

of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 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. 804(2). This rule will be effective December 13, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 14, 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, Intergovernmental relations, Nitrogen Oxides, Ozone, Volatile Organic Compounds.

Dated: October 15, 2001.

**David A. Ullrich,**

*Deputy Regional Administrator, Region 5.*

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart O—Illinois

2. Section 52.726 is amended by adding paragraph (dd) to read as follows:

#### § 52.726 Control Strategy: Ozone

\* \* \* \* \*

(dd) Chicago Ozone Attainment Demonstration Approval—On December 26, 2000, Illinois submitted a one-hour ozone attainment demonstration plan as a requested revision to the Illinois State Implementation Plan. This plan includes: A modeled demonstration of attainment and associated attainment year conformity emission budgets; a plan to reduce ozone precursor emissions by 3 percent per year from 2000 to 2007 (a post-1999 rate-of-progress plan), and associated conformity emission budgets; a contingency measures plan for both the ozone attainment demonstration and the post-1999 rate-of-progress plan; a commitment to conduct a Mid-Course Review of the ozone attainment demonstration by the end of 2004; a demonstration that Illinois has implemented all reasonably available control measures; and a commitment to revise motor vehicle emission budgets within two years after the U.S. Environmental Protection Agency officially releases the MOBILE6 emission factor model.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[W1108-7338; FRL-7094-3]

### Approval and Promulgation of Air Quality Plans; Wisconsin; Ozone

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving the revisions submitted by the Wisconsin Department of Natural Resources (WDNR or state) to its State Implementation Plan (SIP) for the Milwaukee-Racine area for attainment of the one-hour ozone standard and is approving the SIP as fully meeting the attainment demonstration requirement of the Clean Air Act (Act). The revision was submitted to EPA on December 27, 2000. EPA is approving the air quality modeling, rules to reduce emissions of ozone forming pollutants (i.e., nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC)), a plan demonstrating how progress in emission reductions will be achieved through the area's attainment date of 2007 (i.e., Rate of Progress Plan (ROP)), a reasonably available control measure (RACM) analysis, NO<sub>x</sub> waiver revisions, transportation conformity budgets, and commitments to complete a mid-course review and to recalculate the attainment year budget using MOBILE6. On July 2, 2001, we proposed approval of these SIP revision elements and the SIP as a whole as meeting the attainment demonstration requirement of the Act.

**DATES:** This final rule is effective December 13, 2001.

**ADDRESSES:** You can access copies of the SIP revision request and the Technical Support Document (TSD) for the proposed rulemaking on the SIP revision request at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Randy Robinson at (312) 353-6713 before visiting the Region 5 Office).

**FOR FURTHER INFORMATION CONTACT:** Randy Robinson, Regulation Development Section 2, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone number (312) 353-6713, robinson.randall@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever

“we,” “us,” or “our” are used, we mean EPA.

The supplemental information is organized in the following order:

- I. What Is EPA Approving In This Action?
- I.a. Additional Information on Approval Elements.
- II. Are There Related Elements that Need to be Federally Approved?
- III. Did We Receive Public Comments on the Proposed Approval of Wisconsin’s One-Hour Ozone Attainment Demonstration?
- IV. Final Rulemaking Action.
- V. Administrative Requirements.

**I. What Is EPA Approving in This Action?**

We are approving (1) the modeled attainment demonstration, (2) the NO<sub>x</sub> reduction rule, (3) the revision to the NO<sub>x</sub> waiver, (4) the rule to control VOCs from industrial solvent cleaning operations, (5) the rule requiring VOC controls at plastic parts coating operations, (6) the SIP order requiring VOC control for Flint Ink, (7) the

conformity budgets for the 2007 attainment year and the ROP milestone years of 2002 and 2005, along with the state’s commitment to revise the budgets within one year of the formal release of MOBILE6, (8) the RACM analysis, (9) the commitment to conduct a mid-course review of the attainment status of the Lake Michigan area, and (10) the post-1999 ROP plan. Today’s action finalizes approval of these elements of Wisconsin’s one-hour ozone attainment demonstration SIP revision and fully approves the Wisconsin SIP as meeting the attainment demonstration requirements of sections 182(c)(2) and (d). Below are additional details on the SIP revisions and our rulemaking. Further information is available in the July 2, 2001 proposed rulemaking (66 FR 34878).

*I.a. Additional Information on Approval Elements*

The July 2, 2001 notice proposed approval of a draft plastic parts rule.

The proposal stated that in order to proceed with a final approval, the state must submit a final plastic parts rule that is not significantly different than the draft rule. WDNR submitted a final rule, with no changes, on August 29, 2001, and today’s notice finalizes our approval of the state’s plastic parts rule. The July notice also proposed approval of a rule to control VOC emissions from industrial solvent cleaning operations in the six-county Milwaukee-Racine severe area, and a revision to the SIP to establish RACT requirements for the Flint Ink facility located in Milwaukee. We are finalizing both of the proposed approvals in today’s notice.

In this notice we are approving the transportation conformity budgets submitted with both the post-1999 ROP and the attainment demonstration. The motor vehicle emission budgets for 2002, 2005, and the attainment year 2007 are identified in Table 1 below.

TABLE 1.—MOTOR VEHICLE EMISSION BUDGETS

AREA	2002 ROP		2005 ROP		2007 ROP/attainment	
	VOC (tpd)	NO <sub>x</sub> (tpd)	VOC (tpd)	NO <sub>x</sub> (tpd)	VOC (tpd)	NO <sub>x</sub> (tpd)
Milwaukee .....	43.5	103.5	36.7	84.1	32.2	71.4
Manitowoc .....	5.4	10.0	5.2	8.8	5.2	8.3
Sheboygan .....	4.5	9.4	3.7	7.4	3.3	6.4

We are approving the ROP milestone and attainment year motor vehicle emissions budgets until such time that the state submits a revised budget adequate for conformity purposes, as called for by the state in its commitment to recalculate and apply a revised budget for conformity within one year of the formal release of MOBILE6. The current MVEB’s were determined to be adequate effective September 4, 2001 (66 FR 43255).

