

Dated: January 30, 2003.

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*Commander, U.S. Coast Guard, Acting
Captain of the Port, Chicago.*

[FR Doc. 03-3739 Filed 2-13-03; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-7452-2]

Approval and Promulgation of Implementation Plans; Rhode Island; One Hour Ozone Attainment Demonstration for the Rhode Island Ozone Nonattainment Area

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to fully approve the one-hour ozone attainment demonstration State Implementation Plan (SIP) for the Rhode Island serious ozone nonattainment area, submitted by the Rhode Island Department of Environmental Protection on January 27, 2003. This action is based on the requirements of the Clean Air Act as amended in 1990, related to one-hour ozone attainment demonstrations.

DATES: Comments must be received on or before March 17, 2003.

ADDRESSES: Written comments (two copies if possible) should be sent to: David B. Conroy at the EPA Region I (New England) Office, One Congress Street, Suite 1100-CAQ, Boston, Massachusetts 02114-2023.

Copies of the state submittal and EPA's technical support document (TSD) are available for public inspection during normal business hours (9 A.M. to 4 P.M.) at the following addresses: U.S. Environmental Protection Agency, Region 1 (New England), One Congress St., 11th Floor, Boston, Massachusetts, telephone (617) 918-1664, and at the Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, Rhode Island 02908-5767. Please telephone in advance before visiting.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, (617) 918-1664.

SUPPLEMENTARY INFORMATION: This notice provides an analysis of the one-hour ozone attainment demonstration SIP submitted by the Rhode Island Department of Environmental Management (Rhode Island DEM) in proposed form on January 27, 2003 for the Rhode Island serious ozone nonattainment area. This revision is

being proposed under a procedure called parallel processing. Under parallel processing, EPA proposes action on a state submission before it has been formally submitted to EPA, and will take final action on its proposal if the final submission is substantially unchanged from the submission on which proposal is based, or if significant changes in the final submission are anticipated and adequately described in EPA's proposal as a basis for EPA's proposed action.

The Rhode Island DEM will hold a public hearing on its proposed SIP revision on February 27, 2003. The SIP revision that Rhode Island has proposed includes all the basic elements of what EPA is proposing to approve. If the proposed attainment demonstration plan is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will approve the state's plan consistent with this proposal and any submitted comments. Before EPA can finally approve this SIP revision, Rhode Island must finally adopt the SIP revision and submit it formally to EPA for incorporation into the SIP.

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I. Clean Air Act Requirements for Serious Ozone Nonattainment Areas

The Clean Air Act (CAA) requires EPA to establish national ambient air quality standards (NAAQS or standards) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. CAA sections 108 and 109. In 1979, EPA promulgated the one-hour 0.12 parts per million (ppm) ground-level ozone standard. 44 FR 8202 (February 8, 1979). Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-

level ozone. NO_x and VOC are referred to as precursors of ozone.

An area exceeds the one-hour ozone standard each time an ambient air quality monitor records a one-hour average ozone concentration of 0.125 ppm or higher.¹ An area is violating the standard if, over a consecutive three-year period, more than three exceedances are expected to occur at any one monitor. The area's 4th highest ozone reading at a single monitor is its design value. The CAA, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one-hour ozone standard, generally based on air quality monitoring data from the three-year period from 1987-1989. CAA section 107(d)(4); 56 FR 56694 (November 6, 1991). The CAA further classified these areas, based on the area's design value, as marginal, moderate, serious, severe, or extreme. CAA section 181(a). Marginal areas were suffering the least significant air pollution problems while the areas classified as severe and extreme had the most significant air pollution problems.

The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas were required to attain the one-hour ozone standard by November 15, 1999 and severe areas are required to attain by November 15, 2005 or November 15, 2007. The Rhode Island ozone nonattainment area is classified as serious and its attainment date is November 15, 1999.

Under section 182(c)(2) of the CAA, serious areas were required to submit by November 15, 1994 demonstrations of how they would attain the one-hour ozone standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year. In some cases, NO_x emission reductions can be substituted for the required VOC emission reductions.

In general, an attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the control

¹ The one-hour ozone standard is 0.12 ppm. EPA's long-standing practice is that monitored values of 0.125 ppm or higher are rounded up, and thus considered an exceedance of the NAAQS and values less than 0.125 ppm are rounded down and are not an exceedance.

measures necessary to achieve those reductions. Another component of the attainment demonstration SIP is a motor vehicle emissions budgets for transportation conformity purposes. Transportation conformity is a process for ensuring that the effects of emissions associated with new or improved federally-funded roadways and transit are considered before they are Federally funded or approved. As described in section 176(c)(2)(A) of the CAA, attainment demonstrations necessarily include the estimates of motor vehicle emissions that are consistent with attainment, which then act as a budget or ceiling for the purposes of determining whether federally-supported transportation plans, transportation implementation programs, and projects conform to the attainment demonstration SIP.

II. Background and Current Air Quality Status of the Rhode Island Ozone Nonattainment Area

The Rhode Island ozone nonattainment area is a state wide area. Historically and throughout most of the 1990's, ozone monitors throughout the Rhode Island nonattainment area violated the one-hour ozone standard. Directly downwind of the Rhode Island nonattainment area, there were also a number of other nonattainment areas violating the one-hour ozone standard during the 1990's in Massachusetts, New Hampshire, and in portions of southern Maine.

On June 9, 1999, EPA determined that the Rhode Island serious ozone nonattainment area had attained the 1-hour ozone standard (64 FR 30911).² This determination was based on data collected from 1996–1998. On June 9, 1999, EPA also determined that the Eastern Massachusetts area, the Portsmouth-Dover-Rochester, New Hampshire ozone nonattainment area, and the Portland, Maine ozone nonattainment area had also attained the 1-hour ozone standard based on data collected from 1996–1998. See 64 FR 30911. At the time of these determinations of attainment, there were no areas in any portion of Rhode Island, Eastern Massachusetts, New Hampshire or Maine that violated the one-hour ozone standard.

The Rhode Island nonattainment area continued to have air quality meeting

the one-hour ozone standard in 1999 (based on data from 1997–1999) and in 2000 (based on data from 1998–2000). Based on data collected in 1999–2001, however, the Rhode Island area now has air quality violating the one-hour ozone standard. The violating monitors, based on 1999–2001 ozone data, are in West Greenwich, East Providence, and Narragansett, Rhode Island. Ozone data readings from the monitors for the area from the summer of 2002 now show only the West Greenwich and East Providence monitors registering a violation of the one-hour ozone NAAQS for the three-year period 2000–2002.

III. History and Time Frame for the State's Attainment Demonstration SIP

A. Ozone Transport Assessment Group and the NO_x SIP Call

Notwithstanding significant efforts by the states, in 1995 EPA recognized that many states in the eastern half of the United States could not meet the November 1994 time frame for submitting an attainment demonstration SIP because emissions of NO_x and VOCs in upwind states (and the ozone formed by these emissions) affected these nonattainment areas and the full impact of this effect had not yet been determined. This phenomenon is called ozone transport.

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by states but noting the remaining difficulties in making attainment demonstration SIP submittals.³ Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the states in the eastern half of the country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)⁴ and provided for the states to submit the attainment demonstration SIPs based on the expected time frames for OTAG to complete its evaluation of ozone transport.

In June 1997, OTAG concluded and provided EPA with recommendations regarding ozone transport. The OTAG generally concluded that transport of ozone and the precursor NO_x is

significant and should be reduced regionally to enable states in the eastern half of the country to attain the ozone NAAQS.

In recognition of the length of the OTAG process, in a December 29, 1997 memorandum, Richard Wilson, EPA's then Acting Assistant Administrator for Air and Radiation, provided until April 1998 for states to submit the following elements of their attainment demonstration SIPs for serious and severe nonattainment areas: (1) Evidence that the applicable control measures in subpart 2 of part D of title I of the CAA were adopted and implemented or were on an expeditious course to being adopted and implemented; (2) a list of measures needed to meet the remaining rate-of-progress (ROP) emissions reduction requirement and to reach attainment; (3) for severe areas only, a commitment to adopt and submit target calculations for post-1999 ROP and the control measures necessary for attainment and ROP plans through the attainment year by the end of 2000; (4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the state submittal.⁵ This submission is sometimes referred to as the Phase 2 submission. Motor vehicle emissions budgets can be established based on a commitment to adopt the measures needed for attainment and identification of the measures needed. Thus, state submissions due in April 1998 under the Wilson policy should have included motor vehicle emissions budgets.

Building upon the OTAG recommendations and technical analyses, in November 1997, EPA proposed action addressing the ozone transport problem. In its proposal, EPA found that current SIPs in 22 states and the District of Columbia (23 jurisdictions) were insufficient to provide for attainment and maintenance of the one-hour ozone standard because they did not regulate NO_x emissions that significantly contribute to ozone transport. 62 FR 60318 (November 7, 1997). The EPA finalized that rule in September 1998, calling on the 23 jurisdictions to revise their SIPs to require NO_x emissions reductions within the state to a level consistent with a NO_x emissions budget identified in the final rule. 63 FR 57356 (October 27, 1998). This final rule is commonly referred to as the NO_x SIP Call.

