

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ50-238; FRL-7132-4]

Approval and Promulgation of Implementation Plans; New Jersey Reasonable Further Progress Plans, Transportation Conformity Budgets and 1-Hour Ozone Attainment Demonstrations State Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving several New Jersey State Implementation Plans (SIP) revisions addressing several Clean Air Act requirements. Specifically, EPA is approving 1-hour Ozone Attainment Demonstrations, Reasonable Further Progress Plans for milestone years 2002, 2005 and 2007, conformity budgets for 2002, 2005 and 2007, contingency measures, a 1996 periodic emission inventory, ozone projection year emission inventories for 2002, 2005 and 2007, enforceable commitments for the 1-hour ozone attainment demonstration, and reasonably available control measure analysis for the New York-Northern New Jersey-Long Island nonattainment area (NAA) and the Philadelphia, Wilmington, Trenton NAA. The intended effect of this action is to approve programs required by the Clean Air Act which will result in emission reductions that will achieve attainment of the 1-hour national ambient air quality standard for ozone in the New York-Northern New Jersey-Long Island NAA and the Philadelphia, Wilmington, Trenton NAA.

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

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

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Region II Office, Air Programs Branch,
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I. What Action Is EPA Taking Today?

EPA is approving several State Implementation Plan (SIP) revisions submitted by New Jersey to address Clean Air Act (CAA) requirements related to attainment of the national ambient air quality standard for ozone. These submittals apply to the New Jersey portions of two severe ozone nonattainment areas—the New York, Northern New Jersey, Long Island Area, and the Philadelphia, Wilmington, Trenton Area. For purposes of this action these areas will be referred to as, respectively, the Northern New Jersey ozone nonattainment area (NAA) and the Trenton ozone NAA. The counties located within the Northern New Jersey NAA are: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union. The counties within

the Trenton NAA are: Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem. Unless otherwise noted, the submissions referenced are for both NAAs.

Specifically, EPA is approving New Jersey's:

- 1996 periodic emission inventory;
- 2002, 2005 and 2007 ozone emission inventories (which are referred to as projection year emission inventories);
- 2002, 2005 and 2007 Reasonable Further Progress (RFP) Plans;
- ozone contingency measures;
- 2002, 2005 and 2007 conformity budgets;
- reasonably available control measure analysis; and
- 1-hour ozone attainment demonstrations for the Northern New Jersey and Trenton NAAs with enforceable commitments.

Table 1 identifies the SIP revisions that have been submitted to fulfill the CAA requirements for the 1-hour ozone attainment demonstrations.

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

Date	Content
August 31, 1998.	Attainment demonstrations.
October 16, 1998.	Public participation appendix.
April 26, 2000	1. Revised Motor Vehicle Emissions Budgets (MVEB). 2. Commitments to: —Adopt and submit additional control measures for attainment by October 31, 2001 —Revise transportation conformity budgets to include benefits from the Tier 2/ Sulfur-in-fuel rule —Revise attainment year transportation conformity budgets 1 year after release of MOBILE6 —Revise transportation conformity budgets if additional measures include mobile measures —Perform Mid course review
April 11, 2001	1. 1996 Periodic emission inventory. 2. 2002, 2005, 2007 projection year emission inventories. 3. Reasonable Further Progress Plans for 2002, 2005 and 2007. 4. Contingency measures. 5. 2002, 2005 and 2007 Conformity Budgets.

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

Date	Content
June 18, 2001	Proposed Reasonably Available Control Measures Analysis.
October 8, 2001.	Adopted Reasonably Available Control Measures Analysis.

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

A. Emission Inventories

On April 11, 2001, New Jersey submitted a SIP revision which contained the statewide 1996 periodic emission inventory, and 2002 and 2005 ozone projection year emission inventories for the Northern New Jersey NAA and Trenton NAA and a 2007 ozone projection year emission inventory for the Northern New Jersey NAA. These emission inventories contained information on both volatile organic compounds (VOCs) and nitrogen oxides (NO_x). EPA proposed approval on September 12, 2001 (66 FR 47419), and extended the comment period on October 16, 2001 (66 FR 53560). No comments were received on these emission inventories. Therefore, EPA is approving them as part of New Jersey's SIP.

B. RFP Plans for 2002, 2005 and 2007

On April 11, 2001, New Jersey submitted a SIP revision which contained the 2002 and 2005 RFP Plans for the Northern New Jersey NAA and Trenton NAA and a 2007 RFP Plan for the Northern New Jersey NAA. New Jersey has identified the control measures necessary to achieve the required emission reductions and all the measures have been adopted and implemented or adopted and scheduled for implementation. These plans identified the control measures that will be generating the emission reductions needed to achieve the three percent per year emission reductions averaged over each consecutive three-year period until the area reaches attainment. EPA proposed approval on September 12, 2001 (66 FR 47419), and extended the comment period on October 16, 2001 (66 FR 53560). No comments were received on these RFP Plans. Therefore, EPA is approving them as part of New Jersey's SIP.

C. Ozone Contingency Measures

On April 11, 2001, New Jersey submitted a SIP revision which identified the ozone contingency measures for the Trenton NAA and Northern New Jersey NAA necessary to fulfill the RFP and attainment requirements of section 172(c)(9) of the CAA. Contingency measures are control measures that must be implemented should an ozone nonattainment area fail to achieve RFP or to attain the NAAQS

within the time-frames specified under the CAA. Consistent with EPA guidance, New Jersey used a combination of excess VOC and NO_x emission reductions (0.3 percent VOC and 2.7 percent NO_x) resulting from the implementation of adopted State control programs. These reductions are available for each milestone year (2002 and 2005) and the attainment years (2005 and 2007), for the Trenton NAA and Northern New Jersey NAA respectively. EPA proposed approval on September 12, 2001 (66 FR 47419), and extended the comment period on October 16, 2001 (66 FR 53560). No comments were received on the contingency measures portion of the SIP revision. Therefore, EPA is approving it as part of New Jersey's SIP.

D. Conformity Budgets

On April 11, 2001, New Jersey submitted a SIP revision which contained the transportation conformity budgets for the Northern New Jersey NAA and Trenton NAA (see Table 2) and the general conformity emission budgets for McGuire Air Force Base (see Table 3). It should be noted that for the Northern New Jersey NAA the 2002 and 2005 conformity budgets are based on the RFP Plan and the 2007 budgets are based on the 1-hour ozone attainment plan. For the Trenton NAA, the 2002 budgets are based on the RFP Plan and the 2005 budgets are based on the 1-hour ozone attainment plan.

