

and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC under L601. Nonmachinable parcels for the Buffalo ASF service area claimed at DBMC rates may be sorted to the Pittsburgh BMC under L601 if bedloaded and presented with machinable parcels.

\* \* \* \* \*

[An appropriate amendment to 39 CFR part 111.3 will be published to reflect these changes.]

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[GA-57-200224; FRL-7206-2]

#### Approval and Promulgation of Implementation Plans; Georgia: 1-Hour Ozone Attainment Demonstration, Motor Vehicle Emissions Budgets, Reasonably Available Control Measures, Contingency Measures and Attainment Date Extension

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

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Clean Air Act, as amended in 1990, (CAA), EPA is approving the 1-hour ozone attainment demonstration State Implementation Plan (SIP) for the Atlanta serious 1-hour ozone nonattainment area. In conjunction with its approval of the attainment demonstration, EPA is: extending the ozone attainment date for the Atlanta 1-hour ozone nonattainment area to November 15, 2004, while retaining the area's current classification as a serious ozone nonattainment area; finding that the Atlanta 1-hour ozone nonattainment area meets the reasonably available control measures (RACM) requirements of the CAA; finding that the contingency measures identified by the State of Georgia are adequate; approving the Partnership for a Smog Free Georgia (PSG) program; and approving the 2004 motor vehicle emissions budgets (MVEB).

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

**ADDRESSES:** Copies of documents relevant to this action are available for public inspection during normal business hours at the following

addresses: U.S. EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363-7000.

**FOR FURTHER INFORMATION CONTACT:** Scott M. Martin, EPA Region 4, (404) 562-9036 or email: [martin.scott@epa.gov](mailto:martin.scott@epa.gov).

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##### I. Background

On July 17, 2001, the Georgia Environmental Protection Division (GAEPD) submitted to EPA a revised 1-hour ozone attainment demonstration for the Atlanta 1-hour ozone nonattainment area (Atlanta area) that replaced the attainment demonstration submitted to EPA on October 28, 1999. The new submittal contained a revised MVEB, a request for an attainment date extension to November 15, 2004, a revised PSG program and the RACM analysis. GAEPD also agreed to perform an early assessment of the Atlanta Ozone Attainment SIP and submit it to EPA by November 15, 2003.

EPA proposed to approve the attainment demonstration and to grant an attainment date extension, pursuant to EPA's "Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas." The extension policy applies where pollution from upwind areas interferes with the ability of a downwind area to demonstrate attainment with the 1-hour ozone standard by the dates prescribed in the CAA. As an alternative to reclassification for areas affected by transport, the extension policy provides that an area, such as Atlanta, is eligible for an attainment date extension if it can make submissions that meet certain conditions. EPA proposed that the Atlanta area met all of the required conditions.

In the alternative, EPA proposed to find that the Atlanta area failed to attain the 1-hour ozone National Ambient Air Quality Standards (NAAQS) by

November 15, 1999, the date set forth in the CAA for serious nonattainment areas. If EPA had finalized this finding, the Atlanta area would be reclassified, by operation of law, as a severe nonattainment area. EPA also took comment on a proposed schedule for submittal of the SIP revisions required for severe areas should the area be reclassified.

Please see the **Federal Register** proposal actions published on December 16, 1999, (64 FR 70478) and December 11, 2001, (66 FR 63972) for further information.

##### II. Today's Actions

###### A. Attainment Demonstration Approval and Extension of Attainment Date

In today's action EPA is finalizing its proposed determination that the Atlanta SIP has met the criteria for an attainment date extension. Therefore, EPA is extending the attainment date for the Atlanta area to November 15, 2004, to allow the reductions in transport needed for attainment to occur. Please see the **Federal Register** actions published on December 16, 1999, (64 FR 70478) and December 11, 2001, (66 FR 63972) for further information.

EPA's policy regarding an extension of the ozone attainment date for areas affected by transport was set forth in a July 16, 1998, guidance Memorandum entitled "Extension of Attainment Dates for Downwind Transport Areas" which was published in a notice of interpretation on March 25, 1999, (64 FR 12221). In it, EPA set forth its interpretation of the CAA regarding the extension of attainment dates for ozone nonattainment areas that have been classified as moderate or serious for the 1-hour ozone NAAQS, and which are downwind of areas that have interfered with the moderate and serious nonattainment areas's attainment of the ozone NAAQS by dates prescribed in the CAA. EPA stated that it will consider extending the attainment date for an area or a state that:

a. Has been identified as a downwind area affected by transport from either an upwind area in the same state with a later attainment date or an upwind area in another state that significantly contributes to downwind ozone nonattainment;

b. Has submitted an approvable attainment demonstration with any necessary, adopted local measures, and with an attainment date that shows it will attain the 1-hour NAAQS no later than the date that the emission reductions are expected from upwind areas in the final nitrogen oxide (NO<sub>x</sub>) SIP Call and/or the statutory attainment

date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind emission reductions;

c. Has adopted all applicable local measures required under the area's current ozone classification and any additional emission control measures demonstrated to be necessary to achieve timely attainment, assuming the emission reductions occur as required in the upwind areas; and

d. Has provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

EPA has determined that the Atlanta area has satisfied the criteria for an attainment date extension as follows.

(i) The State has cited EPA's NO<sub>x</sub> SIP Call modeling and analyses documented in EPA's final NO<sub>x</sub> SIP Call notice published on October 27, 1998, (63 FR 57356) to demonstrate that the Atlanta area is affected by an upwind area in another state that significantly contributes to ozone nonattainment in the Atlanta area. In our December 16, 1999, notice (64 FR 70478) proposing approval of the initial 1-hour ozone attainment demonstration for the Atlanta area submitted on October 28, 1999, we explained how the Ozone Transport Assessment Group (OTAG) modeling which supported the NO<sub>x</sub> SIP Call and the attainment demonstration for the Atlanta area demonstrates the impacts of transport. The NO<sub>x</sub> SIP Call notice provides that emissions from sources in Alabama, Kentucky, North Carolina, South Carolina, and Tennessee significantly contribute to violations of the 1-hour ozone standard in the Atlanta area.

(ii) As explained elsewhere in this notice, the GAEPD has submitted an attainment demonstration that EPA believes is approvable and that provides for timely attainment no later than the date emission reductions are expected under the NO<sub>x</sub> SIP call. All of the local control measures relied upon in the attainment demonstration have been adopted and submitted to EPA. These measures include all serious area requirements under section 182(c) and the additional controls discussed in the December 16, 1999, proposal (64 FR 70478) and the July 10, 2001, (66 FR 35906) final rule.

(iii) The GAEPD has adopted all local measures required by section 182(c) of the CAA for the Atlanta serious nonattainment area and all other measures necessary for timely attainment. (See 59 FR 46176, 60 FR 12691, 60 FR 66150, 61 FR 3819, 62 FR

42918, 64 FR 20188). Additionally, see discussion of contingency measures discussed below.

(iv) With respect to implementation of all adopted measures as expeditiously as practicable but no later than the time upwind controls are expected, the Atlanta SIP requires that all local control measures needed for attainment be in place by May 1, 2003, or earlier. The upwind areas identified above are required to implement controls consistent with the NO<sub>x</sub> SIP Call by May 31, 2004. All of the local control measures in the Atlanta SIP will, therefore, be implemented prior to that time and EPA also finds that they will be implemented as expeditiously as possible.

EPA has determined, based on the above discussion, that the Atlanta SIP has met the criteria for an attainment date extension. Therefore, EPA is extending the attainment date for the Atlanta area to November 15, 2004, to allow the reductions in transport to occur before attainment is required. This does not affect the GAEPD's obligation to implement the remaining local measures by the dates required in the approved SIP regulations. Additional background information on EPA's attainment date extension policy can be found in the following **Federal Register** notices:

64 FR 14441—March 25, 1999  
 64 FR 12284—March 18, 1999  
 64 FR 18864—April 16, 1999  
 64 FR 27734—May 21, 1999  
 64 FR 70459—December 16, 1999  
 65 FR 20404—April 17, 2000  
 66 FR 585—January 3, 2001  
 66 FR 634—January 3, 2001  
 66 FR 666—January 3, 2001  
 66 FR 17647—April 3, 2001  
 66 FR 20122—April 19, 2001  
 66 FR 26913—May 15, 2001  
 66 FR 33996—June 26, 2001

In the supplemental proposed rule published on December 11, 2001, EPA proposed to approve the 1-hour ozone attainment demonstration for the Atlanta area as submitted on July 17, 2001, and to extend the area's attainment date to November 15, 2004. In the alternative, EPA proposed to find that the Atlanta area failed to attain the 1-hour ozone NAAQS by November 15, 1999, and to reclassify the Atlanta area to severe.

In today's action, EPA is granting final approval to the 1-hour ozone attainment demonstration for the Atlanta area and extending the attainment date to November 15, 2004. The Atlanta area will thus retain its classification as a serious nonattainment area.

### *B. Reasonably Available Control Measures Analysis (RACM)*

Section 172(c)(1) of the CAA requires attainment demonstration SIPs to provide for the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology, (RACT) and to provide for the attainment of the NAAQS. EPA has previously provided guidance interpreting the RACM requirements of 172(c)(1) (see 57 FR 13498, 13560). RACM was also discussed in the supplemental proposed rule published on December 11, 2001, (see 66 FR 63972). Today, EPA is approving Georgia's RACM analysis.

### *C. 2004 Motor Vehicle Emissions Budgets*

The MVEB for 2004 were calculated using the revised speeds, updated registration data, updated vehicle miles traveled (VMT), and projected 2004 VMT, and the control measures identified in the 1-hour ozone attainment demonstration for the Atlanta area. The resulting budgets are 106.25 and 225.12 tons per typical summer day of VOC and NO<sub>x</sub>, respectively.

These MVEB reflect the most up-to-date mobile modeling assumptions including 2004 VMT projected from the travel demand model for the Atlanta area and July 2004 emission factors from EPA's MOBILE5b emission factor model and 1999 vehicle registration data, which were available at the time of SIP adoption. The control measures identified and modeled for mobile emissions used to establish the MVEB, along with other control measures in this plan, will result in attainment of the 1-hour ozone NAAQS by 2004.