As we proposed on July 28, 2000, in the supplemental notice of proposed rulemaking (65 FR 46383), the final approval action we are taking today will be effective for conformity purposes only until the state submits revised motor vehicle emissions budgets that we find adequate. We are limiting the duration of our approval in this manner because we are only approving the attainment demonstrations and their budgets because the states have committed to revise them. The revised budgets, once confirmed as adequate, will be more appropriate than the budgets we are approving today.

The Act requires nonattainment areas designated serious or above to use photochemical grid modeling or an

analytical method judged by EPA to be as effective. The modeled attainment demonstration approved in this notice uses a photochemical grid model (Urban Airshed Model-Variable Version, UAM-V) and follows the EPA modeling guidance in predicting ozone concentrations in the attainment year throughout the Lake Michigan region.

We are approving the state’s NO<sub>x</sub> reduction rules. These rules achieve staged reductions from 2002 through 2007 from sources in southeast Wisconsin. The reductions are accounted for in the attainment demonstration as well as the post-1999 ROP plan.

We are approving the ROP plan, which provides for a nine-percent reduction in emissions (VOC and/or NO<sub>x</sub>) in each of the successive three-year periods from November 1999 through November 2000.

On January 26, 1996, EPA promulgated a NO<sub>x</sub> waiver under section 182(f) of the Act for the Lake Michigan ozone nonattainment areas (61 FR 2428). The rulemaking granted exemptions from the Reasonably Available Control Technology (RACT) and New Source Review (NSR)

requirements for major stationary sources of NO<sub>x</sub>, and from certain vehicle inspection and maintenance (I/M) and general and transportation conformity requirements for ozone nonattainment areas within the Lake Michigan area modeling domain. EPA granted this waiver based on air quality modeling indicating that NO<sub>x</sub> reductions in the area do not contribute to attainment of the ozone standard. The waiver is now being revised to reflect the emission reductions from the state NO<sub>x</sub> rule and the I/M program, which are relied on in the modeled attainment demonstration (On October 10, 2001, Administrator Christine Todd Whitman delegated authority to Region 5’s Deputy Regional Administrator, David A. Ullrich, to sign final rulemakings concerning revision of NO<sub>x</sub> waivers and responding to NO<sub>x</sub> waiver petitions for Illinois, Indiana, and Wisconsin). The modeling demonstrates that the ozone standard will be attained with the implementation of these controls. Any additional NO<sub>x</sub> requirements beyond those described above are considered “excess reductions”, since they would

be in excess of the reductions needed to attain the ozone standard.

The state committed, in a letter dated February 22, 2000, to perform a mid-course review (MCR) of the attainment status of the one-hour ozone nonattainment area by December 31, 2003. The state also reiterated, in a July 31, 2001 comment letter, that the MCR will likely not be completed until the end of 2004. We are finalizing approval of the state's commitment, yet recognize that circumstances, discussed later in this notice, may lead to the state submitting a MCR in 2004. The state's commitment and the MCR are discussed in more detail in a later section.

Section 172(c)(1) of the Act requires SIPs to contain Reasonably Available Control Measures (RACM) as necessary to provide for attainment as expeditiously as practicable. On June 6, 2001, Wisconsin supplemented its December 2000 attainment demonstration submittal with a RACM analysis. This analysis was discussed, along with information added by EPA, in the July 2, 2001, proposed approval of the Wisconsin submittal. We did not receive any comments on the analysis. We are finalizing the approval of the RACM analysis as meeting the requirements of the Act.

## II. Are There Other Elements That Need To Be Federally Approved?

In addition to the elements mentioned above, there are related items on which EPA has recently taken final action or on which EPA is taking final action in other rulemakings. Two items that must be addressed concurrent with this rulemaking are (1) the post-1996 ROP plan, proposed for approval on June 22, 2001 (66 FR 33495) with a final approval signed by the Regional Administrator on September 26, 2001; and (2) revisions to the state's inspection and maintenance program. We conditionally approved Wisconsin's motor vehicle inspection and maintenance (I/M) program SIP on January 12, 1995 (60 FR 2881) with a subsequent revision submitted on December 30, 1998. We published a direct final approval of Wisconsin's I/M SIP on August 16, 2001 (66 FR 42949). Comments on the notice were due September 17, 2001. No comments were submitted. Therefore, the I/M SIP becomes effective on October 15, 2001.

## III. Did We Receive Public Comments on the Proposed Approval of Wisconsin's One-Hour Ozone Attainment Demonstration?

On July 2, 2001, we published a proposed approval of the Wisconsin one-hour ozone attainment

demonstration SIP revision the state had submitted on December 22, 2000 (66 FR 34878). The public comment period closed on August 1, 2001. We received one comment letter on the proposed rulemaking, from the Wisconsin Department of Natural Resources. A closely related rulemaking was published on December 16, 1999 (64 FR 70531). In that notice, we proposed conditional approval of an earlier one-hour ozone attainment demonstration, submitted by Wisconsin on April 30, 1998. The December 1999 proposal was published concurrent with proposed actions on attainment demonstrations for nine other serious and severe ozone nonattainment areas across the eastern part of the United States. EPA received a number of comments on the December 1999 proposed rulemakings. The one-hour ozone attainment demonstration SIP revision package submitted by Wisconsin in December 2000 essentially replaced its earlier 1998 submittal. In this final rulemaking, we will address the relevant comments received on our December 1999 proposed conditional approval rulemaking as well as the comments received on the recent proposed approval.

A summary of comments received on the December 16, 1999 proposed conditional approval and a summary of the comments received on the July 2001 proposal and our responses are set forth below. The comments and responses include those that were more general in nature, applying to all or several of the proposed actions issued on December 16, 1999, as well as comments and responses specific to the attainment demonstration for the Milwaukee-Racine nonattainment area.