TABLE 2.—NEW JERSEY TRANSPORTATION CONFORMITY BUDGETS

Transportation Planning Area	2002		2005		2007	
	VOC (tpd)	NO _x (tpd)	VOC (tpd)	NO _x (tpd)	VOC (tpd)	NO _x (tpd)
North Jersey Transportation Planning Authority (NJTPA)	140.15	240.19	98.11	187.70	93.20	175.51
South Jersey Transportation Planning Organization (SJTPO)	17.49	33.02	13.36	26.42	¹ n/a	n/a
Delaware Valley Regional Planning Commission (DVRPC)	55.28	73.05	38.03	55.62	n/a	n/a

1. Not applicable.

TABLE 3.—MCGUIRE AIR FORCE BASE GENERAL CONFORMITY EMISSION BUDGETS

VOC	NO _x tons/year	NO _x tons/year
1990 Baseline	1,112	1,038
1996	1,186	1,107
1999	1,223	1,142
2002	1,405	875
2005	1,406	884

On June 1, 2001 (66 FR 29797), EPA found the transportation conformity budgets to be adequate for conformity purposes effective June 18, 2001. At that time, EPA responded to comments

regarding adequacy of budgets. EPA proposed approval of all of these budgets on September 12, 2001 (66 FR 47419), and extended the comment period on October 16, 2001 (66 FR 53560). No specific comments were received on the proposed approval of New Jersey's budgets, however, EPA received general comments concerning conformity budgets which are addressed in Section III. EPA is approving the budgets as part of New Jersey's SIP.

These budgets (see Table 2 and 3) are consistent with the measures in New Jersey's RFP plans and attainment demonstrations that are also being approved today. It is important to note

that New Jersey has committed to revise the 2005 and 2007 attainment year transportation conformity emissions budgets within one year of the official release of the MOBILE6 motor vehicles emissions model for regulatory purposes. New Jersey has committed to submit new budgets if any additional measures involve motor vehicles and affect the motor vehicle budgets. Therefore, EPA is approving these budgets only until New Jersey meets its commitments and submits new budgets, and EPA finds those budgets adequate. Accordingly, once the revised budgets are submitted by the State and found adequate by EPA, those budgets will

replace the 2005 and 2007 attainment year emissions budgets being approved today for conformity purposes. EPA is approving New Jersey's commitment to revise the attainment year motor vehicle emissions budgets using the MOBILE6 model within one year after the release of the MOBILE6 model, and the commitment to revise the budgets if any additional measures affect the budgets.

E. Reasonably Available Control Measure Analysis

On June 18, 2001, New Jersey submitted a proposed assessment of whether any additional RACM are available to advance the attainment date, from 2005 to an earlier year for the Trenton NAA and from 2007 to an earlier year for the Northern New Jersey NAA. On September 24, 2001 (66 FR 48847), EPA proposed approval of New Jersey's RACM analysis and on October 16, 2001 (66 FR 53560), EPA extended the comment period for this proposal. No specific comments were received on New Jersey's RACM analysis, however, EPA received general comments concerning RACM which are addressed in section III. EPA is approving New Jersey's analysis which determined that there are no additional control measures available, beyond those already included in the attainment demonstrations, that are technically or economically feasible and would advance the attainment dates of 2005 or 2007 for the Trenton NAA or Northern New Jersey NAA, respectively. However, EPA does believe that the control strategies considered in New Jersey's RACM analysis may have potential for reducing ozone levels over the longer term, and we recommend that New Jersey and other states in the

Ozone Transport Region revisit these control strategies when they begin developing the 8-hour ozone standard SIP.

F. 1-hour Ozone Attainment Demonstration SIP Including Enforceable Commitments

On December 16, 1999 (64 FR 70380), EPA proposed approval of New Jersey's 1-hour Ozone Attainment Demonstration SIP. However, this approval was contingent upon New Jersey submitting the following:

- (1) The adopted NO_x SIP Call program as a SIP revision;
- (2) The adopted CAA required measures for severe nonattainment areas and adopted measures relied on in the modeled 1-hour Ozone Attainment Demonstration SIP;
- (3) enforceable commitments to:
 - a. Adopt and submit sufficient measures to address the additional emission reductions identified by EPA as necessary for attainment;
 - b. Submit revised transportation conformity budgets to include the Tier 2/Sulfur program benefits, if these benefits have not already been incorporated;
 - c. Revise the Attainment Demonstration SIP, including recalculation of the transportation conformity budgets (if any of the additional emission reductions pertain to motor vehicle measures) to reflect the adopted additional measures needed for attainment; and
 - d. Revise the Attainment Demonstration, including transportation conformity budgets, within one year of the release of MOBILE6.

The specifics of how New Jersey fulfilled all these requirements are discussed below.

(1) NO_x SIP Call Submittal

On December 10, 1999 and July 31, 2000, New Jersey submitted adopted SIP revisions which fulfilled the NO_x SIP Call requirements. Specifically, New Jersey adopted Subchapter 31 "NO_x Budget Program," of Title 7, Chapter 27 of the New Jersey Administrative Code in order to strengthen its 1-hour Ozone Attainment Demonstration SIP and to comply with the NO_x SIP Call during each ozone season, *i.e.*, May 1 through September 30, beginning in 2003. On May 22, 2001 (66 FR 28063), EPA approved New Jersey's SIP revisions as meeting the NO_x SIP Call. It is important to note that New Jersey is implementing its NO_x SIP Call rules requiring source compliance by 2003, even though an order from the D.C. Circuit Court allowed that full implementation could be rolled back to 2004.

(2) CAA Measures and Control Measures Relied on in the Modeled 1-hour Ozone Attainment Demonstration SIP

New Jersey has already adopted the control measures required for areas classified as severe under section 182 of the CAA for the Northern New Jersey and Trenton NAAs. Table 4 presents a summary of the control measures that are relied on in the 1-hour Ozone Attainment Demonstration SIP, including the Rate of Progress (ROP) and RFP plans. The reader is referred to EPA's March 1, 1999 (64 FR 9952) proposed approval of New Jersey's 15 and 9 Percent ROP Plans and September 12, 2001 (66 FR 47419) proposed approvals of New Jersey's RFP Plans for a more detailed discussion of the control measures identified.

TABLE 4.—SUMMARY OF OZONE CONTROL MEASURES IN NEW JERSEY'S SIP

Control measure	Type of measure
On-Road Sources:	
Federal Motor Vehicle Control program (Tier 1 & 2)	Federal
National Low Emission Vehicle ¹ (NLEV)	State opt-in—SIP approved
Enhanced Inspection & Maintenance	State adopted—SIP approved
Reformulated Gasoline (Phase 1 & 2)	Federal
Heavy Duty Diesel Engines (On-road)	Federal
Non-Road Sources:	
Federal Spark Ignition Small Engine standards	Federal
Federal New Gasoline Spark Ignition Marine Engine standards	Federal
Federal Nonroad Compression Ignition engines	Federal
Locomotive & Locomotive Engines	Federal
Commercial Marine Diesel Engines	Federal
Stationary Sources:	
VOC CTG Source Categories	State adopted—SIP approved
VOC Non-CTG Source Categories—RACT	State adopted—SIP approved
NO _x RACT	State adopted—SIP approved
Marine Vessel Ballasting & Loading Operations	State adopted—SIP approved
Stage II Vapor Recovery & On-board Refueling Vapor Recovery (ORVR)	State adopted—SIP approved & Federal
OTC NO _x MOU Controls	State adopted—SIP approved
NO _x SIP Call Program	State adopted—SIP approved

TABLE 4.—SUMMARY OF OZONE CONTROL MEASURES IN NEW JERSEY’S SIP—Continued

Control measure	Type of measure
Area Sources:	
AIM Surface Coatings	State adopted—SIP approved & Federal
Consumer & Commercial Products	State adopted—SIP approved & Federal
Autobody Refinishing	Federal
Hazardous Organic NESHAP	Federal
Landfill Controls	State adopted—SIP approved & Federal

¹ To the extent NLEV not superceded by Tier 2.