EPA is granting final approval to the 2004 MVEB because they are based on the most recent data, they reflect reductions from the control measures included in the attainment demonstration and they are consistent with the overall attainment demonstration.

Now that EPA has approved the Atlanta attainment demonstration, all future transportation conformity determinations must be measured against the MVEB in the approved SIP. The previous adequacy determination that EPA had made with respect to the MVEB in the submitted attainment demonstration SIP will have no further force or effect in any future conformity determinations. EPA's final approval of the attainment demonstration and the

MVEB contained in it is a separate action from EPA's prior adequacy determination and is based upon different analyses and standards. The adequacy determination had only found that the submitted budgets met the adequacy criteria in EPA's transportation conformity regulations, 40 CFR 93.118(e)(4). Today's approval is based on EPA's conclusions that the SIP as a whole, including the MVEB it contains, meets all applicable requirements for approval of an attainment demonstration as described throughout this notice.

#### D. Partnership for a Smog Free Georgia

In 1997, EPA published the "Voluntary Mobile Source Emission Policy" (VMEP) in order to assist states considering nonregulatory emission strategies, which are generally not effective on a mandatory basis. The VMEP policy allows states to take credit for expected emission reductions from voluntary mobile source programs, and allows states to take credit for up to 3 percent of the total emission reductions needed for attainment through the VMEP policy. Georgia is using this policy to take credit for its PSG program. The PSG promotes effective voluntary actions that employers, their employees and general residents in the region can take to help improve air quality in the metro Atlanta region during the ozone season.

EPA is approving the PSG program, its evaluation procedures, and the expected emission reduction targets as an enforceable part of the SIP under the VMEP policy. Additional information can be found in the above referenced proposal notice.

#### E. Contingency Measures

Section 172(c)(9) and 182(c)(9) of the CAA require SIPs to contain additional measures that will take effect without further action by the state or EPA if an area fails to attain the standard by the applicable date or to meet rate-of-progress (ROP) deadlines. The CAA does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. Although the Atlanta SIP does not contain such contingency measures EPA has determined that existing federally enforceable measures would provide the necessary substantive relief sufficient to provide the basis for approval of an extension to the area's attainment date. Georgia must still submit the required contingency measures to EPA for approval into the SIP. Additional information can be found in the above referenced proposal notice.

### III. Comment and Response

EPA received comments from the public on the Notices and Supplemental Notices of Proposed Rulemaking published in the **Federal Register** on December 16, 1999, (64 FR 70478) and December 11, 2001, (66 FR 63972.) Comments were submitted by The Georgia Conservancy, Environmental Defense, Natural Resources Defense Council, The Sierra Club, Souther Company Services, Kilpatrick Stockton LLP, Georgia Center for Law in the Public Interest, American Road & Transportation Builders Association (ARTBA), Advocates for Safe and Efficient Transportation (ASET), National Association of Home Builders (NAHB), and the Southern Environmental Law Center.

EPA sets forth below in this section our responses to adverse comments received on these notices which are relevant to this rulemaking. Additionally, some of the comments received in Docket A-98-47 on EPA's notice regarding "Extensions of Attainment Dates for Downwind Transport Areas" 64 FR 14441 (March 25, 1999), are relevant to this rulemaking. EPA incorporates its responses to those comments, set forth in 66 FR 585, 66 FR 634, 66 FR 666 (January 3, 2001), 66 FR 26913 (May 15, 2001), and 66 FR 33996 (June 26, 2001) insofar as herein relevant.

The following discussion summarizes and responds to all adverse comments:

*Comments Received Relating to the Supplemental Proposed Rule Published in the Federal Register on Tuesday, December 11, 2001, See 66 FR 63972*

#### Comment 1

EPA proposes to extend the attainment date for the Atlanta metropolitan area to November 15, 2004, 66 Fed. Reg. 63,972. Because this extension violates the plain meaning of the CAA, it must be rejected under Step One of *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984). Moreover, the extension rests on an unreasonable—and therefore impermissible—interpretation that must be rejected even if *Chevron* Step Two applies. See *Whitman v. American Trucking Assns.*, 121 S. Ct. 903, 916 (2001) (reversing an EPA interpretation of Subparts 1 and 2 that "goes beyond the limits of what is ambiguous and contradicts what in our view is quite clear"); *Natural Resources Defense Council v. Daley*, 209 F.3d 747, 753 (D.C. Cir. 2000) (rejecting an agency interpretation that "diverges from any realistic meaning" of the statute).

The CAA expressly sets November 15, 1999, as the attainment date for serious areas, and authorizes no extensions on the grounds asserted by EPA. The structure of the CAA further refutes EPA's assertion of authority to amend those deadlines administratively. While accepted principles of statutory interpretation would in any event preclude EPA's attempt to administratively amend express statutory provisions, such amendment is especially unwarranted with respect to deadlines for attainment of primary air quality standards.

EPA's claim that it has authority to extend attainment dates based on pollution transport is further refuted by express CAA provisions showing that Congress expressly authorized both (1) attainment date extensions and (2) modifications to the CAA's provisions based on pollution transport. These extension provisions provide the exclusive authority for attainment date extensions because when Congress has prescribed the conditions under which an extension may be granted, no other conditions may be created by the Agency to grant an extension. The U.S. Court of Appeals for the Eleventh Circuit rejected EPA's administrative amendment of the CAA plain terms.

#### Response 1

In this final rule, EPA responds to the adverse comments on EPA's legal authority to extend Atlanta's attainment date received in response to the relevant proposals. The responses to comments in a number of prior rulemakings concerning the attainment date extensions granted in Washington, DC, Springfield, MA, Greater CT, Beaumont Texas, and St. Louis are relevant and responsive to the comments received on Atlanta. In those prior rulemakings, EPA responded to similar challenges to the legality of the attainment date extension policy, and EPA therefore incorporates its responses to these comments, set forth in 66 FR 586, 66 FR 634, 66 FR 666 (January 3, 2001), 66 FR 26913 (May 15, 2001) and 66 FR 33996 (June 26, 2001) insofar as herein relevant.

Many of the legal arguments and other issues raised in the comments addressing the attainment date extension proposed in Atlanta have also been addressed in the briefs EPA has filed in litigation concerning the extensions in Washington, D.C. (*Sierra Club v. Whitman*) No. 01-1070 (D.C. Cir.), St. Louis, *Sierra Club v. EPA* 01-2844, No. 01-2845 (7th Cir.), and *Sierra Club v. Whitman*, Nos. 01-5123 and 01-5299 (D.C. Cir.) and Beaumont *Sierra Club v. EPA*, No. 01-60537 (5th Cir.). These briefs have been placed in the

docket for this rulemaking and are incorporated herein by reference.

In response to the contention that EPA's proposed attainment date extension conflicts with an order previously issued by the Eleventh Circuit Court of Appeals, the Eleventh Circuit Court of Appeals has not even directly reviewed, or ruled on, and thus certainly has not formally rejected, EPA's attainment date extension policy. The court did issue a stay of EPA's adequacy determination on the emissions budgets in the 1999 attainment demonstration SIP pending completion of litigation in *Georgians for Transportation Alternatives, et al. v. EPA, et al.*, No. 00-12187, order of July 18, 2000. The petitioners had alleged in their stay request that the budget was inadequate because the SIP illegally relied upon an attainment date extension. However, EPA responded that the budget would be adequate even if an attainment date were not granted and the area were bumped up, since in either case the attainment date would be the same. The court granted the stay in a one line order without opinion. The most that can be taken from this action is that the court believed petitioners had some likelihood of success on the merits and in light of allegations of potential harm chose to preserve the status quo pending completion of the litigation. The issuance of the stay without opinion in no way indicates that the court affirmatively rejected EPA's extension policy. The court never ruled further on the matter since EPA ultimately withdrew its adequacy determination based on new factual developments relating to the attainment demonstration. Similarly, in a recent development that occurred after EPA received comments on its instant action, the 11th Circuit Court of Appeals issued a stay on the recently adequate MVEB for the Atlanta nonattainment area in response to a request for an expedited stay in *Sierra Club, et al v. EPA*, No. 02-11188-F on April 17, 2002. However, the 11th Circuit of Appeals did not provide any rationale for its grant of the stay. It simply issued a stay in the same manner as in *Georgians for Transportation Alternatives, et al. v. EPA, et al.*, No. 00-12187. Since a stay is not an adjudication on the merits, the grant of a stay does not change EPA's position as to the legality of the extension policy.

A commenter's contention that EPA should not grant Atlanta an attainment date extension because Georgia should have acted earlier to commence a section 126 proceeding to reduce emissions from upwind states ignores the fact that an adequate analysis and

allocation of responsibility for transport did not exist in time to support relief by the area's original attainment date. See similar responses in EPA's prior rulemakings on the other attainment date extension areas.

Another argument raised is that reclassification of an area affected by transport is necessary to achieve additional interim reductions in the area, even where they will not advance attainment and when a combination of local and upwind reductions will bring the area into attainment. The commenter relies for his argument on section 176(c)(1)(A), a conformity provision which contains only a general characterization of the purposes of the SIP as a whole. While EPA agrees that SIPs have purposes other than that of providing for attainment, the CAA contains specific and detailed requirements directed to fulfilling those purposes, and the SIP for Atlanta meets those requirements. EPA believes that, under the circumstances, Congress did not intend to require a SIP to go beyond those requirements in order to obtain reductions to compensate for pollution coming from outside the area's borders. The commenter also references *Natural Resources Defense Council v. Reilly*, 983 F.2d 259, 268, 272 (D.C. Cir. 1993). This case involved promulgation of requirements for on-board refueling vapor recovery systems, a provision far different from the complex relationship among the CAA provisions regarding transport and reclassification. Contrary to commenter's contention that *Reilly* supports the concept of "double controls", in the context of onboard regulation, Congress mandated that Stage II controls be withdrawn after the promulgation of onboard controls in moderate areas, and also mandated a more delayed withdrawal from serious and severe areas because of the decade-long phase-in required for effective onboard controls in those areas. That case did not deal with transport, and nothing in *Reilly* indicates that Congress would be supportive of local areas being held responsible for reducing transported pollution for which upwind areas are obligated to promulgate and implement controls.