### A. Reliance on NO<sub>x</sub> SIP Call and Tier II Modeling

*Comment:* Several commenters stated that given the uncertainty surrounding the NO<sub>x</sub> SIP Call at the time of EPA's proposals on the attainment demonstrations, there is no basis for the conclusion reached by EPA that states should assume implementation of the NO<sub>x</sub> SIP Call, or rely on it as a part of their demonstrations. One commenter claims that there were errors in the emissions inventories used for the NO<sub>x</sub> SIP Call Supplemental Notice (SNPR) and that these inaccuracies were carried over to the modeling analyses, estimates of air quality based on that modeling, and estimates of EPA's Tier II tailpipe emissions reduction program not modeled in the demonstrations. Thus, because of the inaccuracies in the inventories used for the SIP Call, the attainment demonstration modeling is also flawed. Finally, one commenter

suggests that modeling data demonstrates that the benefits of imposing NO<sub>x</sub> SIP Call controls are limited to areas near the sources controlled.

*Response:* These comments were submitted prior to several court decisions largely upholding EPA's NO<sub>x</sub> SIP Call. *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000), *cert. denied*, 121 S.Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power v. EPA*, 251 F.3d 1026 (D.C. Cir. 2001). In those cases, the court largely upheld the NO<sub>x</sub> SIP Call. Although a few issues were vacated or remanded to EPA for further consideration, these issues do not concern the accuracy of the emission inventories relied on for purposes of the SIP Call. Moreover, contrary to the commenter's suggestion, the SIP Call modeling data bases were not used to develop estimates of reductions from the Tier II program for the severe-area one-hour attainment demonstrations. Accordingly, the commenter's concerns that inaccurate inventories for the SIP Call modeling lead to inaccurate results for the severe-area one-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the states to achieve the full level of the SIP Call reductions by May 2003. First, the court vacated the rule as it applied to two states—Missouri and Georgia—and also remanded the definition of a co-generator and the assumed emission limit for internal combustion engines. EPA has informed the states that until EPA addresses the remanded issues, EPA will accept SIPs that do not include those small portions of the emission budget. However, EPA is planning to propose a rule shortly to address the remanded issues and ensure that emission reductions from these states and the emission reductions represented by the two source categories are addressed in time to benefit the severe nonattainment areas. Also, although the court in the *Michigan* case subsequently issued an order delaying the implementation date to no later than May 31, 2004, and the *Appalachian Power* case remanded an issue concerning computation of the EGU growth factor, it is EPA's view that states should assume that the SIP Call reductions will occur in time to ensure attainment in the severe nonattainment areas. Both EPA and the states are moving forward to implement the SIP Call.

Finally, contrary to the commenter's conclusions, EPA's modeling to determine the region-wide impacts of the NO<sub>x</sub> SIP call clearly shows that regional transport of ozone and its

precursors is impacting nonattainment areas several states away. This analysis was upheld by the court in *Michigan*.

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

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

*Response:* The EPA reviewed the initial SIP submittals for the Milwaukee-Racine nonattainment area and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA consequently issued a policy guidance memorandum requiring these states to address the RACM requirement through an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, Re: "Additional Submission on RACM from states with Severe 1-hour Ozone Nonattainment Area SIPs.")

The State of Wisconsin supplemented its original SIP with an analysis of RACM on June 6, 2001. EPA proposed to approve this supplement to the SIP as meeting the RACM requirements on July 2, 2001 (66 FR 34878). Based on this SIP supplement, and additional information derived from attainment demonstration modeling, EPA concluded that the SIP for the Milwaukee-Racine nonattainment area meets the requirement for adopting RACM.

Section 172(c)(1) of the Act requires SIPs to contain RACM and provides for areas to attain the National Ambient Air Quality Standards (NAAQS) as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of section 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA stated that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM. Finally, EPA indicated that states could reject measures as not being RACM if they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs. The EPA also issued a recent memorandum re-confirming the principles in the earlier guidance, entitled, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

The July 2, 2001 proposed approval discusses the state's RACM analysis, focusing on both additional transportation control measures and additional stationary source control measures. The state concludes that there are no control measures, above and beyond what the state is already implementing, that would advance the Act's specified attainment date of 2007. We received no comments on the proposed approval.

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

RACM for these or any other areas for the new ozone standard.

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

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

EPA previously responded to comments concerning the adequacy of MVEBs when EPA took final action determining the budgets adequate, and does not address those issues again here. The responses are found at <http://www.epa.gov/oms/transp/conform/pastsips.htm>.

#### *C. Adequacy of Motor Vehicle Emissions Budgets*

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

*Response:* We have completed our review of the adequacy of these SIPs, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We responded to all comments related to adequacy when we issued our adequacy findings, and

therefore we are not listing the individual comments or responding to them here. You may access our findings of adequacy and responses to comments at [www.epa.gov/otaq/traq](http://www.epa.gov/otaq/traq) (once there, click on the "conformity" button). EPA regional contacts are identified on the web site.

#### D. Attainment Demonstration and Rate of Progress Motor Vehicle Emission Inventories

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

*Response:* All of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was submitted. The SIPs use the same vehicle fleet characteristics used in the most recent periodic inventory update. The fleet mix for the Wisconsin submittal was derived from 1995–1997 registration data, and was supplemented with 1998 registration data for the December 2000 submittal. EPA requires using the most recent available data, but we do not require updating it on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest disapproving SIPs on this basis. Nevertheless, we do expect that revisions to these SIPs that use MOBILE6 (as required in those cases where the SIP relies on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6.

#### E. MOBILE6 and Motor Vehicle Emissions Budgets

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

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

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

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

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

*Response:* EPA agrees. The motor vehicle emissions budgets in the Milwaukee-Racine area attainment demonstration reflect the motor vehicle control measures in the attainment demonstration.

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

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

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

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

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

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

*Comment:* If the MOBILE6 budgets are smaller than the MOBILE5 budgets, the difference between the budgets should

not be available for reallocation to other sources, unless air quality data show that the area is attainment and a revised attainment demonstration is submitted that demonstrates that the increased emissions are consistent with attainment and maintenance. Similarly, the MOBILE5 budgets should not be retained (when MOBILE6 is used for conformity demonstrations) unless the above conditions are met.

