high priority to those projects which are air quality-beneficial. However, at the least because it lacks the authority to do so, EPA believes this suggested measure should not be considered a RACM available to the State for the purpose of advancing the attainment date.

D. Approval of Attainment 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 and rate of progress demonstrations because not all of the emissions reductions assumed in the demonstrations (a) 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. Also a 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. The commenter indicated that New York submitted an enforceable commitment on April 18, 2000 to participate in the OTC process and to adopt measures by October 31, 2001. Although New York did participate in the OTC process, the deadline for choosing and adopting shortfall measures has come and gone. So far, New York has not submitted anything to EPA which states which control measures New York plans to use to address the shortfall. Nor has New York adopted measures to address the required emission shortfall reductions.

With respect to the commitments from New York for the New York Metro Area, the commenters contend that the 85 tons per day VOC and 7 tons per day of NO_X gap must be closed now. Deferred adoption and submittal are not consistent with the statutory mandates and are not consistent with the CAA's demand that all SIPs contain enforceable measures. EPA does not have authority to approve a SIP if part of the SIP is not adequate to meet all tests for approval. Although the submittal consists in part of commitments, New York has not yet actually adopted rules implementing final control strategies, and the plan includes insufficient reduction strategies to meet the emission reduction goals established by New York. Thus, New York has failed to adopt a SIP with sufficient adopted and enforceable measures to achieve attainment. For these reasons, the commenter points out the submittal also does not meet the definition of a ''full attainment demonstration SIP,'' in a current consent decree EPA entered into in *NRDC* v. *Browner*, cir. 99–2976 (D.Ct. D.C.), which obligates EPA to propose a federal implementation plan by November 30, 2001 if EPA has not fully approved the New York 1-hour Ozone Attainment Demonstration SIP by that date.[6] The commenter believes that for these reasons, EPA should reject the New York 1-hour Ozone Attainment Demonstration SIP and impose sanctions on the area and publish a proposed FIP no later than October 15, 2001.

Response: EPA disagrees with the comments, and believes, consistent with past practice, that the CAA allows full approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.[7] 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)

[6] Since this comment was submitted, the court granted an extension from November 30, 2001 to January 15, 2002.

[7] 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. 1987), aff'd, 871 F.2d 319 (3rd Cir. 1989); *NRDC* v. *N.Y. State Dept. of Envs. 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 CAA, which starts an 18-month period for the state to begin implementation before mandatory sanctions are imposed.

whether the commitment is for a reasonable and appropriate period of time.

It is also noted that while New York does rely on commitments to adopt additional measures as requested by EPA to insure demonstrating attainment, it does not rely on commitments to demonstrate RFP (see 66 FR 42479, August 13, 2001). New York's RFP plans, discussed above, demonstrate RFP with VOC and NO_X emission reductions achieved within the nonattainment area by the implementation of fully promulgated Federal and fully adopted SIP-approved State measures.

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, Baltimore, and Philadelphia 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 New York's attainment demonstration for the New York Metro Area, EPA has determined that the submission of enforceable commitments in place of adopted control measures for these limited sets of reductions will not interfere with the area's ability to meet the 2007 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, Jan. 8, 1997 (ozone attainment demonstration for the South Coast Air Basin; 65 FR 18903, Apr. 10, 2000 (revisions to attainment demonstration for the South Coast Air Basin); 63 FR 41326, Aug. 3, 1998 (federal implementation plan for PM–10 for Phoenix); 48 FR 51472 (State implementation plan for New Jersey). Nothing in the CAA speaks directly to the approvability of enforceable commitments.[8] 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 met the applicable requirement of the CAA.'' (Emphasis added). Section 172(c)(6) of the CAA 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 reach attainment. 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, after concluding that the circumstances warrant consideration of an enforceable commitment—as they do for the New York Metro 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). EPA does not believe that case is directly applicable here, because the commitments made here are limited. EPA agrees with the Court that other provisions in the CAA 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 attainment plan. For the New York Metro Area, the commitment addresses only 9.1 percent and 0.8 percent of the total VOC and NO_X emissions reductions , respectively, necessary to attain the standard. A summary of the adopted control measures and other components credited in New York's attainment demonstration submission are discussed in section II of this document. These adopted and implemented control measures are the majority of the total emissions reductions needed to demonstrate attainment.