A commenter argues that it is equitable to reclassify Atlanta because, although it is downwind of some areas, it is upwind of other nonattainment areas, and may contribute to nonattainment there. Reclassification of an upwind area, however, is not the mechanism prescribed by Congress to remedy transport. An area is not required to be reclassified if it provides for local attainment but contributes to nonattainment elsewhere. For purposes

of reclassification the relevant analysis is of the air quality and transported pollution problem in the area being reclassified, and not the air quality downwind from the area. To the extent that the area is responsible for violations in other areas downwind, it is subject to the provisions of section 110(a)(2)(D) and section 126.

Commenters cite to prior case law in support of such propositions as: a list of specific remedial provisions excludes the possibility of inferring that Congress intended any additional forms of relief; an agency cannot substitute its policy choices for those of Congress; the attainment deadlines are central to the CAA and cannot be adjusted. EPA has previously set forth its views on these issues in its prior responses and in its briefs. None of the cases or arguments cited by the commenter alters these views, or undermines EPA's authority to interpret the text of the statute in its full context so as to give effect to Congress's intent. EPA is implementing the attainment date extension not as a mere Agency policy preference, but in order to fulfill Congress's intent. Moreover, even in the absence of explicit statutory authority, EPA may grant extensions of time under the CAA where it concludes that Congress would have done the same had it foreseen the circumstances presented. *NRDC v. EPA*, 22 F.3d 1125 (D. C. Cir. 1994).

#### Comment 2

EPA's proposal to grant an unauthorized date extension has been pre-empted by the re-classification of the Atlanta area that occurred by operation of law pursuant to section 182(g)(3) of the CAA. That provision provides for reclassification of a serious area to severe "[i]f a State fails to submit a demonstration under paragraph 2 for any Serious area within the required period," and fails to make a election of one of the statutory options prescribed by paragraph (3) for remedying that failure.

#### Comment 3

The fact that Georgia failed to make the demonstration required by section 182(g)(2) is established by EPA's response to a Freedom of Information Act request submitted April 20, 2001.

#### Comment 4

Atlanta failed to comply with the rate of further progress milestone for NO<sub>x</sub>.

#### Response to Comments 2, 3, and 4

Under paragraph (2) of subsection 182(g), each State containing all or part of a nonattainment area classified serious or higher is required to submit,

at specified times after a milestone has occurred, "a demonstration that the milestone has been met." This provision further provides,

A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require, by rule. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

Under paragraph (3), "If a State fails to submit a demonstration under paragraph (2)," it must, within specified time frames, elect among several choices, and if it fails to make such an election, then, at a specified time, it is reclassified by operation of law.

By its terms, paragraph (3) mandates the reclassification, or bump-up, only if the State fails to submit "a demonstration under paragraph (2)." Paragraph (2), in turn, provides by its terms that the required demonstration is one that "in such form and manner \* \* \* contain[s] such information and analysis as the Administrator shall require, by rule."

Subsection 182(g) does not provide a date by which EPA must promulgate the rule that establishes the requirements for the demonstration, and EPA has not yet promulgated such a rule. By limiting the bump-up to circumstances in which the State fails to submit a demonstration that conforms to EPA requirements for form and content, subsection 182(g), read most straightforwardly, indicates at least through implication that absent such a rule, there is no requirement for any demonstration that, if not submitted, would ultimately result in a bump-up.

This reading is sensible in light of the many different methods that EPA could require for the demonstration. The milestone compliance demonstration is designed to require some form of accounting to ascertain whether the area has achieved the amount of emissions reductions that the SIP requires by that time. One method of making this calculation may be to require a comprehensive inventory of all sources near the time of the milestone. This approach may require careful consideration because of the time and expense typically involved in conducting inventories, and because other provisions of the CAA require inventories, but at different times than would be required by the milestone compliance demonstration. See 182(a)(3). A second method may be to

allow emissions estimates, consistent with approved methodologies, rather than comprehensive inventories. A third method may be to determine whether the controls required under the SIP to have been implemented by the time of the milestone have, in fact, been implemented. These different methods would impose significantly different burdens on States and sources, and may yield somewhat different results.

This review of the different methods for making the demonstration makes clear that the most straightforward reading of section 182(g)(2)-(3)—to require application of the bump-up by operation of law only after a EPA promulgates rules for the demonstration—is sensible. It makes sense that EPA should first tell the States, by rule, which of the various milestone accounting methodologies they must use. By comparison, it would make little sense to punish, in effect, a State with a bump-up for failing to submit a demonstration when EPA has not yet told the State the form and content for the demonstration, and when important differences exist in the various methods for making the demonstration.

The CAA requires serious ozone nonattainment areas to develop and submit Rate of Progress Plans (ROP) which would provide for at least a 15 percent reduction of volatile organic compound (VOC) emissions 1990 to 1996 (15 percent plan), and Post-1996 ROPs, which would provide for at least three percent per year in either VOC or NO<sub>x</sub> annually for 1997, 1998, and 1999, (9 percent plan). The 15 percent plan was submitted on November 15, 1993, and the 9 percent plan was submitted on November 15, 1994. Both plans were revised on June 17, 1996.

All elements of the 15 percent plan, which reduced VOC emissions by 117.06 tons per day were implemented by the GAEPD. EPA granted final approval to this plan on April 26, 1999, (64 FR 20186). A milestone compliance demonstration (MCD) as required by section 182(g) of the CAA was submitted by the GAEPD to EPA on February 14, 1997.

All elements of the 9 percent plan, which reduced NO<sub>x</sub> emissions by 50.10 tons per day, were implemented by the GAEPD. Although the GAEPD did not submit a milestone compliance demonstration, there is a discussion in section 3.2.2. of the attainment demonstration which states that all control measures associated with the 15 and 9 percent plans have been adopted and implemented. EPA granted final approval to this plan on March 18, 1999, (64 FR 13348).

Comment 5

The Atlanta SIP fails to demonstrate attainment with a standard of 0.12 ppm, rather than 0.124 which was not promulgated as the NAAQS.

Response 5

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

As early as 1977, two years before EPA promulgated the 1-hour ozone NAAQS, EPA provided in guidance that the level of the standard dictates the number of significant figures to be used in determining whether the standard was exceeded (Guidelines for the Interpretation of Air Quality Standards, OAQPS No. 1.2-008, February 1977). In addition, the regulations governing the reporting of annual summary statistics from ambient monitoring stations for use by EPA in determining national air quality status clearly indicate the rounding convention to be used for 1-hour ozone data (40 CFR 58, Appendix F). In 1979, EPA issued additional guidance specific to ozone in which EPA provided that "the stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of .12 ppm means that measurements are to be rounded to two decimal places (.005 rounds up), and, therefore, .125 ppm is the smallest concentration value in excess of the level of the standard." (Guideline for the Interpretation of Ozone Air Quality Standards, EPA-450/4-79-003, at p. 6.) EPA's guidance on air quality modeling is consistent with those Guidelines. See e.g., Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, July 1996.

The level of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) is defined in 40 CFR 50.9 as 0.12 parts per million (ppm), not 120 parts per billion (ppb) as implied by the commenter. In other words, the 1-hour ozone NAAQS is specified as two

significant digits and the data handling approach employed to compare ambient air quality data to the 1-hour ozone standard is to round to two decimal places as per the regulations and guidance referenced above.

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

#### Comment 6

The control strategy submitted in the SIP as developed from the photochemical grid modeling demonstration will not provide for attainment.

#### Response 6

Even though, evidence from the photochemical grid model demonstrates that the control measures submitted in the current SIP may result in exceedances, the demonstration does provide for attainment. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the 1-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be “no exceedances” in the future model predictions. The Atlanta demonstration contains adequate measures to reduce the area-wide design value to below the level of the NAAQS.

The photochemical grid modeling assumed an attainment year of 2003. Allowing additional time to redo the modeling for 2004 would not be consistent with the CAA intent that areas come into attainment as expeditiously as practicable nor would it significantly advance the technical basis for the attainment demonstration. Therefore, EPA agreed that attainment for 2004 could be demonstrated with the submittal of a 2004 emissions inventory as a supplement to the 2003

demonstration, provided that the 2004 emissions are less than or equal to the level of emissions used in the modeling. It could then be concluded that if emissions for 2004 were modeled, the predicted concentrations of ozone would be less than or equal to the 2003 1-hour ozone concentrations modeled. As described below, the state has adequately addressed the differences between the emissions projections for 2003 and 2004.

The Atlanta 1-hour ozone attainment demonstration is based on photochemical grid modeling and weight of evidence analyses as recommended in the EPA’s guidance for the 1-hour ozone attainment demonstration. Georgia submitted an attainment modeling demonstration supporting the attainment date extension to 2003 for the Atlanta 13-county nonattainment area to achieve the 1-hour ozone NAAQS to EPA on October 28, 1999. EPA proposed to approve the attainment demonstration and an attainment date extension request on the December 16, 1999, in the **Federal Register** (see 64 FR 70478). The photochemical grid ozone modeling performed for the Atlanta 1-hour ozone nonattainment area is based on an emissions projection to 2003, the attainment extension year that the Georgia Environmental Protection Division (Georgia EPD) requested of EPA in its October 28, 1999, submittal. On December 16, 1999, EPA proposed approval of the 2003 attainment strategy developed with photochemical grid modeling and the supporting weight of evidence (WOE) analyses. EPA does not agree that errors and deficiencies exist in the 2003-based photochemical modeling to affect its approvability for demonstrating attainment of the 1-hour ozone NAAQS. Detailed information on the 2003 Atlanta attainment photochemical modeling demonstration, the supplemental WOE analysis and EPA modeling requirements are contained in the Technical Support Document for the December 16, 1999, proposal (64 FR 70478). The 2003 modeled control strategy simulations indicate that ozone levels in the Atlanta area will be significantly reduced when the identified additional controls are implemented.