*Response:* EPA agrees that if recalculation using MOBILE6 shows lower motor vehicle emissions than MOBILE5, then these motor vehicle emission reductions cannot be reallocated to other sources or assigned to the motor vehicle emissions budget as a safety margin unless the area reassesses the analysis in its attainment demonstration and shows that it will still attain. In other words, the area must assess how its original attainment demonstration is impacted by using MOBILE6 vs. MOBILE5 before it reallocates any apparent motor vehicle emission reductions resulting from the use of MOBILE6. Since Wisconsin has committed to submit MOBILE6 budgets within one year of the model's release and EPA's approval of the MOBILE5 budgets is limited, the MOBILE5 budgets will not be retained once the MOBILE6 budgets have been found adequate.

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

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

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

*Response:* This comment is not germane to this rulemaking. However, it is important to note that EPA intends to clarify its policy for implementing MOBILE6 in conformity determinations when we release the final MOBILE6

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

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

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

#### F. Credit for Measures Not Fully Implemented

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

*Response:* Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum<sup>1</sup> that provided that states could claim a 20% reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, states relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR Part 59, Subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20% reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy

memorandum. In accordance with EPA's final regulation, states have assumed a 20% reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to comply with the final regulation within one year of promulgation, except for certain pesticide formulations, which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to "use up existing label stock" and "adjust inventories" to conform to the rule. 63 FR 48848 (September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the fall of 1999 with full reductions by September 2000, and that it was appropriate for the states to take credit for a 20% emission reduction in their SIPs.

Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy<sup>2</sup>, many states claimed a 37% reduction from this source category based on a proposed rule. However, EPA's final rule, "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings," published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33% overall nationwide. The 37% emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40%. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36%

for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately 1% difference between the 37% estimate of reductions assumed by states, following EPA guidance based on the proposal, and the 36% reduction actually achieved by the final rule for previously unregulated areas. EPA's best estimate of the reduction potential of the final rule was set forth in a September 19, 1996 memorandum entitled "Emissions Calculations for the Automobile Refinish Coatings Final Rule" from Mark Morris to Docket No. A-95-18.

Consumer Products Rule: Consistent with a June 22, 1995 EPA guidance<sup>3</sup>, states claimed a 20% reduction from this source category based on EPA's proposed rule. The final rule, "National Volatile Organic Compound Emission Standards for Consumer Products," (63 FR 48819), published on September 11, 1998, has resulted in a 20% reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the fall of 1999. In the consumer products rule, EPA determined and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to state regulations and in anticipation of the final rule. 63 FR 48819. That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the fall of 1999. It was appropriate for the states to take credit for a 20% emission reduction for the consumer products rule in their SIPs.

#### G. Enforcement of Control Programs

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

*Response:* In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the Clean Air Act. Once approved by the EPA, there is no need for states to readopt and resubmit these programs with each and every SIP revision generally required by other sections of the Act. In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping

<sup>1</sup> "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules," March 22, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to Air Division Directors, Regions I-X.

<sup>2</sup> "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule," November 27, 1994, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I-X.

<sup>3</sup> "Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act," June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I-X.

and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules that are not enforceable are generally not approved by the EPA. To the extent that the ozone attainment demonstration and ROP plan depend on specific state emission control regulations these individual regulations have undergone review by the EPA in past approval actions or, to the extent they are being approved through this action, have undergone review in the current rulemaking.

#### H. Attainment Demonstrations—Weight of Evidence

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

*Response:* Under section 182(c)(2) and (d) of the CAA, serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the 1-hour standard. Section 182(c)(2)(A) provides that “[t]his attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator’s discretion, to be at least as effective.” As described in more detail below, the EPA allows states to supplement their photochemical modeling results with additional evidence designed to account for uncertainties in the photochemical modeling to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration “be based on photochemical grid modeling,” because the modeling results constitute the principal component of EPA’s analysis, with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) is reflected in the

regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, “The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models).”<sup>4</sup> 40 CFR 51.112(a)(1). However, the regulations further provide, “Where an air quality model specified in appendix W \* \* \* is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment \* \* \*.” Appendix W, in turn, provides that, “The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas,” but further refers to EPA’s modeling guidance for data requirements and procedures for operating the model. 40 CFR 51 App. W section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA’s guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: The deterministic test or the statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (ppm) ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) 1-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain

conditions (depending on the severity of the episode modeled).<sup>5</sup>

In 1996, EPA issued guidance<sup>6</sup> to update the 1991 guidance referenced in 40 CFR 50 App. W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area’s ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA’s guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, the state may rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (e.g., changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (i.e. analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance<sup>7</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

<sup>5</sup> Guidance on the Use Of Modeled Results to Demonstrate Attainment of the Ozone NAAQS. EPA-454/B-95-007, June 1996.

<sup>6</sup> Ibid.

<sup>7</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>.

<sup>4</sup> The August 12, 1996 version of “Appendix W to Part 51—Guideline on Air Quality Models” was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the 1-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be “no exceedances” in the future model predictions. The method outlined in EPA’s 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three “design values” represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area’s base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

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

A commenter criticized the 1999 guidance as flawed on grounds that it

allows the averaging of the three highest air quality sites across a region, whereas EPA’s 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site. This has the effect of allowing averaging lower air quality concentrations against higher concentrations thus reducing the total emission reduction needed to attain at the higher site. The commenter does not appear to have described the guidance accurately. The guidance does not recommend averaging across a region or spatial averaging of observed data. The guidance does recommend determination of the highest site in the region for each of the three-year periods, determined by the base year modeled. For example, if the base year is 1990, it is the amount of emissions in 1990 that must be adjusted or evaluated (by accounting for growth and controls) to determine whether attainment results. These 1990 emissions contributed to three design value periods (1988–90, 1989–91 and 1990–92). Under the approach of the guidance document, EPA determined the design value for each of those three-year periods, and then averaged those three design values to determine the base design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the three design values. Averaging the three years is beneficial for another reason: It allows consideration of a broader range of meteorological conditions—those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Further more, EPA relied on three-year averaging only for purposes of determining one component, *i.e.*—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to attain.