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 29, 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.

The third factor, EPA has considered in determining to approve limited commitments for the New York attainment demonstration is whether the commitment is for a reasonable and appropriate time period. EPA recognizes that both the CAA 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 or the need to work as part of a multi-state effort, support the consideration of an enforceable commitment in place of adopted control measures, the commitment should provide for the adoption of the

[8] 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 CAA provides that the conditional approval will convert to a disapproval if ''the state fails to comply with such commitment.''

necessary control measures on an expeditious, yet practicable, schedule.

As provided above, for New York, Baltimore and Philadelphia, 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.

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 it's proposed approval of the attainment demonstrations, EPA further considered that these areas were all located with the Northeast Ozone Transport Region (OTR) 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. See e.g., 64 FR 70364. 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 New York, consistent with the memoranda of understanding signed by Carl Johnson, Deputy Commissioner, NYSDEC, will propose, adopt and implement the identified control measures. The actual OTC regulation development process took longer than EPA anticipated—15 months of the 22 months that EPA had thought the complete effort (*i.e.,* OTC process and state adoption) should take. This left the states in the OTC seven months to complete the individual state regulatory adoption process. Although, as described below, New York did not make its submission by the October 31, 2001 deadline, EPA believes that the State is sufficiently on track and that the SIP should not be disapproved at this time. Moreover, if EPA or citizens are concerned about the delay in adoption of the measures, EPA and citizens have the ability to take action under CAA (*e.g.* sections 179(a) and (b) and 304) to ensure New York completes the adoption process.

New York is well underway with the regulatory development process for all six of the OTC model rules, which include consumer products and architectural and industrial coatings rules, a mobile equipment refinishing rule, solvent cleaning rule, controls on portable fuel containers as well as the NO_X model rule (NO_X reductions from sources that are not included in the 1994 OTC NO_X Memorandum of Understanding for regional NO_X reductions or covered by EPA's NO_X SIP Call). EPA believes that New York is making sufficient progress to support approval of the commitment, because New York will adopt and implement the additional measures well within a time period fully consistent with the New York Metro Area attaining the standard by November 15, 2007. In a letter dated December 31, 2001, New York provided additional information on their progress in addressing the shortfall in emission reductions.

The enforceable commitments submitted by New York for the New York Metro Area, in conjunction with the other SIP measures and other sources of emissions reductions, constitute the required demonstration of attainment and the commitments will not interfere with the area's ability to make reasonable progress under section 182(c)(2)(B) and (d). EPA believes that the delay in submittal of the final rules is permissible under section 110(k)(3) because New York has obligated itself to submit the rules by specified short-term dates, the states commitment is enforceable by EPA and the public. Moreover, as discussed in the December 16, 1999 proposal, its Technical Support Document (TSD), and section II of this document, the SIP submittal approved today contains major substantive components submitted as adopted regulations and enforceable orders.

EPA believes that the New York SIP meets the NRDC Consent Decree definition of a ''full attainment demonstration.'' The consent decree defines a ''full attainment demonstration'' as a demonstration according to CAA section 182(c)(2). As a whole, the attainment demonstration—consisting of photochemical grid modeling, adopted control measures, an enforceable commitment with respect to a limited portion of the reductions necessary to attain, and other analyses and documentation—is approvable since it ''provides for attainment of the ozone [NAAQS] by the applicable attainment date.'' See section 182(c)(2)(A).

Comment: One commenter raises concerns regarding the enforceability of New York's commitment to adopt and submit the additional control measures to achieve additional emission reductions necessary for attainment. Specifically, the commenter is concerned that the lack of specific identified measures and specific identified emission reductions associated with those measures undercuts their enforceability. The commenter suggests that the commitments made by New York are more ''discretionary'' than the types of commitments that courts have enforced in the past because these State's commitments do not identify specific measures.