In the December 16, 1999 proposal, EPA specifically identified two CAA required control programs that had yet to be approved by EPA: Post-1999 RFP Plans with control measures needed to meet these Plans and implementation of the Enhanced Inspection and Maintenance (I/M) program. As discussed above, EPA is approving New Jersey’s Post-1999 RFP Plans as part of today’s action. On June 12, 2001 (66 FR 31544), EPA made a determination that New Jersey has implemented the enhanced I/M program and reinstated the interim approval granted under Section 348 of the National Highway Systems Designation Act. On September 11, 2001 (66 FR 47130), EPA proposed full approval of the enhanced I/M program and on *January 22, 2002*, EPA took final action giving full approval. Therefore, New Jersey has satisfied both of these requirements.

(3) Enforceable Commitments

On April 26, 2000, New Jersey submitted a revision to the 1-hour Ozone Attainment Demonstration SIP for the Northern New Jersey and Trenton NAAs. This submission addressed the commitments originally requested in EPA’s December 16, 1999 proposal as follows:

a. Adopt and submit sufficient measures to address the additional emission reductions identified by EPA as necessary for attainment.

New Jersey submitted an adopted SIP revision containing the enforceable commitment to adopt and submit by October 31, 2001 additional control measures to meet that level of reductions identified by EPA in its December 16, 1999 (64 FR 70380) proposed approval of New Jersey’s 1-hour Ozone Attainment Demonstrations. In addition, as a backstop, New Jersey committed to adopt intrastate measures by October 31, 2001 if the regional measures do not provide sufficient emission reductions to achieve the additional reductions identified by EPA. New Jersey also committed to work through the OTC process to develop a regional strategy regarding the measures necessary to meet the additional

reductions identified by EPA. In fact, New Jersey has taken a active role in the OTC process of identifying and developing regional control strategies that would achieve the necessary additional reductions to attain the 1-hour ozone standard.

New Jersey adopted a SIP revision which identified the specific measures it would propose to adopt after public notice and comment along with the estimated emission reductions these measures could achieve and the role these measures play in the attainment demonstrations. The following are the measures recommended by the OTC and which New Jersey will be taking to public hearing: consumer and commercial products rule, architectural and industrial maintenance coatings rule, mobile equipment refinishing rule, solvent cleaning rule, controls on portable fuel containers as well as the NO_x model rule (NO_x reductions from sources that are not included in the 1994 OTC NO_x Memorandum of Understanding for regional NO_x reductions or covered by EPA’s NO_x SIP Call). New Jersey has begun its regulatory development process for these measures. In a letter dated December 11, 2001, New Jersey provided additional information on their progress in addressing the shortfall in emission reductions, including a schedule for the rulemaking and publishing the schedule in the “New Jersey Register” rulemaking calendar dated January 7, 2002. See also section III.D. for an expanded discussion on New Jersey’s commitment.

b. Submit revised transportation conformity budgets to include the Tier 2/Sulfur program benefits, if these benefits have not already been incorporated.

New Jersey submitted revised transportation conformity budgets which include the Tier 2/Sulfur program and therefore, this commitment has been satisfied.

c. Revise the Attainment Demonstration SIP, including recalculation of the transportation conformity budgets (if any of the additional emission reductions pertain

to motor vehicle measures) to reflect the adopted additional measures needed for attainment.

New Jersey committed to revise the attainment demonstration SIP by submitting additional measures necessary for attainment and to recalculate the transportation conformity budgets, if necessary, based on those measures.

d. Revise the Attainment Demonstration, including transportation conformity budgets, within one year of the release of MOBILE6.

All states whose attainment demonstration includes the effects of the Tier 2/sulfur program have committed to revise and re-submit their motor vehicle emissions budgets after EPA releases MOBILE6. On April 26, 2000, New Jersey submitted an enforceable commitment to revise its attainment year transportation conformity budgets within one year of release of MOBILE6.

As we proposed in the July 28, 2000 supplemental notice of proposed rulemaking (65 FR 46383), the final approval action we are taking today will be effective for conformity purposes only until revised motor vehicle emissions budgets are submitted and we have found them 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. Therefore, once we have confirmed that the revised budgets are adequate, they will be more appropriate than the budgets we are approving today.

e. Perform and submit a mid course review.

Also in the April 26, 2000 SIP revision, New Jersey revised its prior commitment to a mid course review (MCR). Specifically, to be consistent with EPA’s recommendation, New Jersey has revised the date for submitting its MCR to December 31, 2003.

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

EPA received comments from the public on the Notice of Proposed Rulemaking (NPR) published on December 16, 1999 (64 FR 47419) for New Jersey's ozone attainment demonstration. In addition, EPA received comments from the public on the supplemental notice of proposed rulemaking published on July 28, 2000 (65 FR 46383) on the attainment demonstrations, in which EPA clarified and expanded on two issues relating to the motor vehicle emissions budgets in the attainment demonstration SIPs. EPA also received comments on the September 12, 2001 (66 FR 47419) proposed approval of New Jersey's RFP Plans and transportation conformity budgets for 2002, 2005 and 2007 and the September 24, 2001 (66 FR 48847) proposed approval of New Jersey's RACM analysis.

A. Attainment Demonstrations

1. General Comments

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

Response: In the following responses, we address the specific concerns raised by the commenters in more detail. We believe the plans provided by the State of New Jersey are fully approvable under the CAA and will provide for attainment as expeditiously as practicable which is by November 15, 2005 for the Trenton NAA and November 15, 2007 for the Northern New Jersey NAA and the plans includes all reasonably available control measures. Therefore, we are finalizing our approval in this action. Furthermore, because we are fully approving the plan as meeting the requirements of 182(c)(2) and (d) of the CAA, it is unnecessary to commence development of a FIP.

Comment: New Jersey has not provided modeling that shows attainment in 2007. A commenter also states that there is no demonstration of maintenance of the ozone standard

below the 0.12 ppm one-hour standard beyond 2007.

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

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

needed to achieve three-years of "clean data." For these reasons, EPA does not agree with the commenter that the State's attainment demonstration needs to demonstrate that the area will have three years of data showing attainment in the attainment year. However, EPA does believe that the CAA requires and that it is prudent for states to implement controls as expeditiously as practicable. EPA also believes that for the Trenton and Northern New Jersey NAAs, all measures are being implemented as expeditiously as practicable and that the areas have demonstrated attainment consistent with EPA's modeling guidance.