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

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

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

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

A commenter further criticized EPA’s technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a rollback modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR 51 App. W section 6.2.1.e. provides, “Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.” Section 14.0 of appendix W

defines "rollback" as "a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately." Under this approach if 20% improvement in ozone is needed for the area to reach attainment, it is assumed a 20% reduction in VOC would be required. There was no approach for identifying NO<sub>x</sub> reductions. The "proportional rollback" approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies using a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone. For example, if monitoring or modeling results indicate that ozone was reduced by 25 ppb during a particular period, and that VOC and NO<sub>x</sub> emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO<sub>x</sub>. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a "proportional rollback" technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies. This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: it obviates the need to expend more time and resources to perform additional modeling. In addition, the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling

which is more consistent with recommendations referenced to in Appendix W and does not assume a direct proportional relationship between ozone and its precursors. In addition, the requirement that areas perform a mid-course review (a check of progress toward attainment) provides a margin of safety.

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

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

and Milwaukee, but did point to the need for additional reductions, in varying amounts, in the other areas. As a result, the other areas submitted control requirements to provide the indicated level of emissions reductions. EPA applied the same methodology in these areas, but because of differences in the application of the model to the circumstances of each individual area, the results differed on a case-by-case basis.

As another WOE factor, for areas within the NO<sub>x</sub> SIP call domain, results from the EPA regional modeling for NO<sub>x</sub> controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

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

The commenter further criticized EPA's application of the WOE determination on grounds that EPA ignores evidence indicating that continued nonattainment is likely, such as, according to the commenter, monitoring data indicating that ozone levels in many cities during 1999 exceeded the NAAQS by margins as wide or wider than those predicted by the UAM. EPA has reviewed the evidence provided by the commenter. The 1999 monitor values do not

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

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

#### *I. Additional VOC Reduction Technology*

*Comment:* For states that need additional VOC reductions, this commenter recommends a process to achieve these reductions, that involves

the use of HFC-152a (1,1 difluoroethane) as the blowing agent in manufacturing of polystyrene foam products such as food trays and egg cartons. HFC-152a could be used instead of hydrocarbons, a known pollutant, as a blowing agent. Use of HFC-151a, which is classified as "VOC exempt", would eliminate nationwide the entire 25,000 tons/year of VOC emissions from this industry.

*Response:* EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC-152a (1,1 difluoroethane), which is excluded as a VOC under 40 CFR 50.100(s).<sup>8</sup> Since the HFC-152a is not regulated as a VOC for purposes of the ozone NAAQS, its use in place of VOCs such as pentane or butane would result in a reduction of VOC levels. However, EPA cannot mandate that states adopt any specific control program to meet the NAAQS. It is each state's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC-152a, states may want to consider claims regarding the comparability of the quality of products made with this blowing agent with the quality of products made with other blowing agents. Also the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. This is a technology that states may want to consider, but, ultimately, each state must make the decision whether to require this particular technology to achieve the necessary VOC emissions reductions.

#### *J. Impact of SIP Call on Wisconsin*

*Comment:* A commenter stated that recent modeling of the impact of the SIP call reductions on Wisconsin shows that the state can attain the one-hour ozone standard in all the current nonattainment areas by 2007 without any additional controls. Therefore, the state should not be subjected to further Reasonably Available Control Technology (RACT) or Reasonable Further Progress requirements.

*Response:* Section 182(c)(2) of the Act requires that any ozone nonattainment area classified as serious and above submit a SIP that includes, among other things, (1) an attainment demonstration, based on photochemical grid modeling, that provides for attainment of the one-hour ozone standard by the area's

applicable attainment date, and (2) a demonstration that the plan will achieve volatile organic compound emission reductions (NO<sub>x</sub> reductions may be substituted) from the 1990 baseline that equal at least three percent per year averaged over each consecutive three-year period from 1996, until the area's attainment date and (3) RACT for all major stationary sources and any source subject to a Control Technique Guideline (CTG). Requirements (1), (2), and (3) above are independent even though a state may be able to demonstrate modeled attainment with a set of measures less than those needed to meet RACT or requirements. As discussed earlier, the area has a waiver granting exemptions from the NO<sub>x</sub> RACT requirements. However, even though a state may be able to demonstrate modeled attainment with a certain group of measures, the state must adopt and implement applicable VOC RACT and, if needed, additional measures to achieve the separate rate-of-progress requirement.

#### *K. Mid-Course Review*

*Comment:* Several commenters stated that the timing of the mid-course review (MCR) is too accelerated and incompatible with the ozone standard and with EPA's rules regarding the submission of quality-assured data. Also, one commenter believes that EPA's draft guidance recognizes that a mid-course review in 2004 or 2005 would be far more robust and would require less data manipulation and much less speculation regarding the future effect on air quality of the control measures in place in 2003, and thus the need for additional control measures to attain by the attainment date.

*Response:* EPA understands the issue of timing. However, the timing issue involves balancing two critical factors. On the one hand, for a mid-course review to be useful in flagging the need to make changes to a control strategy in time to affect attainment by the attainment date, it must be sufficiently in advance of the attainment date. On the other hand, the MCR could discern more accurately whether progress is being made if there were sufficient emission reductions that occurred in the time period between the attainment demonstration modeling and the MCR. Thus, in reviewing a state's commitment regarding the performance of the mid-course review for any specific area, EPA will determine if the timing appropriately accommodates these two factors. In general, EPA believes that the states should perform the MCR for nonattainment areas within the SIP call region immediately following the first

<sup>8</sup>EPA has excluded from regulation as a VOC, for purposes of the ozone NAAQS, compounds with very low reactivity.

ozone season during which sources must comply with the state's SIP in response to EPA's SIP call. Because the court in the SIP call case extended the compliance deadline for the SIP call until May 2004, EPA generally believes that for areas in the eastern United States, the most appropriate time to perform the MCR would be following the 2004 ozone season. However, EPA also recognizes that for areas with an attainment date of November 2005 or earlier, it may be difficult to ensure that the MCR would be completed in time for the state and EPA to react in a manner sufficient to affect the area's ability to attain by its attainment date. In these instances, EPA considers the MCR more of an "early attainment assessment", which—if the MCR predicts that an area will not attain by its attainment date—will work to put the state back on track before the regulatory process that would be initiated after the attainment date.