Response: EPA believes that the CAA provides for enforcement of the terms of an approved SIP. *See e.g.*, CAA 304(a)(1) and (f). Thus, in a case where a state commits to adopt a specific control strategy that will achieve a specific level of reductions by a specific date, the Court may require the State to take action to adopt that measure and achieve the prescribed level of reductions. In the case, such as here, where the State commits to adopt and submit by a specific date measures to achieve a certain level of emission reductions, the Court may order the State to adopt measures to achieve that level of reductions. Simply because the State retains authority regarding the precise mix of controls that it may adopt, does not interfere with the enforceability of the commitment to achieve the level of reductions necessary for attainment. EPA has determined that there are sufficient available controls to achieve the level of reduction to which the State has committed. This determination is supported by the recommendation of the OTC regarding specific controls. Thus, EPA believes that the commitment submitted by New York is enforceable by EPA and citizens and that a court could order the State to adopt control measures that will achieve the level of reductions necessary for attainment.

Comment: One commenter suggested several changes to the enforceable commitments in the New York 1-hour Ozone Attainment Demonstration SIP. In particular, the commenter believes that because the various commitments are scattered throughout the State's submission, it is difficult to assess what the State is required to do. In addition, the commenter suggests that the State adopt additional specific language as part of its commitments.

Response: EPA has identified in section II. F. in this notice the specific commitments made by New York that are being approved in this rulemaking. This should eliminate confusion regarding the enforceable commitments being relied upon for approval of the attainment demonstration. The specific

language changes proposed by the commenters are not necessary for approvable enforceable commitments. EPA believes the current submission complies with the requirements of sections 110, 172 and 182 of the CAA and that such commitments are enforceable by EPA and citizens under CAA sections 113, 304 and 179(a).

Comment: EPA must reject any efforts to relax effective control measures on the books before New York eliminates the identified shortfall in emission reductions.

Response: Section 110(l) of the CAA governs EPA's review of a SIP revision from a state that wishes to make changes to its approved SIP. This section provides that EPA may not approve a SIP revision if it will interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA. Therefore, if we receive an attainment demonstration SIP revision from New York that contains relaxed control measures or the replacement of existing control measures, we would consider the revised plan's prospects for meeting the current attainment requirements and other applicable requirements of the CAA. If we receive a SIP revision that meets our completeness criteria, we will review it against the statutory requirements of section 110(l). Further, the CAA requires us to publish a notice and to provide for public comment on our proposed decision. EPA believes that it is in the context of that future rulemaking, not EPA's current approval, that the commenter's concern regarding the appropriateness of any replacement measures adopted by the State should be considered.

Comment: The mid-course review process outlined by New York is not a permissible substitute for a currently complete attainment demonstration or adopted enforceable control measures. The mid-course review will delay final approval of the SIP until 2004, 10 years after the SIP was required under the CAA.

Response: The mid-course review is not intended as a replacement for a complete attainment demonstration or as a replacement for adopted control measures. Rather, it is intended to reflect the reality that the modeling techniques and inputs are uncertain. Thus, the progress of implementing the plan should be evaluated so that adjustments can be made to ensure the plan is successful. EPA is fully approving the attainment demonstration because, based on the information currently available, EPA believes that it will provide for attainment. However, the mid-course review allows the State and EPA an opportunity to consider additional information closer to the attainment date to assess whether adjustments are necessary. In the case of New York, the State has extensive plans to fully evaluate the inputs to the model and the modeling itself using the most up to date information possible. We are fully supportive of this continued evaluation of the science supporting the plan to reach attainment.

E. Adequacy of Motor Vehicle Emissions Budgets

Comment: The commenters raised several questions concerning the Motor Vehicle Emissions Budgets (the budgets) established in the New York 1-hour Ozone Attainment Demonstration SIP. The commenters stated that the budgets submitted in the SIP should not be called adequate or be approved by the EPA because the attainment demonstration SIP does not provide for attainment. One commenter specifically pointed to the need for adopted and enforceable control measures.

Response: EPA's adequacy process for the 2007 motor vehicle emissions budgets in New York's 1-hour Ozone Attainment Demonstration SIP has been completed, and we have found the motor vehicle emissions budgets to be adequate. We have already responded to any comments related to adequacy of the budgets that we are approving in this action, when we issued our adequacy findings. Therefore, we are not responding to comments on the adequacy of the budgets here. Our finding 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.