A plan for maintenance of the standard is not necessary for the attainment demonstration to be approved. A state is not required by the CAA to provide a maintenance plan until the state petitions for an area to be redesignated to attainment which will not occur until the Trenton and Northern New Jersey NAAs have three years of data showing compliance with the 1-hour ozone standard. While it is not necessary for the state to provide for maintenance of the standard at this time, we do believe emissions in the Trenton and Northern New Jersey NAAs will continue to decrease after 2005 and 2007, respectively, due to on- and off-road vehicle emission control programs that will continue to provide additional reductions as the fleet continues to turnover after 2007. So there is reason to believe that air quality will continue to improve after the attainment date.

2. Weight of Evidence

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

Response: Under section 182(c)(2) and (d) of the CAA, serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the 1-hour standard. Section 182(c)(2)(A) provides that "this" attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective." As described in more detail below, 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).”¹ 40 CFR 51.112(a)(1). However, the regulations further provide, “Where an air quality model specified in appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment * * *” Appendix W, in turn, provides that, “The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas,” but further refers to EPA’s modeling guidance for data requirements and procedures for operating the model. 40 CFR part 51, Appendix W, section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA’s guidance has led us to use both the photochemical grid model, and

additional analytical methods approved by EPA.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the National Ambient Air Quality Standard (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).²

In 1996, EPA issued guidance³ to update the 1991 guidance referenced in 40 CFR part 51, Appendix W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area’s ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA’s guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, a state can rely on, and EPA will consider in addition to the results of the modeled attainment test,

other factors such as other modeled output (e.g., changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (i.e., analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls.

In 1999, EPA issued additional guidance⁴ that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitoring 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)

⁴ “Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.” U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: <http://www.epa.gov/ttn/scram>.

¹ The August 12, 1996 version of “Appendix W to part 51—Guideline on Air Quality Models” was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

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

³ Ibid.

to the peak model predicted ozone concentrations in the base year (*i.e.*, average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

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

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

Under the approach of the guidance document, EPA determined the design value for each of those three-year periods, and then averaged those three design values, to determine the base design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the three design values. Averaging the three years is beneficial for another reason: It

allows consideration of a broader range of meteorological conditions—those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Furthermore, EPA relied on three-year averaging only for purposes of determining one component, *i.e.*—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to reach attainment.

A commenter criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that states must model all control measures being implemented. Moreover, a component of this technique—the estimation of future design value—should be considered a model-predicted estimate. Therefore, results from this technique are an extension of “photochemical grid” modeling and are consistent with Section 182(c)(2)(A). Also, a commenter believes that EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rule. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

A commenter states that application of the method of attainment analysis used for the December 16, 1999 NPRs will yield a lower control estimate than if we relied entirely on reducing maximum predictions in every grid cell to less than or equal to 124 ppb on every modeled day. However, the commenter's approach may overestimate needed controls because the form of the standard allows up to 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 weight of evidence determination.

When reviewing a SIP, the EPA must make a determination that the control measures adopted are reasonably likely

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

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a “rollback” modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR part 51, Appendix W, section 6.2.1.e. provides “Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.” Section 14.0 of Appendix W defines “rollback” as “a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately.” Under this approach if 20 percent improvement in ozone is needed for the area to reach attainment, it is assumed a 20 percent reduction in VOC would be required. There was no approach for identifying NO_x reductions.

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

For example, if monitoring or modeling results indicate that ozone was reduced by 25 parts per billion during a particular period, and that VOC

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

This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: (1) It obviates the need to expend more time and resources to perform additional modeling; (2) it is more consistent with recommendations referenced by Appendix W because the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which does not assume a direct proportional relationship between ozone and its precursors; (3) lastly, the requirement that areas perform a mid course review (a check of progress toward attainment) provides a margin of safety.

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

A commenter also expressed concern that EPA applied unacceptably broad discretion in fashioning and applying

the WOE determinations. For all of the attainment submittals proposed for approval in December 1999 concerning serious and severe ozone nonattainment areas, EPA first reviewed the UAM results. In all cases, the UAM results did not pass the deterministic test. In two cases—Milwaukee and Chicago—the UAM results passed the statistical test; in the rest of the cases, the UAM results failed the statistical test. The UAM has inherent limitations that, in EPA's view, were manifest in all these cases. These limitations include: (1) Only selected time periods were modeled, not the entire three-year period used as the definitive means for determining an area's attainment status; (2) there are inherent uncertainties in the model formulation and model inputs such as hourly emission estimates, emissions growth projections, biogenic emission estimates, and derived wind speeds and directions. As a result of these limitations, for all areas, even Milwaukee and Chicago, EPA examined additional analyses to indicate whether additional SIP controls would yield meaningful reductions in ozone values. These analyses did not point to the need for additional emission reductions for Springfield, Greater Connecticut, Metropolitan Washington DC, Chicago and Milwaukee, but did point to the need for additional reductions, in varying amounts, in the other areas. As a result, the other areas submitted control requirements to provide the indicated level of emissions reductions. EPA applied the same methodology in these areas, but because of differences in the application of the model to the circumstances of each individual area, the results differed on a case-by-case basis.

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

The commenter also complained that EPA has applied the WOE determinations to adjust modeling results only when those results indicate

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

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

In addition, the commenter argued that in applying the WOE determinations, EPA ignored factors showing that the SIPs under-predict

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

Comment: The NAAQS requires that in order to demonstrate attainment of the 1-hour NAAQS that no more than four ambient ozone concentrations exceed 0.12 ppm (235 mg/m³) within any three-year period. That standard was based on the evidence needed to establish a margin of safety for ozone. Unlike the 8-hour standard, the 1-hour standard contains no "rounding convention." No provision of the rule provides authority for EPA to approve SIPs that will only achieve 124 ppb (242.6 g/m³). Thus even if EPA has authority to adopt WOE criteria as a substitute for modeled demonstrations of attainment, which we dispute, then the New Jersey SIP submissions do not demonstrate attainment of the 1-hour NAAQS because it only proposes to reduce ambient ozone to 124 ppb.

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

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

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

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

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

Comment: Several commenters stated that given the uncertainty surrounding the NO_x SIP Call at the time of EPA's proposals on the attainment demonstrations, there is no basis for the

conclusion reached by EPA that states should assume implementation of the NO_x SIP Call, or rely on it as a part of their demonstrations. One commenter claims that there were errors in the emissions inventories used for the NO_x SIP Call Supplemental Notice (SNPR) and that these inaccuracies were carried over to the modeling analyses, estimates of air quality based on that modeling, and estimates of EPA's Tier 2 tailpipe emissions reduction program not modeled in the demonstrations. Thus, because of the inaccuracies in the inventories used for the NO_x SIP Call, the attainment demonstration modeling is also flawed. Finally, one commenter suggests that modeling data demonstrates that the benefits of imposing NO_x SIP Call controls are limited to areas near the sources controlled.