Subsequent to the State’s October 1999 submission and EPA’s December 1999 proposed approval of the Atlanta attainment demonstration, the source compliance date under the NO<sub>x</sub> SIP Call rule was extended from May 1, 2003 to May 31, 2004. In May 1999, the Court of Appeals for the District of Columbia Circuit stayed the obligation of states to submit SIPs in response to EPA’s NO<sub>x</sub>

SIP Call rule, pending litigation over the rule. In March 2000, the Court issued an opinion largely upholding the SIP Call rule. In later rulings in the summer of 2000, the Court lifted the stay of the SIP submission obligation, but provided that since SIP submissions were delayed, EPA could not mandate that states require sources to comply with state-adopted rules under the SIP Call earlier than May 31, 2004. Because the attainment demonstration relied on upwind reductions from the NO<sub>x</sub> SIP Call, Georgia determined that it could not attain in the year preceding the source-compliance date under the SIP and submitted a revised SIP requesting an attainment date of November 2004.

The revised attainment demonstration submitted by the State on July 17, 2001, relies on the photochemical grid modeling that was submitted in October 1999, but provides additional analysis. Although a 2004 attainment year is being proposed for approval for the Atlanta nonattainment area because of the upwind contribution, the local controls in the attainment strategy will all be implemented no later than May 2003.

The 2004 demonstration is based on the following procedures. First, the State uses information from the photochemical grid modeling and ambient air modeling to assess whether or not additional levels of emission reductions are needed beyond those that were necessary to demonstrate attainment. This assessment was completed using the emissions projections for 2004. The second part of the analysis involves an assessment of the levels of attainment emissions for 2004 and whether or not attainment in 2004 is reasonably likely to occur. A determination was made that if the estimates of the projected 2004 emissions with controls implemented are at or below the 2003 modeled levels then attainment by 2004 is reasonably likely to occur.

A comparison of the 2003 and 2004 modeling inventories indicate that NO<sub>x</sub> emissions increase about 2 percent over the modeling domain, while VOC emissions decrease over 8 percent. Since the total NO<sub>x</sub> emissions projected for 2004 are more than the levels modeled for 2003, a demonstration was needed to show why this would not adversely affect the ability of the area to attain the 1-hour ozone NAAQS by 2004. We believe that the relationship between VOC emission reductions and ozone concentration reductions and between NO<sub>x</sub> emission reductions and ozone concentration reductions can be determined using the photochemical modeling results. Sensitivity analyses

from the photochemical modeling in the fine grid were used to develop a relationship to assess the potential for increases in ozone formation for the emission levels projected for 2004. The majority of the local emissions reductions for the attainment strategy occur within the 4-km fine grid with the exception of two power plants near the southern boundary. The sensitivity simulations used were based on the three episode days (i.e., July 31, 1987; August 1, 1987; and July 8, 1988) that were used in the 2003 control strategy simulations. These sensitivity simulations represented modeling scenarios based on reductions across emission inventory categories (e.g., low-level source or elevated sources) while holding all other emissions source categories constant. The air-quality-to-emission-change ratio (i.e., tons per day of emissions change per ppb change in ozone) was developed for each day and sensitivity simulation. The average of these ratios over all days and sensitivities was then determined for each pollutant for each episode day.

The submitted ratios indicate that a 41.5 TPD increase in NO<sub>x</sub> is needed to cause a 1.0 ppb increase in ozone or a 164.9 TPD increase in VOC is needed to cause a 1.0 ppb increase in ozone. These relationships were applied to the emissions changes predicted between 2003 and 2004 as presented in Table 1. The tables indicate that NO<sub>x</sub> emissions are expected to increase by 12.9 TPD and VOC emissions will decrease by 43.7 TPD in 2004. The NO<sub>x</sub> and VOC ratios were applied to the emission changes between 2003 and 2004 to determine how ozone formation would be affected in 2004. This analysis indicated that a 0.3 ppb increase in ozone from the increase in NO<sub>x</sub> emissions is offset by the a 0.3 ppb decrease in ozone from the VOC emissions. The identified shortfall gap has thus been met by the State and the necessary control measures approved by EPA. Therefore, the assessment supports the conclusion that the area will attain the NAAQS in 2004

#### Comment 7

The Atlanta SIP fails to demonstrate timely attainment through the impermissible use of linear rollback assumptions to demonstrate attainment under the weight of evidence approach to demonstrating attainment. The relative reduction factor (RRF) analysis used to estimate a future design value provides no rational basis for discounting the emissions reductions required by the Urban Airshed Model (UAM), to show attainment in all grid

cells for future predictions for each day modeled.

#### Response 7

Episodic photochemical grid modeling is the primary basis for the attainment demonstration, as it was used to define the majority of the control strategy. However, the modeling and corroborative analyses, which form the basis of the weight of evidence analysis, provide a preponderance of evidence to support EPA's determination that attainment of the 1-hour ozone NAAQS will be achieved in 2004. One of these WOE analyses involved the use of a relative reduction factor (derived from the local model results) to determine the level of additional NO<sub>x</sub> and VOC emissions reductions needed to attain.

EPA has generally relied on photochemical modeling to evaluate the attainment demonstration control strategy, and has used locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategy—would reduce ozone levels and thereby strengthen the weight of evidence test. This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback. The limited use of adjustment factors is more practical in light of the uncertainty in the modeling; the resources and time required to perform additional modeling; and the requirement that serious areas perform a progress check by the end of 2003.

The relative reduction factor was used in one WOE analysis to estimate the reductions from additional control measures in the weight of evidence analysis. The 1996 modeling guidance recommends the optional use of weight of evidence analysis partly due to the form of the 1-hour ozone NAAQS. The 1-hour ozone NAAQS allows exceedances, and taking modeling uncertainty into consideration, EPA is not requiring all predicted values in the future model run to be below the level of the NAAQS. The 1996 guidance provides an approach for addressing exceedances (selection of episodes representative of the areas design value and the "statistical" test) and the 1999 guidance provides a method for testing whether additional measures, not modeled, are needed (estimate of a future design value). Since exceedances are allowed, EPA does not agree that the future modeling shows that the area will not attain. The modeling indicates the area may experience an exceedance (model predictions above the level of the NAAQS) but does not indicate this

will lead to a violation (future design value estimate is below the level of the NAAQS).

EPA did not rely on "proportional" rollback as defined in Section 14.0 of 40 CFR 51 Appendix W which defines "rollback" as "a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately." The prohibition in section 6.2.1.e of Appendix W (i.e., "Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.") applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. In this case, EPA used a locally derived as determined by the model, relative reduction factor to estimate a future design value and then used observed changes in air quality (i.e., ratio of change in emissions to change in ozone) to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone. This did assume a linear relationship between the precursors and ozone for determining additional reductions needed for small improvements in ozone.

In 1999, EPA issued additional guidance (hereafter, the 1999 guidance) <sup>1</sup> that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value

<sup>1</sup> "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>.

is expected to be at or below the level of the standard. Since the form of the 1-hour ozone NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be "no exceedances" in the future model predictions. The method outlined in EPA's 1999 guidance uses the highest measured design value from all sites in the nonattainment area for each of three years. The three year "design value" represents the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year.

In the event that the attainment year design value is above the standard, the 1999 guidance provides a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between ozone and the precursors. This is the WOE analysis used by the State to determine additional reductions needed for attainment beyond those modeled. It incorporates the analysis used in the RRF analysis. The regulations do not mandate or nor does EPA guidance suggest that States must model all control measures being implemented. Moreover, a component of this technique, the estimation of future design value, should be considered a model predicted estimate. Therefore, results from this technique are an extension of "photochemical grid" modeling and are consistent with Section 182(c)(2)(A).

#### Comment 8

The Atlanta SIP fails to demonstrate attainment by averaging the emissions reductions required for different

atmospheric episodes to determine reductions needed to attain at specific monitoring sites, and averaging between monitoring sites to support a weight of the evidence analysis.

#### Response 8

The commenter is concerned that calculating the RRF by averaging across episode days is not justified by sound science. When developing the 1999 guidance, EPA considered the use of day specific RRFs versus an average RRF across the days. It was determined that due to day to day variability in ozone concentrations there is more uncertainty in the day specific RRFs, than the RRF calculated by averaging across days. Therefore this approach reduces the impact of a single day and the uncertainty associated with the calculation of the estimated future design value. Since the goal was to estimate a future design value (which allows exceedances), EPA used the average across days. This approach demonstrates future design values below the NAAQS, not day specific predictions below the NAAQS. EPA did estimate an area-wide future design value based on the area's worst design value, instead of site specific future design values as recommended in the EPA's 8-hour modeling guidance. Site specific estimates would provide more information on the spatial variability in the future estimates. However, we have seen from other analyses that other sites typically respond in the same manner as the worst site. The episodes modeled in the attainment demonstration represent the most severe days and highest ever monitored ozone concentration from the three most common meteorological regimes (i.e., stagnation, northwest winds, and the worst case of all other meteorological conditions combined) observed in the Atlanta monitoring network. The guidance does not require that an area demonstrate no exceedances for these severe days, but rather for those days that are representative of the area's design value. It is likely that the model could have predicted lower ozone values for the future scenarios if more representative episodes had been modeled.

#### Comment 9

Failure to consider the implications of uncertainty in results precludes demonstration of attainment.

#### Response 9

EPA considers uncertainty as the "notion that model estimates will not perfectly predict observed air quality at each receptor location, neither now nor

in the future."<sup>2</sup> A great deal of variability in the model estimate is possible from day to day. This variability is in part due to the use of different days, limits on model formulation, limits on understandings of the problem to be modeled, database limitations, uncertainties in forecasting emissions. Some of this variability can be investigated through the use of diagnostic tests which describe alternate, yet highly, plausible variations in the input estimates for wind fields, emission, and modeling methods for chemistry, transport algorithms, removal processes, and numerical routines. For these reasons, EPA recommends that a model performance evaluation be conducted, using graphical and statistical measures, to determine how the model replicates historical ozone events. The state developing the attainment demonstration 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. EPA does not require a rigid criterion for model performance, similar to the 95% certainty level cited by the commenter to be used in a pass/fail test. However, certain statistical parameters are recommended to be developed. Statistical performance measures are recommended to assess whether or not the model evaluation is acceptable.<sup>3</sup> The three primary statistical measures calculated, and the EPA recommended "acceptability" ranges used in the SIP are unpaired accuracy of the peak (EPA goal: within  $\pm 15$ –20 percent), and the mean relative error (EPA goal: within  $\pm 5$ –15 percent, mean unsigned relative error (EPA goal: 30–35 percent). If a state develops an attainment demonstration that indicates acceptable model performance according to the UAM guidance, EPA allows the State to use that model, inputs, and projected emissions to develop an attainment strategy.