² In that notice, EPA also determined the one-hour ozone standard no longer applied to the Rhode Island area. Subsequently, due to continued litigation regarding the 8-hour ozone standard, EPA reinstated the applicability of the one-hour ozone standard in all areas. See 65 FR 45182 (July 20, 2000). EPA, however, did not modify its determination that the Rhode Island area had attained the one-hour ozone standard.

³ Memorandum, "Ozone Attainment Demonstrations," issued March 2, 1995. A copy of the memorandum may be found on EPA's Web site at <http://www.epa.gov/ttn/oarp/t1pgm.html>.

⁴ Letter from Mary A. Gade, Director, State of Illinois Environmental Protection Agency to Environmental Council of States (ECOS) Members, dated April 13, 1995.

⁵ Memorandum, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM 10 NAAQS," issued December 29, 1997. A copy of this memorandum may be found on EPA's Web site at <http://www.epa.gov/ttn/oarp/t1pgm.html>.

B. Rhode Island Ozone Attainment Demonstration Submittal

Unlike other states with serious ozone nonattainment areas, Rhode Island did not in 1998 submit a final ozone attainment demonstration as a SIP revision pursuant to EPA's December 29, 1997 memorandum. Based on data collected from 1996–1998, EPA determined on June 9, 1999 (64 FR 30911) that the Rhode Island serious ozone nonattainment area had attained the 1-hour ozone standard. Consistent with EPA policy, since the Rhode Island area had attained the standard by November 15, 1999, its statutory attainment date, Rhode Island did not need to submit an attainment demonstration to EPA for EPA to take action on.⁶

The Rhode Island nonattainment area continued to have air quality meeting the one-hour ozone standard through the summer of 2000, and it was not until after the summer of 2001 that the Rhode Island area had air quality violating the one-hour ozone standard. At that point in time, this nonattainment area was once again required to have an approved attainment demonstration and ROP plan with respect to section 182(c)(2) of the CAA. Today, in this proposed rule, EPA is proposing action on the proposed attainment demonstration SIP submitted by the Rhode Island DEM on January 27, 2003. EPA has previously approved the state's 15% plan (63 FR 67594, 12/8/98) and 9% ROP plan (66 FR 30811, 6/8/01).

The Rhode Island Attainment Demonstration contains the following elements: (1) The required photochemical grid attainment demonstration modeling, supplemented with a weight-of-evidence (WOE) analysis showing how attainment will be achieved; (2) an analysis showing that Rhode Island is implementing all reasonably available control measures (RACM) and that no other RACM could be adopted in Rhode Island that would advance the attainment year; (3) motor vehicle emissions budgets for the attainment year, which are used for conformity determinations, and (4) contingency measures as required pursuant to section 172(c)(9) of the

⁶Policy guidance contained in a May 10, 1995 memorandum from John Seitz, Director of EPA's Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard" recommends that ROP and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are no longer applicable to an area once it has air quality data indicating that the one hour ozone standard has been attained.

CAA. Rhode Island Department of Environmental Protection will hold a public hearing on this Attainment Demonstration SIP on February 27, 2003.

The statutory attainment date for the Rhode Island Area was November 15, 1999. The area attained the standard as of its attainment date, but then subsequently experienced a violation. The CAA does not expressly address the appropriate attainment date for an area that attains the standard by its attainment date but then subsequently violates the standard nor does it address the planning requirements that apply to such an area. (CAA sections 179 (c) and (d) and 181(b)(2) establish requirements only for those areas that EPA determines do not attain the standard by their attainment date.) With respect to the attainment date, both subparts 1 and 2 specify outside dates for attainment and provide that attainment must be "as expeditiously as practicable." CAA sections 172(a)(2) and 181(a)(1). With respect to control obligations, EPA generally attempts first to work with the State to submit a revised SIP and, where necessary, would issue a SIP Call pursuant to section 110(k)(5). See *e.g.*, 65 FR 64352 (Oct. 27, 2000). Here, Rhode Island is already well on its way to submitting a final attainment demonstration and has indicated that the demonstration provides for attainment as expeditiously as practicable, *i.e.* by November 15, 2007. We review Rhode Island's submission in the following sections.

IV. What Are the Components of a Modeled Attainment Demonstration?

The EPA provides that states may rely on a modeled attainment demonstration supplemented with additional evidence to account for inherent uncertainty in the modeling.⁷ In order to have a complete modeling demonstration submission, states should have submitted the required modeling analysis and identified any additional evidence that EPA should consider in evaluating whether the area will attain the standard.

⁷The EPA issued guidance on the air quality modeling that is used to demonstrate attainment with the one-hour ozone NAAQS. See U.S. EPA, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA-450/4-91-013. (July 1991). A copy may be found on EPA's web site at <http://www.epa.gov/ttn/scram/> (file name: "UAMREG"). See also U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA-454/B-95-007, (June 1996). A copy may be found on EPA's Web site at <http://www.epa.gov/ttn/scram/> (file name: "O3TEST").

A. Modeling Requirements

For purposes of demonstrating attainment, section 182(c) of the CAA requires serious areas to use photochemical grid modeling or an analytical method EPA determines to be as effective.⁸ The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values and to predict air quality changes in the attainment year due to the emission changes which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted concentrations inside the modeling domain are at or below the NAAQS or at an acceptable upper limit above the NAAQS consistent with conditions specified by EPA's guidance. When the predicted concentrations are above the NAAQS, an optional weight-of-evidence determination which incorporates, but is not limited to, other analyses, such as air quality and emissions trends, may be used to address uncertainty inherent in the application of photochemical grid models.

The EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results. First, the state must develop and implement a modeling protocol. The modeling protocol describes the methods and procedures to be used in conducting the modeling analysis and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (state and local agencies, EPA Regional offices, the regulated community, and public interest groups). Second, for purposes of developing the information to put into the model, the state must select air pollution days, *i.e.*, days in the past with poor air quality, that are representative of the ozone pollution problem for the nonattainment area. Third, the state needs to identify the appropriate dimensions of the area to be modeled, *i.e.*, the domain size. The domain should be larger than the designated nonattainment area to reduce uncertainty in the boundary conditions and should include large upwind sources just outside the nonattainment area. In general, the domain is considered the local area where control measures are most beneficial to bring the area into attainment. Fourth, the state needs to determine the grid

⁸Ibid.

resolution. The horizontal and vertical resolutions in the model affect the dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids) may dilute concentrations and may not properly consider impacts of complex terrain, complex meteorology, and land/water interfaces. Fifth, the state needs to generate meteorological data that describe atmospheric conditions and emissions inputs. Finally, the state needs to verify that the model is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests. Once these steps are satisfactorily completed, the model is ready to be used to generate air quality estimates to support an attainment demonstration.

The modeled attainment test compares model-predicted one-hour daily maximum concentrations in all grid cells for the attainment year to the level of the NAAQS. A predicted concentration above 0.124 ppm ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to attain the standard. This type of test is often referred to as an exceedance test. The EPA's guidance recommends that states use either of two modeled attainment or exceedance tests for the one-hour ozone NAAQS: a deterministic test or a statistical test.

The deterministic test requires the state to compare predicted one-hour daily maximum ozone concentrations for each modeled day⁹ to the attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

The statistical test takes into account the fact that the form of the one-hour ozone standard allows exceedances. If, over a three-year period, the area has an average of one or fewer exceedances per year, the area is not violating the standard. Thus, if the state models a very extreme day, the statistical test provides that a prediction above 0.124 ppm up to a certain upper limit may be consistent with attainment of the standard. (The form of the one-hour ozone standard allows for up to three readings above the standard over a three-year period before an area is considered to be in violation.)

The acceptable upper limit above 0.124 ppm is determined by examining the size of exceedances at monitoring sites which meet the one-hour NAAQS. For example, a monitoring site for

which the four highest one-hour average concentrations over a three-year period are 0.136 ppm, 0.130 ppm, 0.128 ppm and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration observed at a location on a single day and it would be the only reading above the standard that would be expected to occur no more than an average of once a year over a three-year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites meeting the NAAQS. Thus, these upper limits are rarely substantially higher than the attainment level of 0.124 ppm.

B. Additional Analyses Where Modeling Fails To Show Attainment

As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in some of the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely. The process by which this is done is called a weight-of-evidence determination.

Under a WOE determination, the state can rely on and EPA will consider factors such as: other modeled attainment tests, e.g., a rollback analysis; other modeled outputs, e.g., changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value; actual observed air quality trends; estimated emissions trends; analyses of air quality monitored data; the responsiveness of the model predictions to further controls; and, whether there are additional control measures that are or will be approved into the SIP but were not included in the modeling analysis. This list is not an exclusive list of factors that may be considered and these factors could vary from case to case. For example, the EPA's guidance contains no limit on how close a modeled attainment test must be to passing to conclude that other evidence

besides an attainment test is sufficiently compelling to suggest attainment. However, the further a modeled attainment test is from being passed, the more compelling the WOE needs to be.