Response: These comments were submitted prior to several court decisions largely upholding EPA's NO_x SIP Call, *Michigan v. United States Env. Prot. Agency*, 213 F.3d 663 (D.C. Cir. 2000), cert. denied, U.S., 121 S.Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power v. EPA*, 251 F.3d 1026 (D.C. Cir. 2001). Although a few issues were vacated or remanded to EPA for further consideration, these issues do not concern the accuracy of the emission inventories relied on for purposes of the NO_x SIP Call. Moreover, contrary to the commenter's suggestion, the NO_x SIP Call modeling data bases were not used to develop estimates of reductions from the Tier 2/Sulfur program for the severe area 1-hour attainment demonstrations. Accordingly, the commenter's concerns that inaccurate inventories for the NO_x SIP Call modeling lead to inaccurate results for the severe-area 1-hour attainment demonstrations are inapposite.

The remanded issues do affect the ability of EPA and the states to achieve the full level of the NO_x SIP Call reductions by May 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 court in the *Appalachian Power* case remanded an issue concerning computation of the electric generating unit growth factor, it is EPA's view that states should assume that the NO_x SIP Call reductions will occur in time to ensure attainment in the severe nonattainment areas. Both EPA and the states are moving forward to implement the NO_x SIP Call. It is important to note that New Jersey is implementing its NO_x SIP Call rules requiring source compliance by 2003.

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

C. Comments on RACM

Comment: Several commenters have stated that there is no evidence that New Jersey has adopted reasonably available control measures (RACM) or that the SIPs provide 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 they derived from SIPs that provide for attainment. Some commenters stated that for measures that are not adopted into the SIP, the state must provide a justification for why the measures were determined to not be RACM.

Response: EPA reviewed the initial SIP submittals for the Northern New Jersey and Trenton NAA and determined that they did not include sufficient documentation concerning available RACM measures. For all of the severe areas for which EPA proposed approval in December 1999, EPA consequently issued policy guidance memorandum to have these states address the RACM requirement through

an additional SIP submittal. (Memorandum of December 14, 2000, from John S. Seitz, Director, Office of Air Quality Planning and Standards, re: "Additional Submission on RACM from states with Severe 1-hour Ozone Nonattainment Area SIPs").

New Jersey supplemented its original SIP with an analysis of RACM (request to parallel process submitted on June 18, 2001 and adopted revision submitted on October 8, 2001). EPA proposed to approve this supplement to the SIP as meeting the RACM requirements on September 24, 2001 (66 FR 48847). Based on this supplement, EPA concluded that the SIP for the Northern New Jersey and Trenton NAA meets the requirement for adopting RACM.

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

Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would be unavailable based on local considerations, including costs. The EPA also issued a recent memorandum re-confirming the principles in the earlier guidance, entitled, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

On June 18, 2001, New Jersey submitted a proposed analysis of Reasonably Available Control Measures (RACM) for the Northern New Jersey and Trenton NAA which was adopted

after public hearing on October 8, 2001 without substantive changes. The RACM analysis included an evaluation of potential transportation control measures (TCMs) for onroad mobile sources, potential control measures for point, area and offroad sources, and other non-TCM onroad control measures. New Jersey ranked the source categories by emission level to identify source categories with the greatest potential for additional control measure benefits, above and beyond what the State is already implementing, that would advance the 2005 or 2007 attainment dates. Individual measures were then evaluated with regard to their technical feasibility, economic feasibility and the speed at which they could be implemented. Finally, the sums of the estimated emissions benefits from the potentially implementable measures were then compared to the emission reductions required to advance the attainment dates for each nonattainment area. This analysis was performed for the New Jersey portions of the two severe nonattainment areas, the Trenton NAA and the Northern New Jersey NAA.

1. Consideration and Implementation of Transportation Control Measures (TCMs)

Fifteen prospective mobile source measures were examined to determine if any of these TCMs could be considered reasonably available control measures. The candidate measures were screened to determine if they were available for potential implementation, and then each measure analyzed for its potential emissions reduction benefit, economic impact, practicability and potential adverse impact by nonattainment area.

The mobile source measures analyzed were grouped into the following five categories; Travel Demand Management and Commuter Choice, Transportation Pricing Strategies and Scenarios, Traffic Flow Improvements, Transit Projects and Transit Oriented Design and Vehicle Fuel and Technology. In addition, two non-mobile source land use related measures were examined which have the potential to reduce vehicle miles traveled and vehicle emissions.

The State's analysis found that none of the TCM's, singularly or in combination, will yield emissions benefits sufficient to advance the attainment dates for the respective New Jersey ozone nonattainment areas. The range of combined emissions benefits from VOC and NO_x was 0.0 tons/day to 2.054 tons/day in the New Jersey portion of the Northern New Jersey NAA and from 0.0 tons/day to 1.10

tons/day in the New Jersey portion of the Trenton NAA. In addition, the State also found that implementing certain measures is not cost effective. These TCMs are not reasonably available at this time, nor may they be able to generate significant emission reductions by the attainment date.

Two land use measures were also reviewed and evaluated for their potential impact to reduce vehicle miles traveled and emissions. The measures were developed to achieve other State goals and include the statewide programs: Open Space Preservation Program in which the State commits to preserving 1,000,000 acres of open space over a ten-year period, and New Development and Redevelopment Plan which is based on "smart growth" principles.

The Open Space Preservation Program can not be phased in any faster and, therefore, can not advance the ozone attainment dates in the New Jersey NAAs. The State Development and Redevelopment Plan is a voluntary plan and has no force of law under municipal home rule. This limits EPA's ability to enforce such a program as part of a SIP. It also requires long lead times before it could be effective on a regional scale and it is not anticipated to advance the attainment dates in the New Jersey nonattainment areas.

2. Consideration and Implementation of Stationary Source, Area Source, and other Non-TCM Measures

The projected attainment year VOC and NO_x emission inventories were separately sorted by source category for each nonattainment area. All source categories with emissions of five tons per day or greater were examined for potential application of new control measures. The State evaluated 29 VOC source categories and 25 NO_x source categories. The analysis for feasibility of potential controls for each source category included evaluation of the potential emissions reduction benefit, technical and economic feasibility, and analysis of whether the measure could be implemented in time to advance the attainment date.

Six potentially implementable control measures were identified with a combined potential emission reduction benefit of 2.2 tons per day of VOC and 0.4 tons per day of NO_x in 2004 for the Trenton NAA and 7.3 tons per day of VOC and 3.3 tons per day of NO_x in 2006 for the Northern New Jersey NAA. Based on a comparison of the emission reductions which are scheduled to occur in the year immediately before the attainment year, the combined benefit of the potential control measures resulted

in less emission reductions. Therefore, no TCM or other measure, either singularly or combined, has been identified which could advance the attainment dates of either area and be considered RACM.

New Jersey evaluated all source categories that could contribute meaningful emission reductions. An extensive list of potential control measures was identified and reviewed. The State considered the time needed to implement these measures as a further screen of their reasonableness and availability. However, EPA believes that some of these control measures may offer some benefits in the future for purposes of an 8-hour ozone standard, and recommends that New Jersey and other states in the OTR revisit these controls in the context of any future planning obligations.

Therefore, EPA proposed in the September 24, 2001 **Federal Register** (66 FR 48847) to approve New Jersey's RACM analysis and its finding that no additional measures, individually or as combined measures, were technically and economically feasible nor would they advance the 1-hour ozone attainment dates.