<sup>2</sup> "Draft Guidance on the Use of Models and other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS." 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. May 1999. Web site: <http://www.epa.gov/ttn/scram>.

<sup>3</sup> "Guideline for Regulatory Application of the Urban Airshed Model." 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. July 1996. Web site: <http://www.epa.gov/ttn/scram>.

Although there are uncertainties associated with the model outputs, it can still be used to support an attainment demonstration and make use of the RRF analysis as part of the weight of evidence.

As calculated, the RRF negates some of the model uncertainty. The same modeling assumptions and meteorological inputs are used for the base year and future year model simulations (only emissions change). Thus to some degree simulated ozone concentrations for both the base year and future year show similar bias (both magnitude and direction). This model bias is eliminated when the RRF is calculated. Since the RRF is a ratio, the bias in the future year concentration (numerator) is canceled by the bias in the base year concentration (denominator). This ratio is then multiplied by the areas observed design value to estimate a future design value. Since in most cases, uncertainties associated with observations are negligible compared to the uncertainties associated with the modeled ozone concentrations, the resulting future design value is a reasonable prediction of future air quality which accounts for uncertainty in day specific model predictions. Therefore, when the RRF is applied to the observed ozone design value concentration, values below the standard indicate attainment is likely to be achieved.

#### Comment 10

Commenters object to the arbitrary and capricious use of MOBILE5 to estimate motor vehicle emissions which has been shown to significantly underestimate motor vehicle emissions.

The tool used to estimate motor vehicle emissions for the attainment demonstration is the MOBILE model. The accuracy of this estimate is critical because, as demonstrated by Table 1 in the notice, on-road sources account for 53 percent of the total NO<sub>x</sub> emission inventory, and 35% of VOCs for the nonattainment area. MOBILE5 was used to estimate motor vehicle emissions in the region for the attainment demonstration. The commenter believes the vehicle emissions are underestimated and should have been run using MOBILE6.

#### Response 10

As noted in the January 18, 2002 Memorandum titled, "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity," the CAA requires that SIP inventories and control measures be based on the most current information available and applicable when a SIP is

developed [Section 172(c)(3) of the CAA and 40 CFR 51.112(a)(1)]. However, as noted in the answer to the first question in that document, "EPA believes that the CAA would not require states that have already submitted SIPs or will submit SIPs shortly after MOBILE6's release to revise these SIPs because a new motor vehicle emissions model is now available." This concept was reiterated in the January 29, 2002, **Federal Register** notice announcing the approval and availability of MOBILE6 for use in SIPs and conformity determinations. Use of the MOBILE6 model for SIP development was not allowed before the January 29, 2002 **Federal Register** notice. As the Atlanta attainment demonstration was submitted on July 17, 2001, and the MOBILE modeling was performed prior to that date, MOBILE5 had to be used as MOBILE6 was not yet approved for use in SIP development.

It should also be noted that at the time of the development of the Atlanta attainment demonstration changes were being made to the various draft versions of the MOBILE6 model as problems were detected in testing the drafts. Since the MOBILE6 model was not available when the Atlanta SIP was developed EPA concludes that it was appropriate to develop the SIP with the MOBILE5 model. In addition, changes in emission rate estimates, as compared to those modeled with MOBILE5, are area specific. Therefore, the exact effect in Atlanta can not be determined until MOBILE6 is run with area specific data. EPA can not now predict whether the MOBILE6 model will produce lower or higher emissions for the attainment year for Atlanta.

#### Comment 11

Commenters object to taking credit for expected reductions in motor vehicle emissions from the PSG that have not occurred, are not being demonstrated, are not enforceable and may not be reasonably expected.

#### Response 11

The Voluntary Mobile Source Emission Reduction Policy is designed to encourage innovation in air pollution control without the typical regulatory hammer used to enforce against stationary sources. The policy allows a state to take a small amount of credit for reasonably expected emission reductions. The reasoning should be based on historical trends or other methodologies or commitments to meet certain goals. In addition, the State must commit to monitor, evaluate, and reconcile any emissions reduction shortfall from such programs in a timely

manner. In the case of the PSG program, the State demonstrated that trends with the PSG program show that it has the potential to achieve the emission reductions claimed. Furthermore, the state committed to specific target levels or participants and corresponding emission reductions. Should the target levels not be met, the state is responsible for the shortfall and must make up the shortfall through other measures. Enforcement of these measures is available under the SIP against the State should it not timely reconcile any emission reduction shortfall. Based on this information, EPA determined that the expectations of the PSG program are reasonable and that there are enough evaluation periods to assure that the 2004 emission reductions goals are met. EPA does not believe that the PSG program should be considered as part of the additional WOE and did not consider it in the WOE evaluation. See 66 FR 57159, 57190 (November 14, 2001) for further information.

#### Comment 12

EPA's basis for allowing Georgia to reject most of the control measures reviewed for RACM is arbitrary and capricious, and not supported by law. Comments submitted to EPA in response to the Agency's supplemental RACM notice in October 2000 were incorporated by reference. In that proposal, EPA confirms Georgia's assertion that not a single additional control measure was reasonably available over the next five years to address ozone pollution in the Atlanta area. Such an extreme position is neither consistent with the CAA nor supported by the record.

#### Comment 13

EPA acknowledged that additional measures were available to reduce ozone levels in the Atlanta area, but were not "reasonably available" within the meaning of the statute because they purportedly would not advance the date of full attainment. EPA asserted that the RACM mandate was part of the CAA's requirement that plans demonstrate attainment "as expeditiously as practicable," and that it would be unreasonable to require measures that do not advance the attainment date—even if those measures would reduce harmful ozone levels in the interim. The Agency's position conflicts with the CAA's requirement to adopt all RACM in addition to the requirement for timely attainment and for the SIP to eliminate or reduce the severity and number of violations of the NAAQS. These provisions require ozone SIPs to

demonstrate attainment of the ozone standard "as expeditiously as practicable, but no later than" area's attainment date. 42 U.S.C. §§ 7511(a)(1), (c)(2)(A). EPA wrongly presumes that the sole purpose of SIPs is to achieve full attainment by the deadline, and that healthier air in the interim is irrelevant. This conflicts with the CAA's public health purpose. The CAA's mandates for interim progress in years prior to attainment to provide air quality benefits well in advance of full attainment. The State concedes that some additional control measures not rejected on other grounds will reduce NO<sub>x</sub> and VOC emissions, but rejects even those measures on the ground that they will not advance attainment. EPA inexplicably insists that such controls are not "reasonable" unless they solve the whole problem. Such a position conflicts with CAA's text and purpose and lacks any rational basis.

#### Comment 14

Neither the State nor EPA has quantified the level of local emission reductions that would be needed to advance the attainment date. EPA may not reasonably conclude that sufficient control measures are not available to satisfy this test until it first determines the amount of emission reduction needed to meet this requirement, and then determines that measures considered by the State and other measures proposed by other stakeholders and not considered by the State, do not achieve sufficient reductions to meet this test. To show the actual impact of additional controls on air quality, EPA would need to conduct photochemical grid modeling. Instead, EPA has estimated the ambient impact of the emissions reductions expected from the small suite of measures not rejected by Georgia, and applied the absurd ratio of 1 ppb to 41.5 t/d NO<sub>x</sub> discussed above to show that no air quality benefit would result. This approach is arbitrary for several reasons.

EPA failed to consider the potential emission reduction benefits of all of the available measures. EPA further failed to consider potential ozone reduction benefits from the combined implementation of strategies to reduce overall motor vehicle traffic ("transportation control measures" or "TCMs"). EPA refused to consider the potential emission reduction benefits of such combined implementation, asserting that it "would be impossible to analyze a seeming infinite set of combinations of measures for possible benefits."

Absent a constitutional prohibition against the implementation of such

measures, there is no legal bar to the consideration of such measures. Nor were these measures considered in the 1997 Georgia State report since federal tax laws supporting such strategies had not yet been enacted, and the measures had not been tried in other states and shown to be effective. The analysis provided by the State is wholly inadequate with respect to considering the cumulative effect on travel demand and SOV use in the Atlanta area if an aggressive, and comprehensive Commuter Choice program were developed and implemented in the region.

Given EPA's issuance of Guidance to the States supporting the development of such programs, it is especially unreasonable for EPA not to require that the air quality benefits of such a program be fully characterized and considered for adoption as a reasonably available control measure.

#### Response 12, 13, and 14

Georgia EPD performed a RACM analysis for potential control of NO<sub>x</sub> and VOC emission sources not included in the attainment demonstration for the Atlanta 1-hour ozone nonattainment area. Each control option was evaluated according to: (1) The State's authority to implement controls; (2) the amount of NO<sub>x</sub> reductions; (3) the amount of VOC reductions; (4) whether a similar control measure is already being implemented in the SIP; (5) the cost effectiveness of the control; (6) whether SIP credit has already been taken for the measure; and (7) whether the measure can be implemented to achieve reductions during the 2003 ozone season, (measures implemented after the 2003 ozone season cannot advance the 2004 attainment date). Any measures determined to be feasible to implement after the above described evaluation were grouped, by primary category, under the heading "Remaining measures." After further analysis of potential controls on each of the above sources, GAEPD concluded that it was not reasonable or practicable to further control these sources. Specifically, for many of the sources GAEPD stated that the time required to implement controls is unpredictable because legislative action authorizing such regulation by GAEPD would be required, or the number of facilities and potential discharge points affected by these control measures would require a tremendous increase in GAEPD resources to implement and ensure compliance (see 66 FR 63982 for further information.). Therefore, GAEPD concluded that these measures could not be implemented in time to achieve

reductions by 2003. EPA agrees with the RACM analysis.