The EPA's modeling guidance also recognizes a need to perform a mid-course review as a means for addressing uncertainty in the modeling results. Because of the uncertainty in long term projections, EPA believes a viable attainment demonstration that relies on WOE needs to contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. The mid-course review is discussed below.

V. What Is the Framework for Proposing Action on the Attainment Demonstration SIPs?

In addition to the modeling analysis and WOE support demonstrating attainment, the EPA has identified the following key elements which generally must be present in order for EPA to approve the one-hour attainment demonstration SIPs. These elements are: measures required by the CAA and measures relied on in the modeled attainment demonstration SIP; NO_x reductions affecting boundary conditions; motor vehicle emissions budgets; any additional measures needed for attainment¹⁰; and a Mid-Course Review (MCR).

A. CAA Measures and Measures Relied on in the Modeled Attainment Demonstration SIP

The states should have adopted the control measures already required under the CAA for the area classification. In addition, a state may have included control measures in its attainment strategy that are in addition to measures required in the CAA. For purposes of fully approving the state's SIP, the state needs to adopt and submit all VOC and NO_x controls within the local modeling domain that were relied on for purposes of the modeled attainment demonstration.

The information in Table 1 is a summary of the CAA requirements that should be met for a serious area for the one-hour ozone NAAQS. These requirements are specified in section 182 of the CAA. EPA must have taken final action approving all measures

¹⁰ As discussed in detail below, the Rhode Island attainment demonstration shows attainment without the need for additional measures beyond what has been adopted into the SIP or will be required by federal regulations. Therefore additional measures are not required for Rhode Island.

⁹ The initial, "ramp-up" days for each episode are excluded from this determination.

relied on for attainment, including the required ROP control measures and target calculations, before EPA can issue a final full approval of the attainment demonstration as meeting CAA section 182(c)(2). This was done for all the measures for Rhode Island.

TABLE 1.—CAA REQUIREMENTS FOR SERIOUS AREAS

- NSR for VOC and NO_x¹¹, including an offset ratio of 1.2:1 and a major VOC and NO_x source cutoff of 50 tons per year
- Reasonable Available Control Technology (RACT) for VOC and NO_x¹¹.
- Enhanced Inspection and Maintenance (I/M) program.
- 15% volatile organic compound plans.
- Emissions inventory.
- Emission statements.
- Periodic inventories.
- Attainment demonstration.
- 9 percent ROP plan through 1999.
- Clean fuels program or substitute.
- Enhanced monitoring Photochemical Assessment Monitoring Stations.
- Stage II vapor recovery.
- Contingency measures.
- Reasonably Available Control Measures Analysis.

¹¹ Unless the area has in effect a NO_x waiver under section 182(f). The Rhode Island area is not such an area.

1. Control Measures Adopted by Rhode Island
 Adopted and submitted rules for all previously required CAA mandated measures for the specific area classification that are being relied on in the attainment demonstration are required. This also includes measures that may not be required for the area classification but that the state relied on in the SIP submission for attainment. As explained in Table 2, Rhode Island has submitted and EPA has approved SIPs for all of the measures the state is relying on for attainment.

TABLE 2.—CONTROL MEASURES IN THE ONE-HOUR OZONE ATTAINMENT PLAN FOR THE RHODE ISLAND SERIOUS OZONE NONATTAINMENT AREA

Name of control measure	Type of measure	Approval status
On-board Refueling Vapor Recovery	Federal rule	Promulgated at 40 CFR part 86.
Federal Motor Vehicle Control program (Tier 0)	Federal rule	Promulgated at 40 CFR part 86 (pre-1990).
Heavy Duty Diesel Engines (On-road)	Federal rule	Promulgated at 40 CFR part 86.
Federal Non-road Heavy Duty diesel engines ..	Federal rule	Promulgated at 40 CFR part 89.
Federal Non-road Gasoline Engines	Federal rule	Promulgated at 40 CFR part 90.
Federal Marine Engines	Federal rule	Promulgated at 40 CFR part 91.
Rail Road Locomotive Controls	Federal rule	Promulgated at 40 CFR part 92.
Automotive Refinishing	State initiative	SIP approved (61 FR 3827; 2/2/96).
Enhanced Inspection & Maintenance	CAA SIP Requirement	SIP approved (66 FR 9663; 2/9/01).
NO _x RACT	CAA SIP Requirement	SIP approved (62 FR 46202; 9/2/97).
VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of CAA.	CAA SIP Requirement	SIP approved (59 FR 52429; 10/18/94).
VOC RACT pursuant to section 182(b)(2)(A) and (C) of CAA.	CAA SIP Requirement	Marine vessel loading SIP approved (61 FR 14975; 4/4/96). limited approval for non-CTG RACT rule (61 FR 14975; 4/4/96 64 FR 67500; 12/2/99). EPA approval pending for certain non-CTG RACT determinations. The state does not rely on reductions from the facilities with approval pending for attainment.
Stage II Vapor Recovery	CAA SIP Requirement	SIP Approved (58 FR 65933; 12/17/93).
Reformulated Gasoline	State opt-in	SIP approved (65 FR 12476; 3/9/00).
National Low Emission Vehicle (NLEV)	State opt-in	Federal program promulgated at 40 CFR 86 subpart R. State opt-in SIP approved (65 FR 12476; 3/9/00).
Clean Fuel Fleets	CAA SIP Requirement	SIP approved (65 FR 12476; 3/9/00). Rhode Island used RFG reductions to meet the Clean Fuel Fleet requirement.
Base Year Emissions Inventory	CAA SIP Requirement	SIP approved (61 FR 55902; 10/30/96, amended 63 FR 67600, 12/8/98).
15% VOC Reduction Plan and Contingency Plan.	CAA SIP Requirement	SIP approved (63 FR 67594; 12/8/98).
9% rate of progress plan	CAA SIP Requirement	SIP approved (66 FR 30811; 6/8/01).
Emissions Statements	CAA SIP Requirement	SIP approved (60 FR 2526; 1/10/95).
Enhanced Monitoring (PAMS)	CAA SIP Requirement	SIP approved (61 FR 55897; 10/30/96).
OTC NO _x MOU Phase II	State initiative	SIP approved (64 FR 29567; 6/2/99).
NO _x SIP Call	CAA requirement established pursuant to SIP call.	SIP approved (65 FR 81748; 12/27/00).

B. NO_x Reductions Consistent With the Modeling Demonstration

On October 27, 1998, EPA completed rulemaking on the NO_x SIP call which required states to address transport of NO_x and ozone to other states. To address transport, the NO_x SIP call established emissions budgets for NO_x that 23 jurisdictions were required to show they would meet by 2007 through enforceable SIP measures adopted and submitted by September 30, 1999. The NO_x SIP call is intended to reduce emissions in upwind states that significantly contribute to nonattainment problems. The EPA did not identify specific sources that the states must regulate nor did EPA limit the states' choices regarding where to achieve the emission reductions. The courts have largely upheld 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, states subject to the NO_x SIP call have largely adopted the controls necessary to meet the budgets set for them under the NO_x SIP call rule. The controls to achieve these reductions should be in place by May 2004.

Rhode Island used the best available NO_x SIP Call information in its modeling analysis. The modeling analysis is discussed in more detail below. Furthermore, Rhode Island adopted control measures to meet the requirements of the NO_x SIP call. EPA approved the regulation Rhode Island adopted pursuant to the NO_x SIP call on December 27, 2000 (65 FR 81748).

C. Motor Vehicle Emissions Budgets (MVEBs)

The EPA believes that attainment demonstration SIPs must necessarily estimate the level of motor vehicle emissions, which when considered with emissions from all other sources (stationary, area and other mobile source), is consistent with attainment. The estimate of motor vehicle emissions is used to determine the conformity of transportation plans and programs to the SIP, as described by CAA section 176(c)(2)(A). For transportation conformity purposes, the estimate of motor vehicle emissions is known as the motor vehicle emissions budget. The EPA believes that appropriately identified motor vehicle emissions budgets are a necessary part of an attainment demonstration SIP. A SIP cannot effectively demonstrate

attainment unless it identifies the level of motor vehicle emissions that can be produced while still demonstrating attainment. See section VII.I. below for the discussion of the motor vehicle emissions budgets included in the Rhode Island attainment demonstration.

D. Mid-Course Review

A mid-course review (MCR), which generally is performed midway between approval of the attainment demonstration and the attainment date, is a reassessment of modeling analyses and more recent monitored data to determine if a prescribed control strategy is resulting in emission reductions and air quality improvements needed to attain the ambient air quality standard for ozone as expeditiously as practicable. See section VII.G. below for additional discussion on Rhode Island's mid-course review.