*Comment:* Several commenters noted that a mid-course review following the ozone season in 2003 will reflect only one season during which regional and other controls of NO<sub>x</sub> emissions will have been implemented. One season's ozone levels are insufficient to provide a trend analysis. It would be heavily reliant upon the weather conditions of that particular season.

*Response:* The commenter points out one weakness with performing the MCR soon after ozone control measures have taken effect—i.e., that it won't provide the most reliable information in terms of a trends analysis. However, ozone levels are only one metric that will probably be employed in EPA's recommended MCR method. EPA has been working with the states and local governments to develop MCR guidance and in that process is considering a range of metrics such as those discussed during meetings of the Federal Advisory Committee Act Subcommittee for Ozone, Particulate Matter and Regional Haze Implementation Programs. For instance, EPA is considering how to account for meteorology in detecting a trend line. EPA is also considering how to use ambient ozone precursor data (e.g., from the Photochemical Assessment Monitoring Stations (PAMS) sites that are located in the severe areas) in the methodology. Also, EPA will consider "administrative" metrics, such as the level of implementation of the emission reduction measures. Thus, EPA believes that there will be sufficient tools available for the states to make good use of the information performed by an MCR even if some of the most significant ozone reductions have not been in place long.

Again, as stated above, in determining the timing for the MCR, the states and EPA need to balance the need for implementation of additional control measures before performing the MCR with ensuring that the MCR is completed in time such that the information it provides may be useful in ensuring that an area reaches attainment by its attainment date. In general, EPA believes that the states should perform the MCR for nonattainment areas within the SIP call region immediately following the first ozone season during which sources are required to comply with the state's SIP in response to EPA's SIP call. Because the court in the SIP Call case extended the compliance deadline for the SIP call until May 2004, EPA generally believes that for areas in the eastern United States, the most appropriate time to perform the MCR would be following the 2004 ozone season.

EPA agrees with the commenter that accounting for the influence of meteorology on air quality observations is challenging, critical, and must be taken into consideration when discerning the level of air quality improvement being observed. Therefore, the draft MCR technical guidance, under review, recommends several methods for accounting for meteorology in the review process. The Agency is also developing, as part of the PM<sub>2.5</sub> and visibility assessments underway, new tools for interpreting meteorological influences on formation and transport of pollutants. Much of these analyses incorporate regression analysis of specific meteorological parameters, along with ozone and PM<sub>2.5</sub> observed concentrations. We encourage scientists and analysts involved with air quality issues to work with EPA to develop and test these methods.

#### *L. Measures for the 1-Hour NAAQS and for Progress Toward 8-Hour NAAQS*

*Comment:* One commenter notes that EPA has been working toward promulgation of a revised 8-hour ozone National Ambient Air Quality Standard (NAAQS) because the Administrator deemed attaining the 1-hour ozone NAAQS is not adequate to protect public health. Therefore, EPA must ensure that measures be implemented now that will be sufficient to meet the 1-hour standard and that make as much progress toward implementing the 8-hour ozone standard as the requirements of the CAA and implementing regulations allow.

*Response:* The 1-hour standard remains in effect for all of these areas and the SIPs that have been submitted are for the purpose of achieving that

NAAQS. Congress has provided the states with the authority to choose the measures necessary to attain the NAAQS and EPA cannot second guess the states' choice if it determines that the SIP meets the requirements of the CAA. EPA believes that the SIPs for the severe areas meet the requirements for attainment demonstrations for the 1-hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the 8-hour standard. However, EPA generally believes that emission controls implemented to attain the 1-hour ozone standard will be beneficial towards attainment of the 8-hour ozone standard as well. This is particularly true regarding the implementation of NO<sub>x</sub> emission controls resulting from EPA's NO<sub>x</sub> SIP Call.

Finally, EPA notes that although the 8-hour ozone standard has been adopted by the EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The states and the EPA have yet to define the 8-hour ozone nonattainment areas and the EPA has yet to issue guidance and requirements for the implementation of the 8-hour ozone standard.

#### *M. Attainment and Post '99 Rate of Progress Demonstrations*

*Comment:* One commenter claims that the plans fail to demonstrate emission reductions of 3% per year over each 3-year period between November 1999 and November 2002; and November 2002 and November 2005; and the 2-year period between November 2005 and November 2007, as required by 42 U.S.C. section 7511a(c)(2)(B). The states have not even attempted to demonstrate compliance with these requirements, and EPA has not proposed to find that they have been met.

The EPA has absolutely no authority to waive the statutory mandate for 3% annual reductions. The statute does not allow EPA to use the NO<sub>x</sub> SIP call or 126 orders as an excuse for waiving rate-of-progress (ROP) deadlines. The statutory ROP requirement is for emission reductions—not ambient reductions. Emission reductions in upwind states do not waive the statutory requirement for 3% annual emission reductions within the downwind nonattainment area.

*Response:* Under no condition is EPA waiving the statutory requirement for 3% annual emission reductions. For many areas, EPA did not propose approval of the post-99 ROP demonstrations at the same time as EPA

proposed action on the area's attainment demonstration. However, for the Milwaukee-Racine area, we are finalizing the approval of both in this notice. Moreover, EPA has not provided that area's may rely on upwind reductions for purposes of meeting the ROP requirements. Rather, states are relying on in-state NO<sub>x</sub> and VOC measures for meeting the ROP requirement.