The EPA's approach toward the RACM requirement is grounded in the language of the CAA. Section 172(c)(1) states that a SIP for a nonattainment area must meet the following requirement, "In general.—Such plan provisions shall provide for the implementation of *all reasonably available control measures as expeditiously as practicable* (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall *provide for attainment of the national primary ambient air quality standards.*" [Emphasis added.] The EPA interprets this language as tying the RACM requirement to the requirement for attainment of the national primary ambient air quality standard. The CAA provides that the attainment date shall be "as expeditiously as practicable but no later than \* \* \*" the deadlines specified in the CAA. EPA believes that the use of the same terminology in conjunction with the RACM requirement serves the purpose of specifying RACM as the way of expediting attainment of the NAAQS in advance of the deadline specified in the CAA. As stated in the "General Preamble" (57 FR 13498 at 13560, April 16, 1992), "The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area *as components of the area's attainment demonstration.*" [Emphasis added.] In other words, because of the construction of the RACM language in the CAA, EPA does not view the RACM requirement as separate from the attainment demonstration requirement. Therefore, EPA believes that the CAA supports its interpretation that measures may be determined to not be RACM if they do not advance the attainment date. In addition, EPA believes that it would not be reasonable to require implementation of measures that would not in fact advance attainment (see 57 FR 13560). EPA has historically taken this interpretation and consistently implemented it through guidance since 1979 (see 44 FR 20372, 20375, April 4, 1979).

The term "reasonably available control measure" is not actually defined in the definitions in the CAA. Therefore, the EPA interpretation that potential measures may be determined not to be RACM if they require an intensive and costly effort for numerous small area

sources is based on the common sense meaning of the phrase, "reasonably available." A measure that is reasonably available is one that is technologically and economically feasible and that can be readily implemented. Ready implementation also includes consideration of whether emissions from small sources are relatively small and whether the administrative burden, to the States and regulated entities, of controlling such sources was likely to be considerable. As stated in the General Preamble, EPA believes that States can reject potential measures based on local conditions including cost. 57 FR 13561.

Also, the development of rules for a large number of very different source categories of small sources for which little control information may exist will likely take much longer than development of rules for source categories for which control information exists or that comprise a smaller number of larger sources. The longer the time frame for development of rules by the State would decrease the possibility that the emission reductions from the additional rules in the nonattainment area would advance the attainment date earlier than would be achieved from the larger amount of reductions expected from upwind controls, such as from the NO<sub>x</sub> SIP Call and controls from upwind severe areas with later statutory attainment dates.

Commenter's argument that the RACM requirement requires interim reductions in addition to the duty to demonstrate timely attainment is incorrect. Although various CAA provisions do require interim reductions, *see, e.g.*, sections 7502(c)(2), 7511a(b)(1) and (c)(2)(B), nothing in the CAA indicates that areas must use the measures required by section 7502(c)(1) to reach these interim goals. Instead, the RACM provision in section 7502(c)(1) refers only to the obligation to demonstrate timely attainment. EPA reasonably concluded that interim reduction requirements could be met by any measures selected by the states, and that section 7502 requires implementation in areas that have met RFP requirements only if such reasonably available control measures as will provide for timely attainment of the NAAQS. As noted above, Atlanta has met its 15 percent and 9 percent ROP requirements.

Another appellate court recently upheld EPA's interpretation of the corresponding RACM provisions for particulate matter (PM-10) in section 7513a(a). *Ober v. Whitman*, 243 F.3d 1190 (9th Cir. 2001). There, EPA applied a two-part test in determining whether controls on certain sources of de

minimis PM-10 emissions would need to be implemented as RACM—looking first at the actual amount of emissions and then at whether control of those emissions would contribute to attainment as expeditiously as practicable. *Id.* at 1193, 1196. The court upheld EPA:

Using the [attainment] deadline to determine whether controls must be imposed makes sense. The deadline is not an arbitrary date unrelated to air quality concerns. \* \* \* In this case, the [plan] concludes that the deadline will not be met even if these small sources of PM-10 were controlled. Under those circumstances, it is reasonable to decline to control the de minimis sources of pollution.

*Id.* at 1198. EPA reasonably concluded here that section 7502(c)(1) similarly does not require implementation of measures that will not contribute to attainment as expeditiously as practicable.

#### Comment 15

The State does not include any of the measures required for severe areas. In view of its bump-up to severe by operation of law, the SIP must include the measures required by section 182(d), including reasonable further progress reductions for the years after 1999.

#### Response 15

As noted in the response to comments 2-4, no bump-up by operation of law occurred due to any purported failure to submit the appropriate milestone compliance demonstration.

#### Comment 16

The Atlanta SIP fails to include the contingency measures required by section 172(c)(9) and 182(c)(9). This proposal is unlawful because it proposes to rely on excess emissions reductions that do not exist, and relies on federal measures not dependent on the attainment status of the nonattainment area.

#### Response 16

Section 172(c)(9) and 182(c)(9) of the CAA require SIPs to contain additional measures that will take effect without further action by the state or EPA if an area fails to attain the standard by the applicable date or to meet rate-of-progress (ROP) deadlines. The CAA does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. However, EPA provided guidance interpreting the control measure requirements of 172(c)(1) and 182(c)(9) in the April 16, 1992, General Preamble for

Implementation of the CAA (see 57 FR 13498, 13510). In that guidance, EPA indicated that states with moderate and above ozone nonattainment areas should include sufficient contingency measures so that, upon implementation of such measures, additional emissions reductions of up to 3 percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been identified. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative reviews. The additional 3 percent reduction would ensure that progress toward attainment occurs at a rate similar to that specified under the reasonable further progress requirements for moderate areas (i.e., 3 percent per year), and that the state will achieve these reductions while conducting additional control measure development and implementation as necessary to correct the shortfall in emissions reductions.

EPA has also determined that promulgated federal measures can be used to analyze whether the contingency measure requirements of section 179(c)(9) and 182(c)(9) have been met. While these measures are not SIP-approved contingency measures which would apply if an area fails to attain, EPA believes that existing federally enforceable measures can be used to provide the necessary substantive relief. Therefore, federal measures may be used in the analysis, to the extent that the attainment demonstration does not rely on them or take credit for them (see, e.g., 66 FR 586, 615, January 3, 2001, and the memorandum from G.T. Helms dated August 13, 1993, "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide Nonattainment Areas".)

EPA believes the contingency measure requirements of sections 172(c)(9) and 182(c)(9) are independent requirements from the attainment demonstration requirements under sections 172(c)(1) and 182(c)(2)(A) and the ROP requirements under sections 172(c)(2) and 182(c)(2)(B). The contingency measure requirements are to address the event that an area fails to meet a ROP milestone or fails to attain the ozone NAAQS by the attainment date established in the SIP. The contingency measure requirements have no bearing on whether a state has submitted a SIP that projects attainment of the ozone NAAQS or the required

ROP reductions toward attainment. The attainment or ROP SIP provides a demonstration that attainment or ROP requirements ought to be fulfilled, but the contingency measure SIP requirements concern what is to happen only if attainment or ROP is not actually achieved. The EPA acknowledges that contingency measures are an independently required SIP revision, but does not believe that submission of contingency measures is necessary before EPA may approve an attainment or ROP SIP. However, EPA believes that areas should have sufficient reductions to meet contingency measure requirements, even if a contingency measure SIP has not been approved, in order to receive an attainment date extension.

EPA has examined the 15 percent ROP and 9 percent ROP plans which were submitted to EPA on June 17, 1996. EPA believes that substantive contingency measure requirements can be met by surplus reductions already achieved in the ROP plans. EPA granted approval to the 15 percent ROP in a **Federal Register** published on April 26, 1999, (64 FR 20186). The 9 percent ROP was approved in a **Federal Register** published on March 18, 1999, (64 FR 13348). Detailed information relating to the calculation of Georgia's 1990 adjusted baseline inventory for VOC and NO<sub>x</sub> emissions for the Atlanta area can be found in the above referenced **Federal Register** actions. The adjusted baseline inventory for VOC found in Georgia's 15 percent ROP is 526.19 tpd and the adjusted baseline inventory for NO<sub>x</sub> found in the 9 percent ROP is 483.12. Therefore, the required 3 percent ROP reductions would be 15.79 tps for VOC ( $0.03 \times 526.19 = 15.79$ ) and 14.50 tpd for NO<sub>x</sub> ( $0.03 \times 483.12 = 14.5$ ). In the 15 percent ROP Georgia exceeds the required VOC emissions reduction by 1.06 tpd. This equates to 0.20 percent of the required 3 percent reduction, leaving a balance of 2.80 percent to be made up by NO<sub>x</sub> reductions. This must be 2.8 percent of the NO<sub>x</sub> adjusted baseline inventory. Therefore, the required NO<sub>x</sub> reductions to satisfy contingency requirements for ROP equal 13.53 tpd ( $0.0280 \times 483.12$ ). The 9 percent ROP achieves an excess NO<sub>x</sub> emissions reduction of 19.47 tpd. Thus, the excess emission reductions achieved in the ROP plans meet the 3 percent contingency requirement.

Additionally, EPA examined the attainment demonstration for the Atlanta area submitted on July 17, 2001, for contingency measures. Although no measures have been specifically designated as contingency measures, EPA has found that measures that could

reasonably constitute appropriate contingency measures are already contained in the SIP or exist in promulgated federal regulations. These measures include additional reductions after 2004 from EPA's Tier 2 tailpipe standards, national low emission vehicle program, and heavy duty diesel emission standards for 2004. Additionally, the Atlanta area will benefit from fleet turnover, as well as an additional model year of light duty vehicles subject to on-board diagnostic (OBD) testing. These measures will continue to provide reductions after November 2004, the attainment date EPA is approving for the Atlanta area. The measures are estimated to reduce emissions in the area by 1.45 percent of the 1990 VOC adjusted baseline emissions and 3.31 percent of the 1990 NO<sub>x</sub> adjusted baseline emissions by 2005 (the year following the time by which EPA must determine whether the area has attained). More details on EPA's contingency measure analysis are included in the docket for this rulemaking action. While there is not an approved contingency measure that would apply if the Atlanta area failed to attain, EPA believes that existing federally enforceable measures would provide the necessary substantive relief sufficient to provide the basis for granting an extension to the area's attainment date. These federally enforceable measures were not accounted for in GAEPD's modeling and are therefore excess emission reductions.