E. Reasonably Available Control Measures (RACM) Analysis

Section 172(c)(1) of the CAA requires SIPs to contain all RACM and provide for attainment as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submissions 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 otherwise be inappropriate for local reasons, including costs. The EPA also issued a 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>.

When EPA presented its statutory argument in support of its RACM policy to the U.S. Court of Appeals for the D.C. Circuit in defense of its approval of the Washington D.C. ozone SIP, the D.C. Circuit found reasonable EPA's interpretation that measures must advance attainment to be RACM. *Sierra Club v. EPA*, 294 F.3d 155, 162 (D.C. Cir. 2002). Specifically, the Court found that:

EPA reasonably concluded that because the Act 'use[s] the same terminology in conjunction with the RACM requirement' as it does in requiring timely attainment, compare 42 U.S.C. 7502(c)(1) (requiring implementation of RACM 'as expeditiously as practicable but no later than' the applicable attainment deadline), with *id.* § 7511(a)(1) (requiring attainment under same constraints), the RACM requirement is to be understood as a means of meeting the deadline for attainment.

Id. Moreover, the D.C. Circuit rejected, as a "misreading of both text and context," Sierra Club's arguments that EPA's interpretation of RACM conflicts with the Act's text and purpose and lacks any rational basis. The D.C. Circuit also found reasonable EPA's interpretation that it could consider costs in a RACM analysis and that measures may be rejected if they would require an intensive and costly effort for regulation of many small sources. *Sierra Club v. EPA*, 294 F.3d at 162,163. See section VII.H. below for additional discussion on Rhode Island's RACM analysis.

VI. What Are the Relevant Policy and Guidance Documents?

This proposal has cited several policy and guidance memoranda. The documents and their location on EPA's web site are listed below; these documents will also be placed in the docket for this proposal action.

Relevant Documents

1. "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: <http://www.epa.gov/ttn/scram> (file name: "ADDWOE1H").

2. "Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control Measures." November 24, 1999. OAQPS. U.S. EPA, RTP, NC.

3. Memorandum, "Guidance on Motor Vehicle Emissions Budgets in One-Hour

Attainment Demonstrations,” from Merrylin Zaw-Mon, Office of Mobile Sources, to the Air Division Directors, Regions I–VI. November 3, 1999. Web site: <http://www.epa.gov/oms/transp/trafconf.html>.

4. Memorandum from Lydia Wegman and Merrylin Zaw-Mon to the Air Division Directors, Regions I–VI, “1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking.” November 8, 1999. Web site: <http://www.epa.gov/oms/transp/trafconf.html>.

5. Memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, “Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration.” Web site: <http://www.epa.gov/scram001/tt25.htm> (file name: “MCRGUIDE”).

6. Memorandum, “Guidance to Clarify EPA’s Policy on What Constitutes “As Expeditiously as Practicable” for Purposes of Attaining the One-Hour Ozone Standard for Serious and Severe Ozone Nonattainment Areas.” John S. Seitz, Director, Office of Air Quality Planning and Standards. November 1999. Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

7. U.S. EPA, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). Web site: <http://www.epa.gov/ttn/scram/> (file name: “UAMREG”).

8. U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). Web site: <http://www.epa.gov/ttn/scram/> (file name: “O3TEST”).

9. Memorandum, “Ozone Attainment Demonstrations,” from Mary D. Nichols, issued March 2, 1995. Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

10. December 29, 1997 Memorandum from Richard Wilson, Acting Assistant Administrator for Air and Radiation “Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM₁₀ NAAQS.” Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

VII. How Does the Rhode Island Submittal Satisfy the Framework?

This section provides a review of Rhode Island’s submittal and an analysis of how this submittal satisfies the framework discussed in Section V. of this notice.

A. What Did the State Submit?

The attainment demonstration SIP submitted by the Rhode Island Department of Environmental Management for the Rhode Island area

includes a modeling analysis using the CALGRID model. The SIP was submitted in proposed form on January 27, 2003. The SIP is subject to public notice and comment and a hearing will be held on February 27, 2003.

Information on how the photochemical grid modeling, the RACM analysis, the mid-course review and the Motor Vehicle Emissions Budgets are consistent with the CAA and EPA guidance is summarized below.

As explained earlier, the Rhode Island area attained the one-hour ozone standard as of 1999, its statutory deadline under the CAA. Moreover, the Rhode Island nonattainment area continued to have air quality meeting the one-hour ozone standard until the 1999 through 2001 time period. In its attainment demonstration, Rhode Island provides evidence that the area will once again attain by 2007.

Rhode Island chose a 2007 attainment date because it has determined that the current violations are due to upwind emissions, some of which cannot be reduced until as late as the beginning of the 2007 ozone season. The additional reductions that will occur in upwind areas, as well as in Rhode Island, include the following programs: (1) EPA’s NO_x SIP call, which will be implemented by May 31, 2004, with states expected to fully comply with their budgets by 2007; (2) EPA’s Tier 2 standards, which will impose new tailpipe standards for motor vehicles and reduce the sulfur content of fuel, and will be phased in beginning in 2004; (3) EPA’s NO_x requirements for highway heavy-duty engines (*i.e.*, trucks and buses), which beginning in 2004 require new diesel trucks and buses to be 50 percent cleaner than today’s models; (4) new nonroad diesel NO_x standards, which started in 1996 with increasingly more stringent standards being phased in through 2006; and (5) a number of upwind states will adopt new VOC controls for architectural coatings and consumer products that will go into effect in 2004.

Rhode Island also notes that New York, New Jersey and Connecticut have CAA attainment dates of 2007, which is when these upwind states will have fully implemented all measures necessary for them to attain the standard. Also, as discussed in section VII.H there is nothing more Rhode Island can do to advance their attainment date. Attainment in Rhode Island will be achieved when transport of ozone into Rhode Island is reduced below the one-hour standard, and the Rhode Island attainment plan discussed below shows this will not occur until November 15, 2007. Based on this

information, EPA agrees that an attainment date of November 15, 2007 is as expeditiously as practicable and EPA proposes approval of this attainment date for the Rhode Island area.

B. How Was the Photochemical Grid Modeling Conducted?

The key element of the attainment demonstration is the photochemical grid modeling required by the CAA. The Rhode Island SIP used the CALGRID model which was approved for use by EPA since it was found to be at least as effective as the guideline model which is UAM–IV. The modeling domain for CALGRID extends from southwest Connecticut, northward 340 km to northern Vermont, and eastward to east of Nantucket, Massachusetts. For the Rhode Island nonattainment area, the domain is consistent with EPA guidance since it contains adequate areas both upwind and downwind of the nonattainment area. The domain also includes the monitors with the highest measured peak ozone concentrations in Rhode Island. Since the CALGRID modeling was done for a much larger domain that includes not only all of Rhode Island but also includes all of Massachusetts, most of Connecticut, southern New Hampshire, southern Vermont, and most of southern Maine, the CALGRID model has several “source” areas and several receptor areas. The only receptor area of import to this notice and the Rhode Island SIP submittal is the Rhode Island serious ozone nonattainment area. For the purposes of this notice, only model results in Rhode Island will be used, unless otherwise noted. As shown below, EPA believes the modeling portion of the attainment demonstration is consistent with EPA guidance.

The model was run for 10 days during four distinct episodes (August 14–17, 1987, June 21–22, 1988, July 7–8, 1988 and July 10–11, 1988). These episodes represent a variety of ozone conducive weather conditions, and reflect days with high measured ozone in a variety of areas within the entire domain. This is because, as stated above, the domain covers several nonattainment areas, and in order to model the meteorology that causes high ozone, several different episodes were needed. The episodes chosen for New England do include the worst ozone episode for Rhode Island over the last 15 years. The CALGRID model results for the first day of each episode are not used for attainment demonstration purposes, because they are considered “ramp-up days.” Ramp-up days help reduce impacts of initial conditions; after ramp-up days, model results are more reflective of actual

emissions being emitted into the atmosphere. Since the first day of each episode was not considered, this leaves six days for strategy assessment. August 16, 1987 was also not used for strategy assessment. This leaves five strategy days: August 15, 1987; August 17, 1987; June 22, 1988; July 8, 1988 and July 11, 1988.

The CALGRID model was run using the CALMET meteorological processor. This processor took actual meteorological data collected by the National Weather Service and the State Air Pollution Agencies and using extrapolation and other analysis techniques provided winds, temperatures and other meteorological parameters at approximately 400 specific grid points for each hour of the episode up to 14 levels (*i.e.*, from the surface to top of the model which is about 5000 feet). CALMET is described in detail in the Rhode Island attainment demonstration, and was approved by EPA for use in the CALGRID modeling system.

