

III. Proposed Action

A. What Action Is EPA Proposing Today?

EPA proposes to approve Indiana's submitted plan as a revision to the SIP to fulfill the Phase I NO_x SIP Call requirements, if Indiana corrects the deficiencies discussed in this document and does not make additional significant revisions not discussed in this document. The submitted plan includes a budget demonstration, supporting materials and the NO_x SIP rules for cement kilns (326 IAC 10-3) and the trading program for EGUs, large non-EGU boilers and turbines and opt-in sources (326 IAC 10-4). The rules achieve 30% reductions from cement kilns, the equivalent of a 0.15 lb/mmBtu limit on EGUs and 60% reductions from large non-EGU boilers and turbines. In the alternative, if Indiana does not address the identified deficiencies, EPA is proposing to disapprove this plan.

Indiana adopted final rules on June 6, 2001. EPA has not concluded its analysis of these final adopted rules and the associated plan. However, based on our preliminary review and conversations with the State, we expect that the rules will address the deficiencies identified in this proposal. These final adopted rules are available on Indiana's website at: <http://www.state.in.us/idem/oam/standard/Sip/index.html>.

B. What Happens if Indiana Does Not Address the Deficiencies Identified or Has Significantly Changed the Regulations During the Final Adoption Process?

Since the EPA is proposing to rulemake on the Indiana NO_x plan under parallel processing procedures, it notes the possibility exists that Indiana will submit a final version of the plan which differs significantly from the version of the plan reviewed in this proposed rulemaking.

If the State makes significant changes to the plan as a result of its public comment and adoption process and based on further deliberation and/or on comments other than based on the discussion and deficiencies noted above, the EPA will need to re-evaluate the rules through a new proposed rulemaking. If, on the other hand, the State only makes changes in the plan to correct the deficiencies identified in this proposed rule consistent with the analysis presented here, the EPA will proceed to final approval rulemaking after considering public comments received in writing during the public comment period on this proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely proposes to approve State law as meeting federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve State rules implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: June 25, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01-16568 Filed 6-29-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[W103-7333; FRL-7005-3]

Approval and Promulgation of Implementation Plans; Wisconsin; Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On December 22, 2000, the Wisconsin Department of Natural Resources submitted a revision to its State Implementation Plan for attainment of the one-hour ozone standard. The submittal includes, among other things, air quality modeling, rules to reduce emissions of ozone forming pollutants (i.e., nitrogen oxides (NO_x) and volatile organic compounds (VOC)), and a plan demonstrating how progress in emission reductions will be achieved through the area's attainment date of 2007 (i.e., Rate of Progress Plan (ROP)). In this action, EPA is proposing to approve the attainment demonstration, the NO_x

rules, the VOC rules, and the post-1999 ROP plan. We find the attainment year emissions budgets to be adequate for conformity. We are revising the NO_x waiver to reflect NO_x emission reductions in the Wisconsin nonattainment area that were included in the attainment modeling. We are proposing approval of a reasonably available control measure (RACM) analysis submitted by the state. We are also proposing to approve commitments by the state to complete a mid-course review of the attainment status of the one-hour ozone nonattainment area and to recalculate conformity budgets within one year of the release of MOBILE6.

DATES: EPA must receive written comments on or before August 1, 2001.

ADDRESSES: Written comments should be sent to: Carl Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of Wisconsin's submittal and EPA's Technical Support Document (TSD) for this proposed rule, and other relevant materials are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604 (Please telephone Randy Robinson at (312) 353-6713 before visiting the Region 5 office.)

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

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I. Background

1. Basis for Wisconsin's Attainment Demonstration SIP

What Are the Relevant Clean Air Act Requirements?

The Clean Air Act (Act or CAA) requires EPA to establish National Ambient Air Quality Standards (NAAQS) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. In

1979, EPA promulgated the one-hour ground-level ozone standard of 0.12 parts per million (ppm) (120 parts per billion [ppb]). 44 FR 8202 (February 8, 1979).

Ground-level ozone is not emitted directly by sources. Rather, volatile organic compounds (VOC) and oxides of nitrogen (NO_x), which are emitted by a wide variety of sources, react in the presence of sunlight to form ground-level ozone. NO_x and VOC are referred to as precursors of ozone.

An area exceeds the one-hour ozone standard each time an ambient air quality monitor records a one-hour average ozone concentration above 0.124 ppm in any given day (only the highest one-hour ozone concentration at the monitor during any 24-hour day is considered when determining the number of exceedance days.) An area violates the ozone standard if, during three consecutive years, more than three days of exceedances occur at any monitor in the area or in its immediate downwind environs.

The highest of the fourth-highest daily peak ozone concentrations over the three-year period at any monitoring site in the area is called the ozone design value for the area. Section 107(d)(4) of the Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one-hour ozone standard, generally based on air quality monitoring data from 1987 through 1989. 56 FR 56694 (November 6, 1991). The Act further classified these areas, based on the area's ozone design values, as marginal, moderate, serious, severe, or extreme. Marginal areas were suffering the least significant ozone nonattainment problems, while the areas classified as severe and extreme had the most significant ozone nonattainment problems.