#### Comment 17

The commenter believes that Georgia's Offset Rule is not being implemented in such a way as to provide for zero growth.

#### Response 17

The facility in question is one of a group of electric generating utilities that are subject to a special 7-plant average emissions limit. A revised application from the facility dated December 21, 2001, proposed an overall ton per ozone season limit for all of the companies' facilities subject to the 7-plant average. These limits will be placed in the facility's permits. Total emissions for the seven plants will not increase, and in fact, due to the early reductions and offset credit, will decrease. It is possible that some individual units may experience an increase in emissions, and hypothetically, these units could be located in the Atlanta non-attainment area. It is also possible that the units in the nonattainment area could be the ones experiencing the decreases in emissions.

EPD's assumption of zero growth is reasonable, given that (1) overall emissions for the seven plants will decrease; (2) exact locations of the decreases and increases were unknown at the time of the SIP demonstration and are still unknown today; (3) emissions from 2003 to 2004 for counties outside the non-attainment were calculated to reflect growth but may, due to the 7-plant limit mentioned above, experience a decrease in emissions; and (4) zero-growth in the 13-county non-attainment area was assumed only between 2003 and 2004. In fact, emissions were grown from 1999 to 2003, a period where zero-growth is expected due to the offset rule, making the assumption of zero growth a very conservative one.

In the future, Georgia EPD will continue to implement its Offset Rule in a manner that no leakage will occur, resulting in zero-growth or a decrease in emissions.

#### Comment 18

ARTBA supports approval of the attainment demonstration for the Atlanta area because approval is the only reasonable action.

#### Response 18

EPA agrees with the commenter.

#### Comment 19

Reclassification to severe nonattainment would not shorten the time for meeting Atlanta's air quality goals. In fact, it would extend the time for compliance to at least 2005. Regardless of whether EPA grants an extension pursuant to the downwind extension policy, EPA is prohibited from reclassifying the Atlanta area under Subpart 2 of the federal CAA. Under 42 U.S.C. 7509(c), an area can be reclassified only if EPA makes a formal finding "[w]ithin 6 months following the applicable attainment date" that the area failed to attain the ozone NAAQS. EPA did not make such a determination within six months of the nominal 1999 attainment deadline for the Atlanta area, and thus is now prohibited from doing so.

#### Response 19

EPA is not reclassifying the area at this time, but rather is granting an extension of the area's attainment date to November 2004. EPA agrees that reclassification must be based on a notice and comment rulemaking. See D.C. Circuit Slip opinion *Sierra Club v. Whitman* No. 01-5123 and 015299 April 5, 2002, Slip Opinion (D.C. Cir). EPA has not yet issued a rulemaking containing a final determination of whether Atlanta attained by its

attainment date. EPA does not agree, however, that missing a mandatory deadline means that EPA loses the power to act to discharge the duty to which the deadline applied. EPA retains the power to act to discharge the duty after the deadline has passed.

*Southwestern Pennsylvania Growth Alliance v. Browner*, 121 F.3d 106, 113–114 (3d Cir. 1997). (EPA does not lose power to perform mandatory duty to act on redesignation request after 18-month statutory period has elapsed).

As noted in the response to comments 2–4, no bump-up by operation of law occurred due to any purported failure to submit the appropriate milestone compliance demonstration.

#### Comment 20

ARTBA recognizes that interest groups have threatened legal challenges of both the EPA extension policy and the proposed attainment demonstration for Atlanta. EPA should not allow the threat of legal challenge to cloud its judgment in approving this attainment demonstration. The practical effect of a legal challenge for the Atlanta transportation planners would be for the current transportation plan (at the time of invalidation) to remain in place because legal challenges would not have a retroactive effect. In the alternative, a disapproval and reclassification of the nonattainment area by EPA might cause air quality goals and transportation plans to be delayed because it would force Atlanta to develop a new state implementation plan and may require current transportation plans to shift to achieve conformity.

#### Response 20

EPA agrees with many of the comments made by the Commenters that correctly point out certain provisions in the conformity rule. However, several of the comments are taken out of context. The commenter notes that 40 C.F.R. § 93.118(e)(3) and proposed rule changes (see 66 FR 50954 and 50958, October 5, 2001) provide any finding of conformity for transportation plans or transportation improvement programs (TIPs) to a motor vehicle emission budget (MVEB), prior to an invalidation of a state implementation plan (SIP) containing that MVEB, would continue to be valid. The commenter further states, “As a policy matter, it is common sense for projects in an approved transportation improvement program to proceed, even when a SIP is subsequently invalidated, because those projects have been deemed by the state and regional planner to be essential in improving air quality, reducing congestion, improving mobility and

access, and/or preventing traffic fatalities.” This statement, however, is not correct. This rule provision recognizes that at some point the planning process must proceed, and recognizing that at the time the transportation plan and TIP were developed and approved, the latest applicable MVEB was used. However, the SIP containing the budget is subsequently disapproved (without a protective finding on the budget), only those projects in the first three years of the TIP, exempt and Transportation Control Measures in approved SIPs can proceed. This provision allows for recognition of the cost and resources expended by the transportation planners to this point in the process. Contrary to the commenter’s statement, it does not imply that even if a SIP becomes invalid that the reason projects can proceed is because they were deemed to be essential by the state and regional planner.

The commenter also states, “In the case of Atlanta, its conformity determination would remain valid, if approved based on the January 8, 2002, adequacy determination or based on approval of the attainment demonstration at issue in the current rulemaking, regardless of any future SIP withdrawal or invalidation, until conformity would have otherwise lapsed of due course pursuant to EPA regulations at 40 C.F.R. § 93.104.” The current 2025 transportation plan and FY 2002–04 TIP for Atlanta, Georgia were found in conformity to the 15 percent and 9 percent rate of progress SIP MVEBs. These were the latest approved budgets in the SIP at the time of transportation plan and TIP approval. The January 8, 2002, finding of adequacy is on the 1-hour attainment SIP. Presently, no finding of conformity has been made for this or any other attainment MVEB. While the conformity rule requires 18 months to redetermine conformity to the budget found adequate on January 8, 2002, this action has not yet occurred. The date by which the conformity redetermination for the new budget must be completed for the transportation plan and TIP would likely be 18 months from the date of the finding of adequacy on the budget. (EPA’s proposed rule change, dated October 5, 1999, would start the 18-month trigger on the date of adequacy for a new SIP budget versus the date of a SIP submittal as currently required. Per this rule, a new SIP budget refers to an initial SIP submission for a given CAA requirement.)

Another statement made by the commenter refers directly to the 18-month clock to re-determine conformity.

It stated (reference to the October 28, 1999, SIP and its budget), “Although this motor vehicle emissions budget was later withdrawn, conformity was determined within the required 18-month period. Any subsequent adequacy determination on a resubmitted budget would not be an initial SIP submission and would not trigger the 18-month ‘conformity clock’.” This statement is incorrect. First, no finding of conformity to the 1999 SIP budget was ever made. In addition, the purpose of the 1999 SIP submission was to demonstrate attainment by 2003. Because of a court decision regarding the nitrogen oxides SIP, the state developed and submitted a new SIP for the purpose of demonstrating attainment by 2004. Since conformity was never done to the 2003 attainment SIP and that SIP has since been replaced, the 2004 attainment SIP is considered an initial submission. Therefore, it started a new 18-month conformity schedule. When the 1999 SIP was withdrawn, the 18-month conformity schedule for that SIP was no longer applicable. When the new SIP was submitted in July 2001, a new 18-month conformity schedule began. Therefore, under the 18-month schedule for redetermining conformity to the MVEB in the July 2001 SIP (with an attainment date of 2004), the deadline is likely to be July 2003. (EPA’s proposed rule change, dated October 5, 1999, would start the 18-month trigger on the date of adequacy for a new SIP budget versus the date of a SIP submittal. Should this rule be finalized, conformity will be required to the budget found adequate in January 2002 by July 2003.) Currently, a transportation plan is under development, with a schedule for adoption and conformity redetermination in late 2002. This action is intended to satisfy the 18-month conformity schedule for redetermining conformity to the most recent applicable SIP MVEB.

EPA does agree that the area should attain as expeditiously as practicable. However, EPA believes this can best be achieved by implementation of the submitted control strategy. Therefore, EPA intends to approve the 1-hour ozone attainment demonstration for the Atlanta area.

*Response to Comments Received Relating to the Proposed Rule Published in the Federal Register on December 16, 1999. See 64 FR 704787, Still Relevant to Today's Action*

#### Comment 1

There is no evidence in the submittal that the Governor has endorsed the SIP as required by 40 CFR 93.118(e)(4)(i).

#### Response 1

According to 40 CFR 93.118(e)(4), EPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

(i) The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his designee) and was subject to a State public hearing.

The Georgia Air Quality Act, Article 1, Section 12-9-6 "Powers and Duties of Director as to Air Quality Generally" designates the Director of the Environmental Protection Division of the Department of Natural Resources of the State of Georgia to exercise general supervision over the administration and enforcement of this article and all rules, regulations, and orders promulgated under this article. The motor vehicle emissions budget was the subject of public hearings held on July 7, 1999, and September 8, 1999. The October 1999 State Implementation Plan (SIP) and subsequent supplemental SIP revisions were submitted via letter from Mr. Harold F. Reheis, the current Director of the Georgia Department of Natural Resources.

#### Comment 2

Commenter believes Georgia should increase information to the public on air quality. Commenter believes that year round data collection and more public information in a consumer friendly index format (e.g. UV index or other meteorological information) would help all citizens understand their risk and the dimensions of the problems.