The emission budgets for New York for the year of 2007 are 161 tpd and 221 tpd for VOC and NO_X, respectively. The 2007 budgets associated with New York's 1-hour Ozone Attainment Demonstration SIP are being approved by the EPA only until revised budgets pursuant to the State's commitments relating to MOBILE6 and shortfall measures are submitted and we have found the revised budgets adequate for transportation conformity purposes. Approval of the attainment budgets is based on the current control measures specified in the SIP and the enforceable commitments made for additional controls which will be implemented in the interim period.

Because enforceable commitments to adopt additional measures are included in the SIP, EPA believes that it can approve the budgets. We believe that the budgets can be approved because the budgets will not interfere with the area's ability to adopt additional measures to attain the ozone standard and they are consistent with New York's 1-hour Ozone Attainment Demonstration SIP. While the area is adopting its additional measures, the SIP's budgets will cap motor vehicle emissions and thereby ensure that the amount of additional reductions necessary to demonstrate attainment will not increase. The budgets are consistent with, and clearly related to, the emissions inventory and the control measures and are consistent with attainment.

EPA disagrees that the SIP does not provide for attainment. For further explanation of how this attainment demonstration SIP as an overall plan provides for attainment please see other responses directly relating to the sufficiency of the overall attainment plan, control strategy, enforceable commitments, etc. contained in this final action.

Comment: 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: 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 of the budgets that we are approving in this action when we issued our adequacy findings and continue to maintain the finding and the reasoning behind those findings. Therefore, we are not listing the individual comments or responding to them here. All of 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.

On August 13, 2001 (66 FR 42479), we proposed to approve the transportation conformity budgets for the New York Metro Area. See Table 2. In this final rule we are approving these budgets.

F. Attainment Demonstration and Rate of Progress Motor Vehicle Emissions Inventories

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: The commenter claims that there is a growing proportion of sport utility vehicles in the New York Metro Area by citing an increase of sport utility vehicles in the Washington DC metropolitan area. The New York Metro Area is not Washington DC nor has the commenter provided any specific evidence that there is a significant increase of sport utility vehicles in the New York Metro Area. However, 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. New York used 1990 vehicle registration data for 2002, and 2005 modeling and inventory purposes, however, the vehicle mix which was formerly based on 1990 data was updated to 1996 data when New York revised the 2007 budgets in April 2000. These were updated to be consistent with New York's revised 1-hour Ozone Attainment Demonstration SIP. 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. New York has committed to submit such a SIP revision within one year after MOBILE6 is issued.

Comment: The New York SIP understates the real speed of traffic on Interstate Roads, Freeways, and Expressways, thereby underestimating related emissions.

Response: The commenter has only made an assertion that the real speed of traffic on Interstate Roads, Freeways, and Expressways exceed those contained in the New York SIP, without providing any specific data to support that assertion. However, the estimates of vehicle speeds on the various roadway types the State used in the SIP revision on which we are taking final action were based on standard professional practices and the most accurate information available at the time the SIP was submitted. Estimation of vehicle speeds is a complex process. The State estimated vehicle speeds based on a methodology it detailed in a New York State Department of Transportation document, ''Speed Estimates for Use in1994 Air Quality State Implementation Plan'', dated October 24, 1994. The State determined speeds for each time period through a number of successive steps. Generally, that methodology involves collection of speed data for a base and a future year from the New York Metropolitan Transportation Council, which provides 24 hour average speeds for three functional class groups for the New York City metropolitan area. Speeds for intermediate years are linearly interpolated between the base and future years by the State. The relationship between speed and the volume-capacity ratio (vcr) for different functional classes were relied on and identified by the State from the Highway-Capacity Manual (HCM) and other sources. Final speeds are based on adjustments of preliminary speeds to reflect differences between MPO travel demand model and HCM based off-peak speed data. In the New York City metropolitan area, the 24 hour average speeds in each county were available to the State for three functional classes. To estimate speeds by the required 6 functional classes, the distribution of VMT between functional classes were obtained from highway performance monitoring system (HPMS) data. A speed difference between the two functional classes represented in each functional class group was assumed by the State: the average speed in the lower functional class was assumed to be 95 percent of the average speed in the higher functional class. To calculate the 24 hour average speeds from the HCM, a selected VMT is divided by the total travel time for that VMT for all time periods, in both functional classes included in a functional class group. For more detail on this methodology, the reader is referred to the above referenced document. Regarding the commenter's assertion that speeds used by the State were understated and may not be reflective of actual speeds reached on area roadways, it should be stressed that the modeling requires the use of vehicle speeds averaged over an hour, as opposed to instantaneous or cruise speeds. EPA defines speed, for modeling purposes, to include all operation of vehicles, including intersections and other obstacles to travel, which may result in stopping and idling. Thus, while stop and go traffic may at times reach speeds above those used by the State in its modeling, the slower speeds must also be accounted for in the hourly average.