The CALGRID model was run with emissions data prepared by EPA Region I and/or a contractor working with EPA Region I. The data were taken from the EPA Aerometric Informational Retrieval System (AIRS) data base in late 1993 and reflect the emission data supplied from the six New England States. The emission data for the small portion of New York state that forms the western edge of the domain was supplied by New York. EPA Region I quality assured all the New England AIRS data, the New York supplied data and all necessary modifications to the data. The data was further processed through the Emissions Preprocessor System (EPS Version 2.0). To more accurately model ozone in New England, day specific emissions were simulated for on-road mobile sources (cars, trucks, busses, etc.), and for large fossil-fueled fired power plants in New England. The base case CALGRID model is consistent with EPA guidance on model performance.

Future emissions were projected to 1999 and 2007 accounting for both emission increases due to industrial growth, population growth and growth in the number of miles traveled by cars, as well as emission reductions due to cleaner gasoline, cleaner cars and controls on industrial pollution. Growth factors were derived using the EPA-approved Bureau of Economic Analysis (BEA) factors and all the emissions were processed using the EPS 2.0 system.

Model runs were also performed for the year 2007. The runs employed 2007 emission estimates inside the New England Domain, along with boundary condition files reflecting EPA's NO_x SIP

Call emission estimates in upwind areas. Year 2007 emissions estimates for the states inside the modeling domain reflected EPA's NO_x SIP call as well as other federal and state control strategies being implemented by the beginning of the 2007 ozone season. This was accomplished using a two-step process. The first step was to project emissions using growth factors to account for increases or decreases in economic activity by industrial sector. In general, the states projected their emissions using the same growth factors that were used in the OTAG modeling effort. The second step involved applying control factors to source categories that would be regulated by the year 2007. States used a combination of information for control levels: those used for the OTAG modeling effort, and state-specific information relating to the effectiveness of control programs planned or in place. These 2007 emission estimates did not, however, include the Tier 2/Gasoline Sulfur program that was subsequently adopted by EPA on February 10, 2000 (65 FR 6698). The ozone reductions in 2007 from the Tier 2/Gasoline Sulfur program are discussed in Section VII.C.4.

C. What Are the Conclusions From the Modeling?

The EPA guidance for approval of the modeling aspect of a one-hour ozone attainment demonstration is to use the one-hour ozone grid modeling to apply one of two modeled attainment tests (deterministic or statistical) with optional weight-of-evidence analyses to supplement the modeled attainment test results when the modeled attainment test is failed. For the July 8, 1988 ozone episode, the deterministic test is passed for the future year 2007 for Rhode Island (*i.e.* all grid cells for every hour of that day using 2007 emissions are below 0.124 ppm). For the other modeled strategy days (*i.e.*, August 15, 1987; August 17, 1987; June 22, 1988; and July 11, 1988), neither the 1999 nor the 2007 CALGRID modeling performed for the Rhode Island area predicts ozone concentrations below the one-hour ozone standard (0.124 ppm) at every grid cell for every hour of every strategy day modeled. The maximum predicted 2007 concentration in the Rhode Island nonattainment area for the relevant episodes is 0.140 ppm, which occurred for the July 11 episode. The 2007 modeling was performed for two episode days: July 8 and July 11. Only these two days could be run for 2007, because 2007 boundary conditions were not available for the other strategy days. This maximum concentration is in western Rhode Island on the border

with Connecticut, and is the result of transport into Rhode Island. Since the CALGRID model does not predict ozone concentrations below the one-hour ozone standard (0.124 ppm) at every grid cell for every hour of every episode day modeled, the strict deterministic test is not passed. Although the CALGRID model, as run for this analysis, does not pass the strict deterministic test at every grid cell, when additional weight-of-evidence analyses are considered, attainment is demonstrated.

Rhode Island submitted an analysis using the model predicted change in ozone to estimate a future air quality design value. In this analysis, Rhode Island uses the photochemical ozone modeling in a relative sense. In other word, Rhode Island uses the modeled ozone concentrations, from the EPA-approved CALGRID model, in conjunction with monitored ozone air quality data. Rhode Island conducted an analysis which shows how the photochemical modeling results, when applied to ozone design values at the West Greenwich, East Providence and Narragansett monitors, predict attainment at these three monitors by 2007 after taking into account anticipated emission reductions from the NO_x SIP call and the Tier 2/Low Sulfur program. The results show that with the planned emission reductions in the two precursor emissions (VOC and NO_x), ground-level ozone concentrations will be below the ambient standard by the 2007 attainment date. The steps Rhode Island DEM used in this analysis are discussed in the next four subsections.

1. Base Year Ozone Design Values

In the attainment demonstration, Rhode Island DEM reviewed ozone monitoring data to determine a base-year design value for each monitor in Rhode Island. Ozone data collected in 1995, 1996, and 1997 were used for calculating 1997 design values. Using 1997 design values versus 1999 design values results in a conservative analysis.

2. Ozone Reduction Between 1999 and 2007

The second step of this approach consists of comparing photochemical modeling run results in order to determine the predicted ozone reduction at each ozone monitor in Rhode Island between 1999 and 2007. Modeling runs were not performed for 1997 but were performed for 1999. The Rhode Island DEM's use of modeling results for 1999 is conservative since as emissions reductions that occurred between 1997 and 1999 are not

accounted for and relied on. Modeling results for 1999 were then compared with modeling results for 2007 (only two strategy days, July 8 and July 11, are used for 2007, because these are the only two days for which 2007 boundary conditions are available) to estimate changes between 1999 and 2007.

The average predicted change in ozone levels between 1999 and 2007 was determined for each 9-cell block of surface cells containing and surrounding each Rhode Island monitor (*i.e.*, the cell containing the monitor and the 8 surrounding cells). The average predicted change in ozone level was then divided by the 1999 average modeled concentration, in order to calculate the percent ozone reduction between 1999 and 2007. The percent ozone reduction for each monitoring location in Rhode Island are presented in the state's submittal.

3. Predicted Ozone Design Values for 2007

The third step was to determine a 2007 ozone design value for each Rhode Island ozone monitoring station location. This was accomplished by reducing the 1997 ozone design value by the percent ozone reduction predicted for each monitoring location derived in step 2, above. If the resulting design value dropped below the one-hour ozone standard, it is reasonable to assume that the monitor can attain the one-hour ozone standard by 2007. Rhode Island showed in their submittal that the predicted 2007 design values for all monitors in Rhode Island are all below the one-hour ozone NAAQS, except for one day at the East Providence monitor. As discussed in detail below, additional reduction in emissions will bring this monitor's predicted design value below the standard by 2007 as well.

For the West Greenwich monitor (the monitor currently with the highest design value), there was a reduction in ozone levels of 24 percent for the July 8 episode and a reduction in ozone levels of 13 percent at the West Greenwich monitor for the July 11 episode. For both episodes, the future adjusted design value for the West Greenwich monitor is predicted to be below the one-hour ozone standard (0.105 ppm for July 8 and 0.124 ppm for July 11.)

It should also be noted that Rhode Island DEM performed this same analysis for all of the ozone monitors in Massachusetts, New Hampshire and Maine that are also in the CALGRID modeling domain (*i.e.*, the areas downwind of Rhode Island that may be affected by pollution transport from

Rhode Island on ozone conducive days). The results from this analysis, which are contained in the submittal, show that all of these monitors are predicted to have ozone values below the one-hour standard by 2007. This is consistent with the EPA-approved attainment demonstrations for both New Hampshire (67 FR 72574; 12/6/02) and Massachusetts for both the Eastern (67 FR 72576; 12/6/02) and Western Massachusetts (66 FR 665; 1/3/01) serious ozone nonattainment area.

4. Predicted Ozone Design Values for 2007 With the Tier 2/Gasoline Sulfur Program

As previously noted, the CALGRID runs for 2007 included the benefits of the NO_x SIP call as well as other CAA measures, but did not account for the Tier 2/Gasoline Sulfur program. The Tier 2/Gasoline Sulfur program consists of emission reductions due to more protective tailpipe emissions standards for all passenger vehicles, including sport utility vehicles (SUVs), minivans, vans and pick-up trucks, as well as lower standards for sulfur in gasoline. These new standards require passenger vehicles to be 77 to 95 percent cleaner than those on the road today and to reduce the sulfur content of gasoline by up to 90 percent. This program, which does not achieve emission reductions until 2004 and beyond, was not included in the CALGRID modeling analysis discussed above.

Rhode Island DEM, however, has looked at the EPA modeling performed in 1999¹² to assess the effectiveness of the Tier 2/Gasoline Sulfur. For three episodes in the summer of 1995, EPA performed two sets of modeling runs: one run with 2007 CAA emission files including emission reductions associated with Tier 2/Gasoline Sulfur program and a second run that did not include Tier 2/Gasoline Sulfur program emission reductions. In both cases, the CAA emission files included EPA's NO_x SIP Call emission reductions. After the modeling runs were completed, EPA used the modeling results in a relative manner to estimate the percent ozone reduction associated with the Tier 2/Gasoline Sulfur program.