#### Response 2

Through the Partnership for a SMOG-Free Georgia, one of the control measures, the public is provided information on air quality. The Georgia Department of Natural Resources' Environmental Protection Division (EPD) issues ozone forecasts throughout the ozone season, i.e., SMOG Alerts. In addition to the SMOG Alerts, the EPD provides, to the public, real-time air quality concentration data throughout

the year for several measured ambient air pollutants through their internet web site (*GOTOBUTTON BM\_1\_ <http://www.air.dnr.state.ga.us/>*). Because ground level ozone is a health concern in Georgia only during the ozone season (March 1 through October 31), the EPA does not require EPD to monitor or provide public information for ozone year round.

#### Comment 3

Air emissions associated with the Norfolk Southern Railway Company's proposed intermodal transportation facility are likely to cause or contribute to continuing violations of the ozone standard and other air quality standards in and around Cobb County and to pose threats to public health. Regulations addressing this facility should be included in the SIP submittal.

#### Response 3

Specific emissions from the Norfolk Southern Railway Company's proposed facility may not have been included in the ozone modeling demonstration for the Atlanta nonattainment area. However, they were included in the projected emissions for Cobb County for this source category. EPA accepts the modeling and supporting weight of evidence analysis to identify additional controls as being representative of a demonstration to achieve the attainment of the 1-hour ozone standard. Regulations were developed for the controls used in this demonstration. It does not appear that specific controls at this facility were needed to achieve attainment of the 1-hour ozone NAAQS for the Atlanta nonattainment area. As such, regulations addressing this facility are not included in the SIP.

#### Comment 4

If the air emissions associated with the railroad facility were not consider in establishing the mobile source budget, future operation of the facility may render the budget inadequate to demonstrate attainment.

#### Response 4

Railroad emissions are not part of the motor vehicle emissions budget for onroad motor vehicles but rather are included in the inventory for nonroad motor vehicles. Railroad facility emissions were used in the development of Georgia's attainment demonstration and nonroad mobile source emissions inventory. All known future activity from railroads/yards were accounted for in the inventory development. Georgia's Nonroad mobile source inventory for 1990 was developed using an EPA Nonroad

database developed for all nonattainment areas. All emission inventories for other years that were used in the attainment modeling demonstration were developed using Bureau of Economic Analysis (BEA) data. The database was developed in accordance with EPA's guidance document entitled "Procedures for Emission Inventory Preparation Volume IV: Mobile Source." Chapter 6 illustrates how emissions from locomotives are to be developed. Railroads are separated into three classes based upon size: Class I, Class II and Class III. Locomotives within each of the Classes can perform two different types of operations: line haul and yard (or switch). Furthermore, it is EPA's understanding that Georgia took into consideration the Austell Report regarding the proposed CSX rail yard move. This report shows that emissions from this move will decrease.

#### Comment 5

Letter to Georgia EPD requesting that proposed Norfolk Southern intermodal facility not be constructed or operated absent adoption of regulations and/or permit conditions to ensure necessary emission controls. Supporting documentation is included.

#### Response 5

The Norfolk Southern intermodal facility is a minor source in Cobb County. Permits are not required for these minor sources in Georgia.

#### Comment 6

EPD should require non-road diesel engines to use the proposed Georgia Diesel Fuel (CA style).

#### Response 6

In the October 1999 SIP submittal, the GAEPD listed several control measures, including low sulfur diesel, that would be studied to ensure that the 1-hour ozone standard will be met and to make progress towards attaining the 8-hour ozone standard. GAEPD investigated the potential for this type of control and met with the Georgia Petroleum Council to discuss this option, as well as the option for implementing a low sulfur/low Reid Vapor pressure gasoline. Since that time, GAEPD has implemented a control program requiring the low sulfur/low Reid Vapor gasoline, and is actively engaged in EPA's voluntary Heavy Duty Diesel Retrofit program. Through this program, GAEPD is encouraging the use of low sulfur diesel in combination with retrofitted diesel engines for construction equipment at the airport, auxiliary powered units, school bus fleets and so forth. GAEPD is working in partnership with engine manufacturers,

municipalities, the City of Atlanta, EPA, and several refineries on this effort. GAEPD abandoned its efforts to mandate low sulfur diesel when EPA promulgated its Heavy Duty Diesel rule on January 18, 2001. This rule establishes a comprehensive national control program that will regulate the heavy-duty vehicle and its fuel as a single system. As part of this program, new emission standards will begin to take effect in model year 2007 and will apply to heavy-duty highway engines and vehicles. Additionally, this program requires a 97 percent reduction for the level of sulfur in highway diesel fuel by mid-2006.

#### Comment 7

Under the extension policy the state must have adopted all applicable local measures required under the area's current classification and any additional measures necessary to demonstrate attainment. The commenter does not believe all of Georgia's additional measures have been adopted.

#### Response 7

On January 31, 2000, and July 31, 2000, the Georgia Environmental Protection Division (GAEPD) submitted revisions to the October 28, 1999, 1-hour ozone attainment demonstration for the Atlanta serious ozone nonattainment area. The purpose of these revisions was to address the level of additional reductions for attainment (i.e., the shortfall) and to identify the controls to achieve the additional reductions. GA EPD used EPA's 1999 guidance to identify the additional reduction in NO<sub>x</sub> and VOC needed for attainment. The additional control measures adopted represent the open burning ban for industrial, residential, commercial, prescribed and slash purposes for attainment counties, additional electric generating units controls for utilities, and a new combustion turbine regulation. GA EPD has adopted all applicable local measures required for a serious 1-hour ozone nonattainment areas and other additional control measures necessary to demonstrate attainment per the EPA attainment date extension policy and modeling guidance. A final rule on the regulations for the Atlanta attainment strategy was published in the **Federal Register** on July 10, 2001, (66 FR 35906) and became effective on August 9, 2001. Please see the **Federal Register** actions published on December 16, 1999, (64 FR 70478) and December 11, 2001, (66 FR 63972) for further information.

#### Comment 8

It is not clear that Georgia is "affected by transport" of ozone precursors in a manner contemplated by the extension policy. Significant effects are not apparent from EPA's Finding of Significant Contribution & Rulemaking for Certain States in the Ozone Transport Assessment Group for Purposes of Reducing Transport of Ozone, 62 FR 60318 (November 7, 1997). Explain specifically the extent to which upwind sources of air pollution are "significant" and the specific basis for EPA's conclusion.

#### Response 8

EPA provided all the evidence and supporting documentation that Atlanta is significantly affected by transport from upwind states, in the manner contemplated by the extension policy, in the nitrogen oxides (NO<sub>x</sub>) State Implementation Plan (SIP) Call rulemaking (63 FR 57356, Oct. 27, 1998). This rule was upheld by the court in *Michigan v. EPA*, 213 F. 3d 663 (D.C. Cir. 2000).

The SIP for bringing the Atlanta area into compliance with the 1-hour ozone National Ambient Air Quality Standards (NAAQS) relies upon reductions from implementation of the NO<sub>x</sub> SIP Call implemented in upwind states. Appendix G of the EPA NO<sub>x</sub> SIP TSD referenced above, "Evaluation of Contributions—Tables of Metrics, 1-Hour CAMX: Upwind States to Downwind States," page G-6, gives average contributions to an Atlanta area exceedance as follows: Alabama, 8 percent; Kentucky, 1 percent; North Carolina, 1 percent; South Carolina, 1 percent; and Tennessee, 4 percent for a total contribution of 15 percent. The State calculated the effect on a monitored exceedance occurring at 125 ppb, the result being a contribution of 18.6 ppb (125 ppb × 15 percent). The implementation of the NO<sub>x</sub> SIP Call in 2004 would reduce the contribution to ozone exceedances by 18.6 ppb. Thus, EPA has indicated that Georgia is affected by upwind transport.

#### IV. Final Action

Today, EPA is granting final approval to the 1-hour ozone attainment demonstration for the Atlanta area as submitted on July 17, 2001, the RACM analysis, commitment to perform an early attainment assessment, contingency measures, the 2004 MVEB, and the PSG program. Additionally, EPA is extending the attainment date to November 15, 2004. The Atlanta area will remain a serious nonattainment area.

#### V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for

failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the

Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Carbon monoxide,

Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 29, 2002.

**J.I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart L—Georgia**

2. Section 52.570 is amended by adding a new entry 18 to the table in paragraph (e) to read as follows:

**§ 52.570 Identification of Plan.**

\* \* \* \* \*

(e) EPA Approved Georgia Nonregulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date
* * * * *	* * * * *	* * * * *	* * * * *
18. Georgia's State Implementation Plan for the Atlanta Ozone Nonattainment Area.	Atlanta Metropolitan Area	July 17, 2001	May 7, 2002.

[FR Doc. 02-11176 Filed 5-6-02; 8:45 am]  
**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 261-0337c; FRL-7171-5]

**Interim Final Determination That State has Corrected a Deficiency in the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District**

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

**ACTION:** Interim final determination.

**SUMMARY:** Elsewhere in today's **Federal Register**, EPA has published a direct final rulemaking fully approving a revision to the California State Implementation Plan (SIP). EPA has also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on EPA's direct final action, EPA will withdraw its direct final rule and will consider any comments received before taking final action on the State's submittal.

Based on the proposed approval, EPA is making an interim final determination by this action that the State has corrected the deficiencies for which a sanctions clock began on October 13, 2000. This action will defer the imposition of offset and highway sanctions. Although this action is effective upon publication, EPA will take comment. If no comments are received on EPA's approval of the State's submittal, the direct final action published in today's **Federal Register** will also finalize EPA's determination that the State has corrected the deficiency that started the sanctions clock. If comments are received on EPA's approval and this interim final action, EPA will publish a final notice taking into consideration any comments received.

**DATES:** This interim final determination is effective May 7, 2002. Comments must be received by June 6, 2002.

**ADDRESSES:** Written comments must be submitted to Andy Steckel at the Region IX office listed below. Copies of the rule revision and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also

available for inspection at the following locations:

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 947-4117.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On September 29, 1998, the State submitted a revision to the SIP, which EPA disapproved in part on September 13, 2000. (65 FR 55193). EPA's disapproval action started an 18-month clock for the imposition of one sanction