*N. Attainment and Rate of Progress Demonstrations—Approval of Demonstrations That Rely on State Commitments or State Rules for Emission Limitations To Lower Emissions in the Future Not Yet Adopted by a State and/or Approved by EPA*

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

With respect to the commitments from Texas for the Houston-Galveston Area, the commenters contend that the 56 tpd gap must be closed now. The commenters are concerned that Texas has proposed a process that will take three more years—until at 2004—to develop and adopt the final control measures needed for attainment. Deferred adoption and submittal are not consistent with the statutory mandates and are not consistent with the CAA's demand that all SIPs contain enforceable measures. EPA does not have authority to approve a SIP if part of the SIP is not adequate to meet all tests for approval. Because the submittal consists in part of commitments, Texas has not adopted rules implementing final control strategies, and the plan includes insufficient reduction strategies to meet the emission reduction goals established by the TNRCC. Thus, Texas has failed to adopt a SIP with sufficient adopted and enforceable measures to achieve attainment. For these reasons, the submittal also does not meet the NRDC's consent decree definition of a "full attainment demonstration SIP," which obligates EPA to propose a federal

implementation plan if it does not approve the Houston-Galveston SIP. For these reasons, EPA should reject the Houston-Galveston SIP and impose sanctions on the area and publish a proposed FIP no later than October 15, 2001.

*Response:* While at the time the comment was submitted, Wisconsin had not yet adopted and submitted all control measures necessary to demonstrate attainment, the state has now adopted and EPA has approved all measures relied upon in the attainment demonstration. These measures will be implemented sufficiently in advance of the area's attainment date. Thus, the commenter's concern has been addressed.

Comments received in response to the July 2, 2001 proposed approval.

We received the comments below in response to the July 2, 2001 proposed approval of Wisconsin's one-hour attainment demonstration SIP revision.

*O. Clarification of State's MOBILE6 Commitment*

*Comment:* The proposed approval contains language regarding the commitment to recalculate motor vehicle emission budgets within one year from the formal release of the MOBILE6 emissions model. The state clarified in its comment letter that it has committed to recalculate only the attainment year (2007) emission budget and not the interim rate-of-progress years (2002 and 2005).

*Response:* EPA concurs with the state's clarification.

*P. Mid-Course Review*

*Comment:* The commenter restated the need for MCRs to be conducted and submitted in 2004, after the NO<sub>x</sub> SIPs have been implemented and also reiterated the state's commitment to conduct the MCR based on attainment year emissions calculated using the new MOBILE6 emission model.

*Response:* EPA concurs with both aspects of the comment. See related response to comment K above.

**IV. Final Rulemaking Action.**

In this rulemaking action, we are approving Wisconsin's one-hour ozone attainment demonstration SIP revision and the related elements submitted on December 27, 2001, supplemented on May 28, 2001, and on June 6, 2001. Specifically, we are approving (1) the modeled attainment demonstration, (2) the NO<sub>x</sub> reduction rule, (3) the revision to the NO<sub>x</sub> waiver, (4) the rule to control VOCs from industrial solvent cleaning operations, (5) the rule requiring VOC controls from plastic

parts coating operations, (6) the SIP order requiring VOC control for Flint Ink, (7) the conformity budgets for the 2007 attainment year, until such time that a revised budget is submitted and found adequate for conformity purposes as called for by the state in its commitment to recalculate and apply a revised budget for conformity within one year of the formal release of MOBILE6, (8) the RACM analysis, (9) the commitment to conduct a mid-course review of the attainment status of the Lake Michigan area, and (10) the post-1999 ROP plan. We are fully approving the attainment demonstration as meeting the requirements of sections 182(c)(2) and (d) of the Act.

**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 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), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power

and responsibilities established by the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to meet such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 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. 804(2). This rule will be effective December 13, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 14, 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, Incorporation by reference, Intergovernmental relations, Nitrogen Oxides, Ozone, Volatile Organic Compounds.

Dated: October 15, 2001.

**David A. Ullrich,**

*Deputy Regional Administrator, Region 5.*

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(103) to read as follows.

##### § 52.2570 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(103) On December 27, 2000, Wisconsin submitted a one-hour ozone attainment demonstration plan as a revision to the Wisconsin State Implementation Plan (SIP). Supplements to the December 27, 2001 plan were submitted on May 28, 2001, June 6, 2001, and August 29, 2001.

(i) Incorporation by reference.

(A) NR 400.02 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(B) NR 422.02 as published in the (Wisconsin) Register, August 2001, No. 548 and effective September 1, 2001.

(C) NR 422.04 as published in the (Wisconsin) Register, August 2001, No. 548 and effective September 1, 2001.

(D) NR 422.083 as published in the (Wisconsin) Register, August 2001, No. 548 and effective September 1, 2001.

(E) NR 422.135 as published in the (Wisconsin) Register, August 2001, No. 548 and effective September 1, 2001.

(F) NR 423.02 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(G) NR 423.035 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(H) NR 428.01 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(I) NR 428.02 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(J) NR 428.04 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(K) NR 428.05 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(L) NR 428.07 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(M) NR 428.08 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(N) NR 428.09 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(O) NR 428.10 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(P) NR 428.11 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(Q) NR 439.04(5)(a) as published in the (Wisconsin) Register, August 2001, No. 548 and effective September 1, 2001.

(R) NR 439.096 as published in the (Wisconsin) Register, January 15, 2001, No. 541 and effective February 1, 2001.

(S) NR 484.04 as published in the (Wisconsin) Register, August 2001, No. 548 and effective September 1, 2001.

(T) A Consent Order, No. AM-00-01, signed and effective September 7, 2000. The Order, issued by the Wisconsin Department of Natural Resources, establishes Reasonably Available Control Requirements for ink manufacturing operations at Flint Ink, located in Milwaukee.

(ii) Additional material.

(A) A letter from Lloyd Eagan, to Cheryl Newton dated May 28, 2001, providing clarifications and a commitment relative to the state's one-hour ozone SIP revision submittal.

(B) A letter and attachments from Lloyd Eagan to David Ullrich, dated June 6, 2001 providing supplemental information for the state's reasonably available control measures analysis.