Rhode Island DEM included the predicted ozone design values for the 2007 CAA run and the 2007 Tier 2 run for each county in the Rhode Island nonattainment area. As shown in their submittal, the benefit at all ozone monitors in Rhode Island is at least an additional 0.001 ppm, over what

CALGRID predicted. The improvement at the East Providence monitor is 1%. The Tier 2 modeling performed by EPA showed all 2007 design values for Rhode Island less than the one-hour standard. This combined with the results of the CALGRID analysis add to the weight-of-evidence.

Rhode Island DEM believes it is reasonable to conclude that the design value at the East Providence monitor for 2007 will be reduced by approximately 1 percent once the Tier 2/Gasoline Sulfur program is implemented, which will result in attainment of the one-hour standard at that monitor and throughout Rhode Island.

5. Conclusions From the Future Air Quality Design Value Analysis

Through this additional analysis, Rhode Island DEM has demonstrated that substantial ozone reductions can be expected to occur after the implementation of a number of control strategies that are in place both within and upwind of the New England Domain. Those strategies include EPA's NO_x SIP Call as well as EPA's Tier 2/Gasoline Sulfur program. Therefore, EPA believes it is reasonable to conclude that the Rhode Island nonattainment area will attain the one-hour ozone standard by 2007. While the absolute modeling results do not demonstrate attainment, the modeling results are useful in demonstrating a relative reduction in ozone levels sufficient to demonstrate attainment in 2007.

6. Additional Evidence To Support Attainment in Rhode Island

In addition to the ozone design value analysis performed by the Rhode Island DEM, EPA performed an additional design value analysis using a slightly different method. EPA used the CALGRID modeling in a relative sense to estimate a future design value. EPA compared base case CALGRID runs to future case CALGRID runs to estimate the improvement in ozone air quality levels between the base and future cases. Four strategy days (August 15 and 17 1987; July 8, 1988 and July 11, 1988)¹³ are used in this analysis, which compared the improvement in modeled air quality between the base and future modeling cases. The following procedure is applied. First, base case CALGRID runs are examined to discern the maximum one-hour ozone concentration modeled in Rhode Island. The four strategy days are all examined.

¹² See "Technical Support Document for the Tier 2/Gasoline Sulfur Ozone Modeling Analyses," EPA420-R-99-031, December 1999.

¹³ The June 22, 1988 strategy day is not used because of problems re-analyzing the base case model run for this episode.

Next, the same area is used to determine future modeled ozone values. The modeled maximum results of the four strategy days are averaged and a reduction factor calculated from the base case to the future case. This reduction factor represents the amount of ozone reduced in this area, as the result of the emission reductions modeled. This reduction factor is used to adjust the average ozone design value for this part of the model domain (*i.e.*, Rhode Island), as monitored between 1985 and 1990. This monitored design value represents both the base case model years of 1987 and 1988 and also the design values used in 1991 to classify one-hour nonattainment areas. The future design value is further reduced when the benefits of EPA's Tier 2/Gasoline Sulfur program are factored in.

This additional analysis also shows that air quality design values in Rhode Island can reasonably be expected to be reduced below 0.124 ppm based on continued additional reductions within the domain and reductions upwind, reflected in the future year boundary conditions, and the benefits of EPA's Tier 2/Gasoline Sulfur program.

7. Summary of the Ozone Modeling

In summary, the ozone modeling submitted for the Rhode Island area is consistent with the CAA and EPA guidance and demonstrates attainment. Other information, which provides additional support for concluding the Rhode Island area will attain in 2007 are the ambient ozone data trends and a trajectory analysis of exceedance days in the area.

D. What Are the Conclusions From the Ozone Trends?

There are three ozone air quality monitors in the Rhode Island nonattainment area that have data from 2000–2002. They are in the Rhode Island cities and towns of West Greenwich, East Providence, and Narragansett. The original serious classification of the nonattainment area was based on data from the 1987 through 1989 time period. Since then and up to and including 2002 ozone data, all 3 sites show a decrease in ozone due to emission reductions, both within Rhode Island and also upwind.

At the three Rhode Island monitors the ozone trend is downward. At the West Greenwich site, the one-hour ozone design value has dropped from 0.162 ppm in 1988 to 0.130 ppm in 2002, a drop of 20 percent. This site is not in attainment, based on 2000–2002 ozone data. At the East Providence site, the one-hour design value has dropped

from 0.138 ppm in 1988 (site moved from Providence to East Providence in 1997) to 0.127 ppm in 2002, for a drop of 8 percent. This site, too, is not in attainment, based on 2000–2002 ozone data. The Narragansett site only has data for the last five years so no trend was calculated. The current design value for the Narragansett site is 0.124 ppm, which is below the standard. To show how close West Greenwich and East Providence are to meeting the NAAQS one can look at the fifth highest value over the same 3-year period 2000–2002. The fifth highest value for West Greenwich is 0.127 ppm and for East Providence it is 0.125 ppm. The sixth highest value is below the one-hour standard at these sites.

The ozone trend is also downward at the Truro, MA ozone monitor, the only monitor in eastern Massachusetts with a design value over the one-hour standard. At the Truro site, the one-hour design value has dropped from 0.146 ppm in 1989 to 0.130 ppm in 2002, for a drop of 11 percent. This site is not in attainment, based on 2000–2002 ozone data. To show how close Truro is to meeting the NAAQS one can look at the fifth highest value over the same 3-year period 2000–2002, the fifth highest value at the Truro site is below the level of the one-hour ozone standard.

Based on the overall downward trend in one-hour ozone concentrations in Rhode Island, and because precursor emissions are projected to keep falling, both within the nonattainment area and upwind from it, there is no reason to believe that the downward trend in ozone concentrations will not continue over the near term. The future emission reductions will be a result of the following: continued benefits from tighter standards on vehicles (National Low Emission Vehicles or CA LEV in upwind areas) due to fleet turnover; the reductions from large point sources due to the OTC NO_x Budget Program and EPA's NO_x SIP call; other federal control measures such as controls on non-road engines; and the Tier 2 vehicle and low sulfur gasoline program.

E. What Do the Ozone Exceedance Day Trajectory Analyses Show?

Trajectory analysis is a tool for assessing atmospheric transport and identifying likely source regions of locally measured air contaminants. The Rhode Island DEM used the HYSPLIT-4 (Hybrid Single-Particle Lagrangian Integrated Trajectory) model, developed by NOAA's Air Resources Lab (ARL), to compute backward trajectories.

To assess airflow patterns on days when any Rhode Island monitor recorded exceedances of the one-hour

ozone NAAQS during the period 1999–2002, 24-hour backward trajectories were computed by the Rhode Island DEM. The surface-based trajectories (start height of 10 meters) for these days, indicators of shorter range transport, follow a general track that crosses near the New York metropolitan area before turning northeastward toward Rhode Island. These trajectories cross no high emission areas in Rhode Island. Upper-level trajectories (500 and 1000 meters elevation), indicators of long-range transport, generally begin farther west over New York State, Pennsylvania or Ohio and follow a more west-to-east track, passing north of the New York metropolitan area. Since the trajectories for the exceedance days strongly resemble one another, the Rhode Island DEM concluded that there is a consistent meteorological pattern and source region for ozone and precursors when monitors in Rhode Island exceed the one-hour ozone NAAQS. Furthermore, the Rhode Island DEM concluded that one-hour exceedance level ozone concentrations will occur at the West Greenwich, East Providence and Narragansett monitors only if the air reaching these monitors had previously crossed nearby high emission areas such as the greater New York metropolitan area. It should be noted, that on all days when there are exceedances at West Greenwich, East Providence and Narragansett, there are also exceedances in Connecticut. EPA concludes that without the influence of the emissions from the greater New York metropolitan area, no one-hour exceedances would have occurred at these monitors. Attainment demonstrations already approved by EPA for Connecticut and the New York city area show attainment will be achieved in 2007, and likewise this attainment demonstration for Rhode Island concludes that attainment will be achieved in 2007.

To corroborate the Rhode Island DEM's results, EPA performed its own trajectory analyses for those days when there were exceedances of the one-hour ozone standard on either Cape Cod, in southeastern Massachusetts, and/or in Rhode Island, over the three year period 1999 through 2001. This area encompasses the ozone monitoring sites in Truro, MA; Fairhaven, MA; Narragansett, RI; East Providence, RI; and West Greenwich, RI. The exceedance days at these sites during 1999–2001 are as follows: June 7, 1999, July 6, 1999, July 16, 1999, June 10, 2000, June 30, 2001, July 25, 2001, August 7, 2001, and August 9, 2001.