The control requirements and date by which attainment is to be achieved vary with an area's classification. Marginal areas are subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas were required to attain the one-hour standard by November 15, 1999, and severe areas are required to attain by November 15, 2005 or November 15, 2007, depending on the areas' ozone design values for 1987 through 1989. The Milwaukee-Racine nonattainment area is classified as severe and its attainment date is November 15, 2007. The Milwaukee-Racine nonattainment area includes the counties of Kenosha, Milwaukee, Ozaukee, Racine,

Washington, and Waukesha. Door and Manitowoc Counties also remain in nonattainment status. Manitowoc County was classified as a moderate area in response to the 1990 CAA Amendments and had an original attainment date of 1996. Since Manitowoc County is downwind of Milwaukee and subject to ozone transport, EPA completed an overwhelming transport rulemaking in 1997 (62 FR 39446), which made Manitowoc's attainment date the same as Milwaukee's date of 2007. Door County remains a rural transport nonattainment area.

An attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the control measures necessary to achieve those reductions. Section 172(c)(6) of the Act requires SIPs to include enforceable emission limitations, and such other control measures, means, or techniques as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment date. Section 172(c)(1) requires the implementation of all reasonably available control measures (including Reasonably Available Control Technology [RACT]) and requires the SIP to provide for attainment of the NAAQS. Section 182(b)(1)(A) requires the SIP to provide for specific annual reductions in emissions of VOC and NO_x as necessary to attain the ozone NAAQS by the applicable attainment date. Finally, section 182(j)(1)(B) requires the use of photochemical grid modeling or other methods judged to be at least as effective to demonstrate attainment of the ozone NAAQS in multi-state ozone nonattainment areas. As part of today's proposal, EPA is proposing action on the attainment demonstration SIP revisions submitted by Wisconsin for the Milwaukee-Racine severe ozone nonattainment area and its associated ozone modeling domain.

The attainment demonstration SIPs must also include motor vehicle emission budgets for transportation conformity purposes. Transportation conformity is a process for ensuring that states consider the effects of emissions associated with federally-funded transportation activities on attainment of the standard. Attainment demonstrations must include the estimates of motor vehicle VOC and NO_x emissions that are consistent with attainment, which then act as a budget or ceiling for the purpose of determining whether transportation plans, programs, and projects conform to the attainment SIP.

What Is the History of the State Attainment Demonstration SIP?

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

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by the states but noting the remaining difficulties in making attainment demonstration SIP submittals.¹ Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the states in the eastern half of the Country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)² and provided for the states to submit the attainment demonstration SIPs based on the expected time frames for OTAG to complete its evaluation of ozone transport.

In June 1997, OTAG concluded and provided EPA with recommendations regarding ozone transport. The OTAG generally concluded that transport of ozone and the precursor NO_x is significant and should be reduced regionally to enable states in the eastern half of the country to attain the ozone NAAQS. Building on the OTAG recommendations and technical analyses, in November 1997, EPA proposed action addressing the ozone transport problem. In its proposal, the EPA found that current SIPs in 22 states and the District of Columbia (23 jurisdictions) were insufficient to provide for attainment and maintenance of the one-hour standard because they did not regulate emissions that significantly contribute to ozone transport. 62 FR 60318 (November 7, 1997). The EPA finalized that rule in September 1998, calling on the 23 jurisdictions to revise their SIPs to

require NO_x emission reductions within each state to a level consistent with a NO_x emissions budget identified in the final rule. 63 FR 57356 (October 27, 1998). This final rule is commonly referred to as the SIP Call. EPA is also requiring regional NO_x emission reductions under its authority in section 126 of the Act to assure that reductions occur in upwind areas that have been shown to impact attainment of the ozone standard in downwind areas. Wisconsin was originally one of the 23 areas subject to the NO_x emission reductions specified in the SIP Call. However, a March 3, 2000 Circuit Court ruling on the SIP Call, among other things, vacated and remanded EPA's decision to include Wisconsin. Thus, Wisconsin is not currently subject to the SIP Call requirements. However, Wisconsin benefits greatly from the upwind NO_x reductions and in fact is reliant upon them to reach attainment.

In recognition of the length of the OTAG process, in a December 29, 1997 memorandum, Richard Wilson, EPA's then Acting Administrator for Air and Radiation, provided until April 1998 for states to submit the following elements of their attainment demonstration SIPs for serious and higher classified nonattainment areas: (1) Evidence that the applicable control strategy measures in subchapter I, part D, subpart 2, of the Act, were adopted and implemented or that the state was on a course to adopt and implement the measures expeditiously; (2) a list of measures needed to meet the remaining ROP emissions reduction requirement and to reach attainment; (3) for severe areas only, a commitment to adopt and submit, by the end of 2000, target calculations for post-1999 ROP, the control measures necessary for attainment, and ROP plans through the attainment year; (4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the state submittal.