Additionally, while EPA requires the most recent available estimates to be used, we do not require it to be updated on a specific schedule. As with vehicle registration data, we expect that the revision to New York's SIP that will be submitted using MOBILE6 will update vehicle speed estimates as appropriate for use with MOBILE6.

G. 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 as a blowing agent instead of hydrocarbons, a known pollutant. 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 a 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. Using HFC–152a as a blowing agent 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 § 612, EPA has identified acceptable foam blowing agents many of which are

not VOCs (*http://www.epa.gov/ozone/title6/snap/*).

H. 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 memorandum [9] that provided that states could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP, RFP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and RFP 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 RFP 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 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 policy,[10] 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 guidance,[11] 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.

I. 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 CAA. Once approved by the 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 CAA. 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 the EPA. To the extent that the ozone attainment demonstration depends on specific state emission control regulations, these individual regulations have undergone review by the EPA in past approval actions.

J. MOBILE6 and Motor Vehicle Emissions Budgets

Comment: One commenter generally supports a policy of requiring motor vehicle emissions budgets to be recalculated when revised MOBILE6 models are released.

Response: The attainment demonstrations that rely on Tier 2 emission reduction credit contain commitments to revise the motor

[9] ''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.

[10] ''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.

[11] ''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.

vehicle emissions budgets after MOBILE6 is issued.

Comment: 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: This is the reason that EPA proposed on the July 28, 2000, a supplemental notice (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: 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: EPA agrees. The motor vehicle emissions budgets in the New York Metro Area attainment demonstration reflects the motor vehicle control measures in New York's 1-hour Ozone Attainment Demonstration SIP. In addition, New York 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: 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: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The New York Metro Area attainment demonstration contains explicitly quantified motor vehicle emissions budgets.

Comment: 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: 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 CAA.

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

Response: 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: 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: 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, New York will be submitting new budgets based on MOBILE6, so the MOBILE5 budgets will not be retained in the SIP indefinitely.

K. MOBILE6 Grace Period

Comment: 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: 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 2-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 issued.

Comment: 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: 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 issued. EPA believes that MOBILE6 should be used in conformity determinations once new MOBILE6 budgets are found adequate.

L. Two-Year Option to Revise the Motor Vehicle Emissions Budgets

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 1-year option, if desired, or submit a new commitment consistent with the alternative 2-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. New York has committed to revise its budgets within one-year of MOBILE6's being issued.

M. Measures for the 1-hour National Ambient Air Quality Standards (NAAQS) and for Progress Toward 8-hour NAAQS

Comment: One commenter notes that EPA has been working toward promulgation of a revised 8-hour ozone NAAQS because the Administrator deemed attaining the 1-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 1-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 1-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 1-

hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the 8-hour standard. However, EPA generally believes that emission controls implemented to attain the 1-hour ozone standard will be beneficial towards attainment of the 8-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 8-hour ozone standard has been adopted by the 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 the EPA have yet to define the 8-hour ozone nonattainment areas and the EPA has yet to issue guidance and requirements for the implementation of the 8-hour ozone standard.

N. Attainment and Post 1999 Reasonable Further 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. 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.

The commenter continues stating that the 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 RFP deadlines. The statutory RFP 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.

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 RFP demonstrations at the same time as EPA proposed action on the area's attainment demonstration. New York submitted its Post-99 RFP Plans on November 27, 1998 and EPA proposed approval on August 13, 2001 (66 FR 42479). EPA is approving the RFP Plans as part of this action.