EPA's trajectory analyses of the days with ozone exceedances at these sites (Truro, MA, Fairhaven, MA,

Narragansett, RI, East Providence, RI and West Greenwich, RI) support the Rhode Island DEM trajectories and the CALGRID modeling which shows that the most probable source region of the exceedances at these sites is areas to the south and west of Rhode Island, including Connecticut and the New York City area. Connecticut is less than 20 miles from West Greenwich or less than 2 hours of typical meteorological transport time. Details of this analysis are found in the TSD for this action. Both the analyses done by the Rhode Island DEM and EPA support the conclusion that without the influence of emissions from upwind, no exceedances would have occurred at the Rhode Island ozone monitors. This further supports the conclusion that the Rhode Island ozone nonattainment area will attain in 2007.

F. Are the Causes of the Recent Violation Being Addressed?

The Rhode Island ozone nonattainment area was in attainment for three consecutive, three-years periods from 1998–2000 (*i.e.*, 1996–1998, 1997–1999, and 1998–2000). CALGRID sensitivity runs looked at the effectiveness of NO_x reductions versus VOC reductions by reducing each pollutant individually within the domain by varying percentages (*i.e.*, 25%, 50%, 75% and 100%). These sensitivity runs concluded that reducing nitrogen oxide emission reductions is a more effective ozone control strategy for the New England Domain. Furthermore, in order to assess the role of transport into the New England domain, sensitivity modeling runs were performed using very clean boundary conditions. These runs use boundary conditions from the OTAG run IN60, which assumed the reductions similar to NO_x SIP call emissions, plus an additional 60 percent reduction in NO_x from the ozone nonattainment areas classified as serious or above. These runs show that upwind NO_x reductions would be effective at reducing ozone throughout southern New England, including in Rhode Island where the current one-hour ozone violations occur. From these sensitivity runs as well as its trajectory analyses, EPA concludes that elevated ozone levels at the Rhode Island monitors are principally due to ozone and NO_x generated in Connecticut and upwind areas. Rhode Island DEM further concluded based on CAMx Source Apportionment Modeling described in EPA's October 27, 1998 Final Rulemaking on the NO_x SIP Call (63 FR 57355), that reducing NO_x emissions in adjacent upwind areas—Connecticut,

New York City and New Jersey—will significantly reduce ozone levels at the Rhode Island monitors. Emissions of NO_x and VOC will also be lowered in Rhode Island as well, as a result of the emission control programs listed in Table 2. These local controls, combined with upwind controls will result in the Rhode Island ozone nonattainment area attaining in 2007.

As part of its submittal, Rhode Island DEM included the NO_x emission reductions anticipated to occur in Connecticut, New York City and New Jersey between 1999 and 2007 and between 2002 and 2007. The reduction between 2002 and 2007 was intended to illustrate the reductions that can be expected to reduce current air quality levels being monitored in Rhode Island. The NO_x reduction expected to occur in Connecticut, New York City and New Jersey between 1999 and 2002 is expected to be 126.5 tons per summer day. Those emission reductions have already occurred, and presumably affect the current ozone levels measured in 2002. Between 2002 and 2007, the NO_x reduction expected to occur in Connecticut, New York City and New Jersey is expected to be a bit higher, at 137 tons per summer day. These reductions, which largely have not occurred yet, will benefit future ozone levels in Rhode Island and will help the Rhode Island ozone nonattainment area meet attainment by 2007.

As part of its submittal, Rhode Island DEM also calculated the NO_x and VOC emission reductions projected to occur between 1999 and 2007 in the Rhode Island area. VOC emissions in Rhode Island are projected from 1999 to 2007 to go from 141.1 tons per summer day (tpsd) to 119.0 tpsd, which is a reduction of 22.1 tpsd or 15.6 percent. NO_x emissions in Rhode Island are projected from 1999 to 2007 to go from 93.1 tpsd to 73.6 tpsd, which is a reduction of 19.5 tpsd or 20.9 percent. When combined with the significant reductions in NO_x emissions expected in upwind states by 2007, the Rhode Island emissions inventory data provides additional reason to anticipate that the area will attain the one-hour ozone standard by 2007.

G. Is the Rhode Island Mid-Course Review Consistent With EPA Guidance?

As discussed above, the Rhode Island serious ozone nonattainment area attained the ozone standard based on ozone data collected in 1997–1999 and 1998–2000, but is now violating the standard. Rhode Island DEM has submitted an attainment demonstration supplemented with a weight-of-evidence analysis; therefore, Rhode

Island DEM needs to commit to a mid-course review. The Rhode Island DEM has committed to perform a mid-course review for this area by December 31, 2004.

H. Is the Rhode Island RACM Analysis Consistent With the CAA and EPA Guidance?

The EPA has reviewed the SIP and the RACM analysis submittal for the Rhode Island area to determine if it includes all required RACM measures and sufficient documentation concerning available RACM measures. The RACM analysis will be subject to a public hearing on February 27, 2003.

The trajectory analyses, which are discussed in greater detail in section VII.E, indicate that elevated ozone levels at the three Rhode Island monitors are largely the result of local transport from upwind high emission areas in Connecticut, New York City and New Jersey.¹⁴ In addition to what the Rhode Island DEM submitted, EPA performed a trajectory analysis of each of the days during 1999 through 2001 when exceedances of the one-hour ozone NAAQS were monitored in the Rhode Island ozone nonattainment area. That analysis shows similar results, *i.e.*, that the source region for these exceedances is areas to the south and west of Rhode Island.

The CAM-x source apportionment modeling showed that emissions in Connecticut and Rhode Island combined contribute only 5% to the anthropogenic one-hour ozone levels in Rhode Island. This CAM-x modeling also shows that Rhode Island cannot attain the one-hour NAAQS without substantial NO_x emission reductions in upwind states, and that, since upwind controls will not be fully implemented prior to 2007, the adoption of additional in-state emission reduction measures would not advance the State's attainment date.

The trajectory analyses and both the CALGRID and CAM-x modeling discussed above indicate that Rhode Island must rely on significant emission reductions from upwind states in order to attain the one-hour ozone standard, and that additional emission reduction measures adopted in Rhode Island alone would have a sufficiently small impact on ozone levels that they could not advance the attainment date in the Rhode Island area. Nonetheless, the Rhode Island DEM RACM analysis does review control measures that could

¹⁴ These areas have approved attainment demonstrations and also have EPA-enforceable emission reduction strategies to bring about attainment of the one-hour standard by 2007.

reduce emissions of VOC and NO_x in Rhode Island and analyzed whether adoption of such measures might lead to attainment earlier than 2007.

Rhode Island DEM examined emissions from all significant emission source categories to assess whether there are any additional RACM that could be adopted. The methodology used consists of a two-step procedure. First, Rhode Island DEM reviewed its 2007 emissions inventory to identify significant source categories. After that, Rhode Island DEM screened potential control measures for the significant emitting source categories to determine if they could provide sufficient benefits to accelerate attainment in the Rhode Island area, and, if so, analyzed if the measures were feasible.

The methodology used by the Rhode Island DEM is based on the RACM analysis performed by EPA for the Greater Connecticut serious ozone nonattainment area. See 66 FR 634; January 3, 2001. The RACM analysis for Greater Connecticut looked at projected 2007 emissions from various source categories after taking into account CAA-mandatory controls, additionally adopted regional and national controls, and State-adopted SIP controls. The RACM analysis then assumed that stationary sources that have already been controlled nationally, regionally or locally in the SIP would not be effective candidates for additional controls that could be considered RACM, since these categories have only recently been required to reduce emissions or are about to shortly.

For VOC emissions, Rhode Island DEM reviewed its 2007 emissions inventory for stationary point, area, and non-road sources and culled from it the sixteen largest source categories. Emissions from each were at least one ton per summer day (tpsd), and in their aggregate emissions from these sixteen source categories represent approximately 90 percent of the total VOC inventory from these three sectors. Rhode Island DEM then analyzed whether control requirements exist for each source category, and found that in most instances state or federal control are currently in place.

For example, the largest emitting source category from these three sectors is the area source surface cleaning category. Rhode Island DEM estimates 2007 emissions for this activity will be 12.44 tpsd. However, Rhode Island DEM notes that most of the sources in the small surface cleaning sector, including all vapor degreasers and cold cleaners, are regulated by Rhode Island Air Pollution Control (APC) Regulation No. 36, "Control of Emissions from Organic

Solvent Cleaning," which became effective in 1996. This regulation incorporates control requirements from EPA's Control Technique Guideline (CTG) for this source category, as well as the requirements of EPA's 1994 National Emission Standard for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaners. These requirements represent Reasonably Available Control Technology (RACT). Rhode Island DEM believes that any additional control measures for this activity would result in relatively small decreases in emissions and would not accelerate the State's attainment of the one-hour ozone NAAQS in emissions.

Control measures for the remaining VOC source categories were reviewed in a similar manner, and then Rhode Island DEM performed a similar analysis for the largest NO_x emitting source categories. Rhode Island's conclusion from this analysis is that, based on the types of measures reviewed and the costs of these programs, in association with the potential emission reduction benefits in the Rhode Island area, there are no stationary point, area, or non-road RACM that could be adopted in the state that would advance attainment prior to 2007.