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

Also, EPA has long advocated that states consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. See, e.g., <http://www.epa.gov/otaq/transp.htm>. In order to demonstrate that they will attain the 1-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures, including the kind that New Jersey 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 of all techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

Because EPA is finding that the SIP meets the CAA's requirement for RACM and that there are no additional reasonably available control measures that can advance the attainment date, EPA concludes that the attainment dates being approved are as expeditious 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 previous responses are found at <http://www.epa.gov/otaq/transp/conform/njrspnd.pdf>.

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

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

New Jersey submitted an enforceable commitment on April 26, 2000, to participate in the OTC process and to adopt measures by October 31, 2001. New Jersey did participate in the OTC process, however, the deadline for choosing and adopting shortfall measures has come and gone. So far, New Jersey has not submitted anything to EPA which states which control measures New Jersey plans to use to address the shortfall. Nor has New Jersey adopted measures to address the required emission shortfall reductions.

With respect to the commitments from New Jersey, the commenters

contend that the emissions gap must be closed now. Deferred adoption and submittal are not consistent with the statutory mandates and are not consistent with the CAA's demand that all SIPs contain enforceable measures. EPA does not have authority to approve a SIP if part of the SIP is not adequate to meet all tests for approval. Because the submittal consists in part of commitments, New Jersey has not adopted rules implementing final control strategies, and the plan includes insufficient reduction strategies to meet the emission reduction goals established by New Jersey. Thus, New Jersey 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 definition of a "full attainment demonstration SIP," in a consent decree EPA entered into in *NRDC v. Browner*, Civ. No. 99-2976 (D.C.T. D.C.), which obligates EPA to propose a federal implementation plan by November 30, 2001 if EPA has not fully approved the New Jersey 1-hour Ozone Attainment Demonstration SIP by that date.⁵ For these reasons, EPA should reject the New Jersey 1-hour Ozone Attainment Demonstration SIP and impose sanctions on the area and publish a proposed FIP no later than October 15, 2001.

Response: EPA disagrees with the comments, and believes, consistent with past practice, that the CAA allows full approval of enforceable commitments that are limited in scope where circumstances exist that warrant the use of such commitments in place of adopted measures.⁶ Once EPA determines that circumstances warrant consideration of an enforceable commitment, EPA believes that three factors should be considered in determining whether to approve the enforceable commitment: (1) Whether

the commitment addresses a limited portion of the statutorily-required program; (2) whether the state is capable of fulfilling its commitment; and (3) whether the commitment is for a reasonable and appropriate period of time.

It is also noted that while New Jersey does rely on commitments to adopt additional measures as requested by EPA to insure demonstrating attainment, it does not rely on commitments to demonstrate RFP. See 66 FR 47419, September 12, 2001. New Jersey's RFP plans, discussed above, demonstrate RFP with VOC and NO_x emission reductions achieved within the nonattainment area by the implementation of fully promulgated Federal and fully adopted SIP-approved state measures.

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

EPA's approach here of considering enforceable commitments that are limited in scope is not new. EPA has historically recognized that under certain circumstances, issuing full approval may be appropriate for a submission that consists, in part, of an enforceable commitment. See e.g., 62 FR 1150, 1187, Jan. 8, 1997 (ozone attainment demonstration for the South Coast Air Basin; 65 FR 18903, Apr. 10, 2000 (revisions to attainment demonstration for the South Coast Air Basin); 63 FR 41326, Aug. 3, 1998 (federal implementation plan for PM-10

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

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

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

⁵ Since this comment was submitted, the court granted an extension from November 30, 2001 to January 15, 2002.

⁶ These commitments are enforceable by the EPA and citizens under, respectively, sections 113 and 304 of the CAA. In the past, EPA has approved enforceable commitments and courts have enforced these actions against states that failed to comply with those commitments. See, e.g., *American Lung Ass'n of N.J. v. Kean*, 670 F. Supp. 1285 (D.N.J. 1987), aff'd, 871 F.2d 319 (3rd Cir. 1989); *NRDC v. N.Y. State Dept. of Envs. Cons.*, 668 F. Supp. 848 (S.D.N.Y. 1987); *Citizens for a Better Env't v. Deukmejian*, 731 F. Supp. 1448, recon. granted in part, 746 F. Supp. 976 (N.D. Cal. 1990); *Coalition for Clean Air v. South Coast Air Quality Mgt. Dist.*, No. CV 97-6916 HLH, (C.D. Cal. Aug. 27, 1999). Further, if a state fails to meet its commitments, EPA could make a finding of failure to implement the SIP under section 179(a) of the CAA, which starts an 18-month period for the State to begin implementation before mandatory sanctions are imposed.

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

In the present circumstances, the commitments address only a small portion of New Jersey's attainment plans. For the Trenton NAA, the commitment addresses only 10.6 percent and 0.7 percent of the total VOC and NO_x emissions reductions, respectively, necessary to attain the standard. For the Northern New Jersey NAA, the commitment addresses only 9.1 percent of the VOC and 0.8 percent of the NO_x emissions reductions necessary to attain the standard. A summary of the adopted control measures and other components credited in New Jersey's attainment demonstration submission are discussed in Section II of this document. These adopted and implemented control measures are the majority of the total emissions reductions needed to demonstrate attainment.

As to the second factor, whether the State is capable of fulfilling the commitment, EPA considered the current or potential availability of measures capable of achieving the additional level of reductions represented by the commitment. For the New York, Philadelphia and Baltimore nonattainment areas, EPA believes that there are sufficient untapped sources of emission reductions that could achieve the minimal levels of additional reductions that the areas need. This is supported by the recent recommendation of the Ozone Transport Commission (OTC) regarding specific controls that could be adopted to achieve the level of reductions needed for each of these three nonattainment areas. Thus, EPA believes that the states will be able to find sources of reductions to meet the shortfall. The states that comprise the New York, Philadelphia and Baltimore nonattainment areas are making significant progress toward adopting the measures to fill the shortfall. The OTC, of which New Jersey is a part, has performed an extensive study and model rule development effort. Public meetings were held and the OTC model rules were also made available for comment. On March 29, 2001 the OTC recommended a set of control measures and model rules. Currently, the states are working through their adoption processes with respect to those, and in some cases other, control measures.

New Jersey was an active participant in the OTC rule development effort and concurred on the recommendation that the Northeast States adopt these

measures. New Jersey's involvement and support for these regional measures is evidence of New Jersey's intent to also adopt them statewide. This was demonstrated when New Jersey took to public hearing a SIP revision which identified the specific control measures they would be proceeding with rulemaking on, along with a description of the measures and projected emission reductions. This was submitted as part of the adopted October 8, 2001 SIP revision. New Jersey is well underway with the regulatory development process for these measures. While New Jersey has not made the submission on the date to which it committed, EPA believes that it is making sufficient progress to support approval of the attainment demonstration because, within a short time period, New Jersey will adopt and implement measures that are fully consistent with the Northern New Jersey and Trenton NAAs attaining the standard by its approved attainment date.