3. Section 52.2585 is amended by adding paragraph (p) to read as follows:

##### § 52.2585 Control strategy: Ozone.

\* \* \* \* \*

(p) Approval—On December 27, 2000, Wisconsin submitted a one-hour ozone attainment demonstration plan as a revision to the Wisconsin State Implementation Plan (SIP).

Supplements to the December 27, 2001 plan were submitted on May 28, 2001, June 6, 2001, and August 29, 2001. This plan includes a modeled demonstration of attainment, rules for the reduction of ozone precursor emissions, a plan to reduce ozone precursor emissions by three percent per year from 2000 to 2007, an analysis of reasonably achievable control measures, an analysis of transportation conformity budgets, a revision of the waiver for emission of oxides of nitrogen, and commitments to conduct a mid-course review of the area's attainment status and to use the new MOBILE6 emissions model.

[FR Doc. 01-27721 Filed 11-9-01; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[IN136-2; FRL-7088-5]

#### Approval and Promulgation of Air Quality Plans; Indiana; Ozone

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is fully approving State Implementation Plan (SIP) revisions submitted by the Indiana Department of Environmental Management (IDEM) for attainment of the 1-hour ozone standard in the Chicago-Gary-Lake County ozone nonattainment area. These SIP revisions are required by Section 182 of the Clean Air Act. This action approves the following: An ozone attainment demonstration; a plan demonstrating how progress in emission reductions will be achieved by specified milestone years through the area's attainment date of 2007 (i.e. a post-1999 Rate of Progress Plan (ROP)); a contingency measures plan for both the ozone attainment demonstration and the post-1999 ROP plan; a reasonably available control measure (RACM) analysis; NO<sub>x</sub> waiver revisions; motor vehicle emissions budgets; and commitments to complete a mid-course review and to recalculate the motor vehicle emissions budgets using MOBILE6. Also, EPA is incorporating into the SIP a portion of an agreed order between U.S. Steel (currently USX Corporation) and the IDEM to establish a coke plant process water treatment plant at its Gary Works.

We proposed approval of these SIP revision elements on August 3, 2001 (66 FR 40802).

**DATES:** This final rule is effective December 13, 2001.

**ADDRESSES:** You can access copies of the SIP revision request and documents relevant to this rulemaking at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Patricia Morris at (312) 353-8656 before visiting the Region 5 Office).

**FOR FURTHER INFORMATION CONTACT:**

Patricia Morris, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone number (312) 353-8656, morris.patricia@epa.gov.

**SUPPLEMENTARY INFORMATION:**

Throughout this document, wherever "we," "us," or "our" are used, we mean EPA.

The supplemental information is organized in the following order:

- I. What Is EPA Approving In This Action?
- II. What Previous Action Has Been Taken Or Proposed On This SIP Revision?
- III. Are There Related Elements that Need to be Federally Approved?
- IV. What Public Comments were Received on the Proposed Approval of Indiana's 1-hour Ozone Attainment Demonstration?
  - A. Comments on the August 3, 2001, proposal.
  - B. Comments on the December 16, 1999, proposed conditional approval.
- V. Final Rulemaking Action.
- VI. Administrative Requirements.

#### I. What Is EPA Approving in This Action?

The EPA is approving SIP revisions submitted by the State of Indiana on December 21, 2000, for purposes of attainment of the 1-hour ozone standard in the Chicago-Gary-Lake County ozone nonattainment area (the Indiana portion of this bi-state ozone nonattainment area includes Lake and Porter Counties, Indiana). We are approving (1) an ozone attainment demonstration demonstrating attainment by 2007, (2) a post-1999 ozone ROP plan with associated ROP conformity budgets, (3) a revision to the NO<sub>x</sub> waiver, (4) a contingency measures plan for both the ozone attainment demonstration and the post-1999 ROP plan, (5) the motor vehicle emissions budgets for the 2007 attainment year, until such time that a revised budget is submitted and found adequate for conformity purposes as called for by the state in its commitment to recalculate and apply a revised

budget for conformity within two years of the formal release of MOBILE6, (6) a RACM analysis, (7) a commitment to conduct a mid-course review of the ozone attainment plan, and (8) an agreed order between U.S. Steel (currently USX Corporation) and the IDEM signed by IDEM on March 22, 1996, which requires U.S. Steel to establish a coke plant process water treatment plant at its Gary Works. Today's action finalizes full approval of Indiana's 1-hour ozone attainment demonstration SIP revision as meeting the requirements of sections 182(c)(2) and (d) of the Clean Air Act (CAA).

#### II. What Previous Action Has Been Taken or Proposed on This SIP Revision?

EPA published a Notice of Proposed Rulemaking (NPR) for the Indiana ozone attainment demonstration SIP for the Lake and Porter Counties portion of the Chicago ozone nonattainment area on December 16, 1999 (64 FR 70514). In that NPR, we proposed to conditionally approve the 1-hour ozone attainment demonstration SIP revision submitted by Indiana on April 30, 1998. This proposed conditional approval was based on the State's submitted ozone modeling analysis and the State's commitments to adopt and submit a final ozone attainment demonstration and a post-1999 ROP plan, including the necessary State air pollution control regulations, by December 31, 2000. We proposed, in the alternative, to disapprove this attainment demonstration plan, if, by December 31, 1999, the State did not select an emissions control strategy associated with its submitted ozone modeling analysis and submit adequate motor vehicle emissions budgets for VOC and NO<sub>x</sub> for the ozone nonattainment area that complied with EPA's conformity regulations and that supported attainment of the 1-hour ozone standard. We also provided that the State should submit, by December 31, 1999, an enforceable commitment to conduct a mid-course review of the ozone attainment plan in 2003.

The State met the submittal requirements of the proposed conditional approval, and submitted a final ozone attainment demonstration and post-1999 ROP plan on December 21, 2000.

Since the State largely replaced the April 30, 1998 ozone attainment demonstration in the December 21, 2000 submittal, the August 3, 2001 NPR primarily focused on the more recent ozone attainment demonstration. As such, this final rule also focuses on the December 21, 2000 version of the ozone