Rhode Island also analyzed whether there were any additional mobile source measures that could be implemented that represent RACM. The Rhode Island DEM is already implementing a wide range of statewide mobile source emissions reduction programs including Stage 2 vapor recovery, enhanced inspection and maintenance, the national low emissions vehicle program, and reformulated gasoline. In addition to the above programs, Rhode Island implements transportation projects under the Congestion Mitigation and Air Quality (CMAQ) program, designed to reduce ozone precursor emissions in the transportation sector. The CMAQ program in Rhode Island's 2003-2004 Transportation Improvement Program (details are provided in the submittal and the TSD for this proposal) includes measures aimed at increasing bicycle, ferry and public transit travel, eliminating traffic congestion through improving transportation management, signalization and roadways, reducing emissions from diesel on-road vehicles with a heavy duty vehicle inspection program, and the installation of emissions controls on public transit diesel buses. However, implementation of these projects, and other similar programs that will be funded with CMAQ monies in the coming years, will only achieve a minimal emission reduction of 0.07 tons per summer day

of VOC and 0.06 tons per summer day of NO_x. This small reduction in precursors will not result in an acceleration of the attainment date. Since a large number of mobile source emissions control programs are already being implemented and since additional measures of the type that have been funded by CMAQ monies would not accelerate the attainment date, Rhode Island has not identified any additional mobile source RACM measures. The Rhode Island DEM's conclusion on mobile sources is that Rhode Island is currently implementing all reasonably available control measures for mobile sources, since the benefits from these projects is minimal compared to Rhode Island's own emissions and even smaller when compared to the transport of ozone and ozone precursors.

EPA concludes that based on the available information, there are no additional technologically and economically feasible emission control measures in Rhode Island that will advance the attainment date for the Rhode Island ozone nonattainment area. Thus no potential measure can be considered RACM for purposes of section 172(c)(1) for the Rhode Island area for its one-hour ozone attainment demonstration. The Rhode Island DEM analysis is consistent with EPA requirements, which as noted above were upheld by the DC Circuit Court. The EPA therefore proposes that the Rhode Island SIP is consistent with the requirements for RACM.

Although EPA does not believe that section 172(c)(1) requires implementation of additional measures for this area, this conclusion is not necessarily valid for other areas.

I. What About Motor Vehicle Emissions Budgets?

On June 8, 2001 (66 FR 30811) EPA approved the Rhode Island post-1996 plan which included a 1999 VOC motor vehicle emissions budgets of 41.57 tons per summer day VOC, as well as a NO_x budget of 46.40 tons per summer day of NO_x. These 1999 motor vehicle emissions budgets were formally determined adequate by EPA New England for use in transportation conformity on September 29, 1998. Subsequent to the rate-of-progress SIPs, on January 27, 2003, Rhode Island DEM submitted its ozone attainment demonstration to EPA, for parallel processing, which includes new motor vehicle emissions budgets for both VOC and NO_x for 2007, and these budgets are shown in Table 3. EPA is proposing these budgets for approval.

TABLE 3.—2007 EMISSIONS BUDGETS FOR ON-ROAD MOBILE SOURCES IN TONS PER SUMMER DAY (TPSD)

Area	2007 VOC budget	2007 NO _x budget
Rhode Island	30.37	33.62

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision on certain provisions of EPA's 1997 conformity rule in response to a case brought by the Environmental Defense Fund. As a result of the decision, a conformity determination cannot be made using the submitted motor vehicle emissions budgets until EPA makes a positive determination that the submitted budget is adequate. In response to the court's decision, EPA issued guidance on our new adequacy process on May 14, 1999¹⁵

EPA believes that these motor vehicle emissions budgets are adequate for use in future transportation conformity analyses as these budgets meet all of the requirements set forth by EPA's adequacy criteria, were developed using EPA's MOBILE6 model, and are consistent with the attainment demonstration. However, prior to making an adequacy finding, EPA must administer a 30 day comment period for these budgets. Therefore, in today's action EPA is opening up the adequacy comment period on these budgets to run concurrently with the comment period for all of today's action. In addition, this **Federal Register** Notice will appear on EPA's Transportation and Air Quality planning website at <http://www.epa.gov/otaq/transp/conform/adequacy.htm>. All comments on these budgets should be submitted to EPA using the procedure outlined earlier in this notice.

J. Contingency Measures

Rhode Island addressed the contingency measure requirement of section 172(c)(9) of the Clean Air Act by demonstrating that the emission reductions from the federal on-road motor vehicle Tier 2 tailpipe standards and sulfur in gasoline rules, and the federal non-road engine control program that accrue between 2007 and mid-2009, which is the date by which emission reductions from contingency measures would need to occur, will achieve more emission reductions than Rhode Island

needs to meet its three percent attainment contingency obligation. We propose approval of Rhode Island's contingency measure submittal.

VIII. Proposed Action

EPA is proposing to fully approve as meeting CAA section 182(c)(2) the ground-level one-hour ozone attainment demonstration State Implementation Plan for the Rhode Island nonattainment area submitted by Rhode Island on January 27, 2003. EPA is proposing an attainment date of November 15, 2007 for the area, and is proposing that the RACM analysis for the Rhode Island area is consistent with the requirements of section 172(c)(1). EPA proposes approval of Rhode Island's contingency measures submittal, which is consistent with the requirements of section 172(c)(9) of the CAA. This notice also proposes to approve 2007 motor vehicle emissions budgets for Rhode Island into the SIP.

This SIP is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrent with the state's procedures for amending its regulations. If the proposed plan is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will publish a Final Rulemaking Notice on the revisions. Before EPA can finally approve this plan Rhode Island must finally adopt the SIP revision and submit it formally to EPA for incorporation into the SIP.

EPA is soliciting public comments on the issues discussed in this proposal. These issues will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

IX. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the 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 Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does

¹⁵ Memo from Gay MacGregor, Director, Regional and State Programs Division, USEPA Office of Mobile Sources, to Regional Air Division Directors, titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court decision," dated May 14, 1999.

not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: February 6, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03-3698 Filed 2-13-03; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[USCG-2002-11288]

RIN 2115-AG30

Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DOT.

ACTION: Notice of extension of comment period and notice of intent.

SUMMARY: The Coast Guard is extending the comment period on the Notice of Proposed Rulemaking (NPRM) on rates for pilotage on the Great Lakes published in the **Federal Register** January 23, 2003, for 45 days. This will extend the comment period to April 24, 2003. The Coast Guard also intends to delay the publishing of an Interim Rule (IR) previously planned for February 12, 2003 (68 FR 3204), to about April 30, 2003.

DATES: Comments and related material must reach the Docket Management Facility on or before April 24, 2003.

ADDRESSES: You may submit your comments directly to the Docket Management Facility. To make sure that your comments and related material do not enter the docket [USCG-2002-11288] more than once, please submit them by only one of the following means:

(1) By mail to the Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Facility at 202-493-2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

The Facility maintains the public docket for this notice. Comments, and related material as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL-401, on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at <http://dms.dot.gov>.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or you may visit <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call or e-mail Tom Lawler, Chief Economist, Office of Great Lakes Pilotage (G-MW-1), U.S. Coast Guard, at telephone 202-267-1241, or tlawler@comdt.uscg.mil. For questions on viewing, or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-9329.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages you to submit comments and related material concerning the NPRM on "Rates for Pilotage on the Great Lakes" published January 23, 2003, [68 FR 3203] in the **Federal Register**. If you do so, please include your name and address, identify the docket number [USCG-2002-11288], and give the reasons for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all

comments and material received during the comment period.

Background Information

On January 23, 2003, the Coast Guard published an NPRM in the **Federal Register** to update the rates for pilotage on the Great Lakes. At a public meeting conducted on January 31, 2003, in Cleveland, OH, it received requests from the public to extend the comment period and to delay the issuance of an IR until after the comment period has ended.

A comment submitted to the docket has similarly requested that the comment period be extended by 45 days and an IR be delayed until the comment period has closed.

We have decided to grant this request for an extension of the comment period from March 10, 2003, to April 24, 2003, and to delay the publication of an IR until after the close of the comment period. The delay will allow the Coast Guard to collect and review all comments before it issues an IR.

The Coast Guard has also extended the comment period to obtain comments on two specific aspects of the NPRM and to obtain industry-related information that will aid the Coast Guard in assessing the economic impact of the IR.

To assist the Coast Guard in analyzing the impact of the IR on industry, the public should comment on the following issues:

1. Determining the total cost of operating a vessel on the Great Lakes and determining what percentages of those costs are attributable to: (a) Pilotage fees, (b) dockage, (c) longshoremen services, (d) tug services, (e) port and agent fees, (f) running expenses, and (g) other operating expenses.

2. Projections of traffic and cargoes anticipated for the 2003 navigational season.

Dated: February 10, 2003.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03-3737 Filed 2-11-03; 3:00 pm]

BILLING CODE 4910-15-P