The third factor, EPA has considered in determining to approve limited commitments for the New Jersey attainment demonstrations is whether the commitment is for a reasonable and appropriate time period. EPA recognizes that both the CAA and EPA have historically emphasized the need for submission of adopted control measures in order to ensure expeditious implementation and achievement of required emissions reductions. Thus, to the extent that other factors, such as the need to consider innovative control strategies or the need to work as part of a multi-state effort, support the consideration of an enforceable commitment in place of adopted control measures. The commitment should provide for the adoption of the necessary control measures on an expeditious, yet practicable, schedule.

As provided above, for New York, Baltimore and Philadelphia, EPA proposed that these areas have time to work within the framework of the OTC to develop, if appropriate, a regional control strategy to achieve the necessary reductions and then to adopt the controls on a state-by-state basis. In the proposed approval of the attainment demonstrations, EPA proposed that these areas would have approximately 22 months (until October 31, 2001), to complete the OTC and state-adoption processes.

As a starting point in suggesting this time frame for submission of the adopted controls, EPA first considered the CAA "SIP Call" provision of the CAA—section 110(k)(5)—which provides states with up to 18 months to submit a SIP after EPA requests a SIP

revision. While EPA may have ended its inquiry there, and provided for the states to submit the measures within 18 months of its proposed approval of the attainment demonstrations, EPA further considered that these areas are all located within the Northeast Ozone Transport Region (OTR) and determined that it was appropriate to provide these areas with additional time to work through the OTR process to determine if regional controls would be appropriate for addressing the shortfall. See *e.g.*, 64 FR 70428. EPA believed that allowing these states until 2001 to adopt these additional measures would not undercut their attainment dates of November 2005 or 2007.

EPA still believes, consistent with the memoranda of understanding signed by Robert C. Shinn, Commissioner, New Jersey Department of Environmental Protection, that it is New Jersey's stated intention to propose, adopt and implement the identified control measures. The actual OTC model regulation development process took longer than EPA anticipated, 15 months of the 22 months that EPA had thought the complete effort should take. This only left the states in the OTC seven months to complete the individual state regulatory adoption process. Although, as described below, New Jersey did not make its submission by that date, EPA believes that the State is sufficiently on track and that the SIP should not be disapproved at this time. Moreover, if EPA or citizens are concerned about the delay in adoption of the measures, EPA and citizens have the ability to take action under CAA (*e.g.*, sections 179(a) and (b) and 304) to ensure New Jersey completes the adoption process.

New Jersey is well underway with the regulatory development process for all six of the OTC model rules, which include consumer products and architectural and industrial coatings rules, a mobile equipment refinishing rule, solvent cleaning rule, controls on portable fuel containers as well as the NO_x model rule (NO_x reductions from sources that are not included in the 1994 OTC NO_x Memorandum of Understanding for regional NO_x reductions or covered by EPA's NO_x SIP Call). EPA believes that New Jersey is making sufficient progress to support approval of the commitment, because New Jersey will adopt and implement the additional measures well within a time period fully consistent with New Jersey attaining the standard by November 15, 2005 for the Trenton NAA and November 15, 2007 for the Northern New Jersey NAA. In a letter dated December 11, 2001, New Jersey provided additional information on

their progress in addressing the shortfall in emission reductions. See also section II.F. for further discussion on New Jersey's commitment.

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

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

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

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

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

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

date information possible. The State will also be evaluating several new control measures for inclusion in the SIP. We are fully supportive of this continued evaluation of the science supporting the plan to reach attainment.

E. Adequacy of Motor Vehicle Emissions Budgets

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

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

On September 12, 2001 (66 FR 47419), we proposed to approve the transportation conformity budgets for the Northern New Jersey and Trenton NAAs. See Table 2. We received no specific comments on New Jersey's budgets. In this final rule we are approving these budgets.

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

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

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

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

G. VOC Emission Reductions

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

Response: EPA has met with the commenter and has discussed the technology described by the company to reduce VOC emissions from polystyrene foam blowing through the use of HFC-152a (1,1 difluoroethane), which is a VOC exempt compound, as a blowing agent. Since the HFC-152a is VOC exempt, its use could result in a VOC reduction compared to the use of VOCs such as pentane or butane as a blowing agent. However, EPA has not studied this technology exhaustively.

It is each state's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC-152a, states may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. Using HFC-152a as a blowing agent is a technology which states may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected state.

Finally, EPA notes that under the significant new alternatives policy (SNAP) program, created under CAA section 612, EPA has identified acceptable foam blowing agents many of which are not VOCs (<http://www.epa.gov/ozone/title6/snap/>).

H. Credit for Measures Not Fully Implemented

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

Response: Architectural and Industrial Maintenance (AIM) Coatings: On March 22, 1995 EPA issued a memorandum⁸ that provided that states could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, states relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR part 59, subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum. In accordance with EPA's final regulation, states have assumed a 20 percent reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to "use up existing label stock" and "adjust inventories" to conform to the rule. 63 FR 48848 (September 11, 1998). In addition, EPA

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

Autobody Refinish Coatings Rule: Consistent with a November 27, 1994 EPA policy,⁹ many states claimed a 37 percent reduction from this source category based on a proposed rule. However, EPA's final rule, "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings," published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide.

The 37 percent emission reduction from EPA's proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36 percent for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately one percent difference between the 37 percent estimate of reductions assumed by states, following EPA guidance based on the proposal, and the 36 percent reduction actually achieved by the final rule for previously unregulated areas.

EPA's best estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled "Emissions Calculations for the Automobile Refinish Coatings Final Rule" from Mark Morris to Docket No. A-95-18.

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

⁹ "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule," 11/29/94, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I-X.

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

I. Enforcement of Control Programs

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

Response: In general, state enforcement, personnel and funding program elements are contained in SIP revisions previously approved by EPA under obligations set forth in section 110(a)(2)(c) of the CAA. Once approved by EPA, there is no need for states to re-adopt and resubmit these programs with each and every SIP revision generally required by other sections of the CAA. In addition, emission control regulations will also contain specific enforcement mechanisms, such as record keeping and reporting requirements, and may also provide for periodic state inspections and reviews of the affected sources. EPA's review of these regulations includes review of the enforceability of the regulations. Rules that are not enforceable are generally not approved by the EPA. To the extent that the ozone attainment demonstration depends on specific state emission control regulations, these individual regulations have undergone review by the EPA in past approval actions.

J. MOBILE6 and Motor Vehicle Emissions Budgets (MVEBS)

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

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

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

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

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

Response: EPA agrees. The motor vehicle emissions budgets in the Northern New Jersey and Trenton attainment demonstrations reflect the motor vehicle control measures in the attainment demonstrations. In addition, New Jersey has committed to submit new budgets as a revision to the attainment SIP consistent with any new measures submitted to fill any shortfall, if the additional control measures affect on-road motor vehicle emissions.