IV. What Are EPA's Conclusions?

As described above, EPA does not believe any of the comments we received on the proposals published for the attainment demonstration and other SIP revisions for the New York portion of the New York-Northern New Jersey-Long Island ozone nonattainment area should affect EPA's determination that the SIP is fully approvable. Thus, EPA is approving several SIP revisions that relate to attainment of the 1-hour ozone standard in New York. EPA has evaluated New York's 1-hour Ozone Attainment Demonstration SIP submittal for consistency with the CAA, applicable EPA regulations, and EPA policy. EPA has determined that the 1-hour ozone standard in the New York Metro Area will not be achieved until the states and EPA implement additional measures to meet the necessary level of reductions identified by EPA, including Tier 2/Sulfur program and a group of local controls, such as measures consistent with the OTC recommendations. EPA has promulgated all of the necessary federal rules needed to provide for attainment. New York has committed to adopt and submit the measures necessary to achieve additional reductions. EPA is approving New York's 1-hour Ozone Attainment Demonstration SIP, including all of the enforceable commitments, as fully meeting the attainment demonstration requirements of sections 182(c)(2) and (d) of the CAA.

EPA has also evaluated New York's Reasonable Further Progress Plans, projection year inventories and transportation conformity budgets for 2002, 2005 and 2007, ozone contingency measures and RACM Analysis submittals for consistency with the CAA and EPA regulations and policy. EPA is approving New York's: 2002, 2005 and 2007 ozone projection emission inventories; 2002, 2005 and 2007 RFP Plans; 2002, 2005 and 2007 transportation conformity budgets; ozone contingency measures; and RACM Analysis.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This final 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 final 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 proposes to approve 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 (Pub. L. 104–4). For the same reason, this final rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This final rule also is not subject to Executive Order 13045 (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 CAA. In this context, in the absence of a prior existing requirement for the state 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 CAA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. 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.*).

The Congressional Review Act, 5 U.S.C. section 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. section 804(2). This rule will be effective March 6, 2002.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 5, 2002. 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 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 oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 14, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 HH—New York

2. Section 52.1683 is amended by adding new paragraph (i) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(i)(1) The 2002, 2005 and 2007 ozone projection year emission inventories included in New York's November 27, 1998 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area are approved.

(2) The Reasonable Further Progress Plans for milestone years 2002, 2005 and 2007 included in the New York's November 27, 1998 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area are approved.

(3) The contingency measures included in the New York's November 27, 1998 State Implementation Plan revision for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area necessary to fulfill the RFP and attainment requirement of section 172(c)(9) of the CAA are approved.

(4) The 2002, 2005 and 2007 conformity emission budgets for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area included in New York's November 27, 1998 and April 18, 2000 State Implementation Plan revisions are approved until such time as New York submits revised budgets consistent with its commitments to revise the budgets with reference to MOBILE6 and/or additional control measures and EPA finds those revised budgets adequate.

(5) The Reasonably Available Control Measure Analysis for the New York portion of the New York-Northern New Jersey-Long Island nonattainment area included in New York's October 1, 2001 State Implementation Plan revision is approved.

(6) The revisions to the State Implementation Plan submitted by New York on November 27, 1998, April 15, 1999, and April 18, 2000, are approved. The revisions are for the purpose of satisfying the attainment demonstration requirements of section 182(c)(2)(A) of the CAA for the New York portion of the New York-Northern New Jersey-Long Island severe ozone nonattainment area. The revisions establish an attainment date of November 15, 2007, for the New York-Northern New Jersey-Long Island ozone nonattainment area. The April 18, 2000, revision includes the following enforceable commitments for future actions associated with attainment of the 1-hour ozone national ambient air quality standard:

(i) Adopt additional control measures by October 31, 2001, to meet that level of reductions identified by EPA for attainment of the 1-hour ozone standard.

(ii) Work through the Ozone Transport Commission (OTC) to develop a regional strategy regarding the measures necessary to meet the additional reductions identified by EPA.

(iii) Adopt and submit by October 31, 2001 intrastate measures for the emission reductions (Backstop) in the event the OTC process does not recommend measures that produce emission reductions.

(iv) Submit revised State Implementation Plan and motor vehicle emissions budget by October 31, 2001 if additional adopted measures affect the motor vehicle emissions inventory.

(v) Revise State Implementation Plan and motor vehicle emissions budget within 1 year after MOBILE6 mobile emissions model is issued.

(vi) Perform a mid-course review and submit the results to EPA by December 31, 2003.

[FR Doc. 02–1754 Filed 2–1–02; 8:45 am]

BILLING CODE 6560–50–P