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

Response: EPA will not approve SIPs without motor vehicle emissions budgets that are explicitly quantified for conformity purposes. The Northern New Jersey and Trenton attainment demonstrations contain explicitly quantified motor vehicle emissions budgets.

Comment: If a state fails to follow through on its commitment to submit the revised motor vehicle emissions budgets using MOBILE6, EPA could make a finding of failure to submit a

portion of a SIP, which would trigger a sanctions clock under section 179.

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

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

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

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

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

K. MOBILE6 Grace Period

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

Response: This comment is not germane to this rulemaking, since the MOBILE6 grace period for conformity determinations is not explicitly tied to EPA's SIP policy and approvals. However, EPA understands that a longer grace period would allow some areas to better transition to new MOBILE6

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

budgets. EPA is considering the maximum 2-year grace period allowed by the conformity rule, and EPA will address this in the future when the final MOBILE6 emissions model and policy guidance is released.

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

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

L. Two-Year Option To Revise the MVEBs

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

Response: EPA proposed the additional option to provide further flexibility in managing MOBILE6 budget revisions. The supplemental proposal did not change the original option to revise budgets within one year of MOBILE6's release. State and local governments can continue to use the 1-year option, if desired, or submit a new commitment consistent with the alternative 2-year option. EPA expects that state and local agencies have consulted on which option is appropriate and have considered the impact on future conformity determinations. New Jersey has committed to revise its budgets within one-year of MOBILE6's release.

M. 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 the 1-hour ozone NAAQS. Congress has provided the states with the authority to choose the measures necessary to attain the NAAQS and EPA cannot second guess the states' choice if EPA determines that the SIP meets the requirements of the CAA. EPA believes that the SIPs for the severe areas meet the requirements for attainment demonstrations for the 1-hour standard and thus, could not disapprove them even if EPA believed other control requirements might be more effective for attaining the 8-hour standard. However, EPA generally believes that emission controls implemented to attain the 1-hour ozone standard will be beneficial towards attainment of the 8-hour ozone standard as well. This is particularly true regarding the implementation of NO_x emission controls resulting from EPA's NO_x SIP Call. Finally, EPA notes that although the 8-hour ozone standard has been adopted by the EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The states and the EPA have yet to define the 8-hour ozone nonattainment areas and the EPA has yet to issue guidance and requirements for the implementation of the 8-hour ozone standard.

N. Attainment and Post 1999 Reasonable Further Progress Demonstrations

Comment: One commenter claims that the plans fail to demonstrate emission reductions of 3 percent per year over each 3-year period between November 1999 and November 2002; and November 2002 and November 2005; and the 2-year period between November 2005 and November 2007, as required by 42 U.S.C. 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 percent annual reductions. The statute does not allow EPA to use the NO_x SIP Call or 126 orders as an excuse for waiving ROP deadlines. The statutory ROP requirement is for emission reductions—not ambient reductions. Emission reductions in upwind states do not waive the statutory requirement for 3 percent annual emission reductions within the downwind nonattainment area.

Response: Under no condition is EPA waiving the statutory requirement for 3 percent annual emission reductions. For many areas, EPA did not propose approval of the post-99 RFP demonstrations at the same time as EPA proposed action on the area's attainment demonstration. New Jersey submitted its Post-99 RFP Plans on April 11, 2001 and EPA proposed approval on September 12, 2001 (66 FR 47419). EPA is approving the RFP Plans as part of this action. Moreover, EPA has not provided that area's may rely on upwind reductions for purposes of meeting the ROP requirements. Rather, states, including New Jersey, are relying on in-state NO_x and VOC measures to meet the ROP requirement.

IV. Conclusion

As described above, EPA does not believe any of the comments we received on the proposals published for the attainment demonstrations for the New Jersey portions of the Northern New Jersey and the Trenton ozone NAAs should affect EPA's determination that the SIP is fully approvable as meeting the attainment demonstration requirements of sections 182(c)(2) and (d) of the CAA. EPA is approving several SIP revisions that relate to attainment of the one-hour ozone standard in New Jersey. The SIP revisions include New Jersey's one-hour ozone attainment demonstrations for the state's portions of the Northern New Jersey and the Trenton NAAs, all of the enforceable commitments, a RACM analysis, 1996 periodic emission inventory, 2002, 2005 and 2007 ozone projection year emission inventories, 2002, 2005 and 2007 RFP Plans, and ozone contingency measures.

New Jersey's one-hour ozone attainment demonstrations include 2005 and 2007 motor vehicle emissions budgets for the Trenton and Northern New Jersey NAAs, respectively. EPA is approving these attainment budgets until new budgets using MOBILE6 are submitted and found adequate. Similarly, if new mobile source measures are submitted to fill the shortfall, the revised budgets will apply after they are submitted and found adequate. Also, EPA is approving the motor vehicle emissions budgets for 2002 and 2005 contained in New Jersey's RFP plans for transportation conformity purposes.

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 (Pub. L. 104-4).

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the

requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the 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 April 5, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 14, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart FF—New Jersey

2. Section 52.1582 is amended by adding new paragraph (h) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone (volatile organic substances) and carbon monoxide.

* * * * *

(h)(1) The statewide 1996 periodic emission inventory included in New Jersey's April 11, 2001 State Implementation Plan revision is approved.

(2) The 2002 and 2005 ozone projection year emission inventories for the New Jersey portion of the Philadelphia/Wilmington/Trenton nonattainment area and the 2002, 2005 and 2007 ozone projection year emission inventories for the New Jersey portion of the New York/Northern New Jersey/Long Island nonattainment area included in New Jersey's April 11, 2001 State Implementation Plan revision are approved.

(3) The 2002 and 2005 Reasonable Further Progress Plans for the New Jersey portion of the Philadelphia/Wilmington/Trenton nonattainment area and the 2002, 2005 and 2007 Reasonable Further Progress Plans for the New Jersey portion of the New York/Northern New Jersey/Long Island nonattainment area included in New Jersey's April 11, 2001 State Implementation Plan revision are approved.

(4) The contingency measures for the New Jersey portions of the Philadelphia/Wilmington/Trenton nonattainment area and the New York/Northern New Jersey/Long Island nonattainment area included in New Jersey's April 11, 2001 State Implementation Plan revision are approved.

(5) The 2002 and 2005 conformity emission budgets for the New Jersey portion of the Philadelphia/Wilmington/Trenton nonattainment area and the 2002, 2005 and 2007 conformity emission budgets for the New Jersey portion of the New York/Northern New Jersey/Long Island nonattainment area included in New Jersey's April 11, 2001 State Implementation Plan revision are approved. The 2005 and 2007 attainment year budgets are only approved until such time as New Jersey submits revised budgets consistent with its commitments to revise the budgets with respect to MOBILE6 and additional measures and EPA finds those revised budgets adequate.

(6) The Reasonably Available Control Measure Analysis for the New Jersey portion of the Philadelphia/

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

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

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

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

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

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

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

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

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

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

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Final rule.

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

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

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

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

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, 2nd Floor, Albany, New York 12233
Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460

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

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I. What Action Is EPA Taking Today?

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

Specifically, EPA is approving New York's:

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