Wisconsin submitted the required elements on April 30, 1998. EPA published a rulemaking on December 16, 1999 (64 FR 70531), which proposed approval of the April 1998 submittal conditioned on the state conducting and submitting some additional material. The December 16, 1999 rulemaking conditioned final approval upon submittal of the following items.

1. A final modeled demonstration of attainment that considers the impacts of the regional NO_x emission reductions and local control measures and clearly identifies an attainment strategy.

2. Adoption and submission of all required CAA measures, including VOC RACT for plastic parts coating, industrial clean-up solvents, and ink manufacturing, and adoption and submission of measures relied on in the final modeled attainment demonstration.

3. Motor vehicle emission budgets for both VOC and NO_x.

4. Control measures necessary to meet the ROP requirement from 1999 to the attainment year of 2007, including target calculations

5. A commitment to perform a mid-course review and submit it by December 2003.

On July 28, 2000 (65 FR 46383), EPA published a supplemental notice of proposed rule titled "Motor Vehicle Emissions Budgets in Attainment Demonstration for the One-Hour National Ambient Air Quality Standard for Ozone." The notice discusses the need to commit to recalculate emission budgets using MOBILE6 within one-year after the models formal release if the attainment demonstration for the area relies on the Tier 2 program. The updated attainment demonstration for Wisconsin relies on Tier 2 so the state is subject to the MOBILE6 commitment.

What Is the Time Frame for Taking Action on the Attainment Demonstration SIPs?

EPA's December 16, 1999, proposed conditional approval required a new submittal by December 2000, which would replace the April 1998 submittal with updated and additional elements. EPA views the December 2000 submittal as a replacement to the April 1998 submittal. EPA, therefore, is not finalizing the December 16, 1999 proposed conditional approval, but rather repropose it in this notice based on the new information in the December 2000 submittal. EPA will respond to comments received on the December 16, 1999 proposed rulemaking in conjunction with comments received on today's proposed rulemaking.

As a result of a settlement agreement with the National Resource Defense Council³, EPA must propose a full attainment demonstration Federal Implementation Plan (FIP) by October 15, 2001, for any severe one-hour ozone nonattainment area attainment demonstrations that have not been fully approved by that date. If the attainment demonstration has not been fully

¹ Memorandum, "Ozone Attainment Demonstrations," issued March 2, 1995. A copy of the memorandum may be found on EPA's web site at: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

² Letter from Mary A. Gade, Director, State of Illinois Environmental Protection Agency to Environmental Council of States (ECOS) Members, dated April 13, 1995.

³ The National Resource Defense Council filed a complaint on November 8, 1999 against EPA, alleging that EPA had an outstanding obligation to promulgate federal implementation plans demonstrating attainment for several serious and severe ozone nonattainment areas.

approved by June 14, 2002, EPA must finalize the FIP by that date. EPA anticipates proceeding with a final approval of the Wisconsin SIP revision by the October 15, 2001 deadline.

2. Framework for Proposing Action on the Attainment Demonstration SIP

What Modeling Guidance Was Available To Develop and Review the Attainment Demonstration Submittal?

The EPA provides guidance for analyzing attainment of the one-hour standard for ozone. The following documents contain EPA's guidelines affecting the content and review of ozone attainment demonstration submittals:

1. *Guideline for Regulatory Application of the Urban Airshed Model*, EPA-450/4-91-013, July 1991. Web site: <http://www.epa.gov/ttn/scram/> (file name: "UAMREG").

2. Memorandum, "The Ozone Attainment Test in State Implementation Plan (SIP) Modeling Demonstrations," from Joseph A. Tikvart, Office of Air Quality Planning and Standards, December 16, 1992.

3. *Guidance on Urban Airshed Model (UAM) Reporting Requirements for Attainment Demonstrations*, EPA-454/R-93-056, March 1994. Web site: <http://www.epa.gov/ttn/scram/> (file name: "UAMRPTRQ").

4. Memorandum, "Ozone Attainment Demonstrations," from Mary D. Nichols, Assistant Administrator for Air and Radiation, March 2, 1995. Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

5. *Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, EPA-454/B-95-007, June 1996. Web site: <http://www.epa.gov/ttn/scram/> (file name: "O3TEST").

6. Memorandum, "Guidance for Implementing the one-hour Ozone and Pre-Existing PM10 NAAQS," from Richard Wilson, Office of Air and Radiation, December 29, 1997. Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

What Are the Modeling Requirements for the Attainment Demonstration?

For purposes of demonstrating attainment, the Act requires nonattainment areas designated as serious or above to use photochemical grid modeling or an analytical method judged by EPA to be as effective. The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone in the nonattainment area and its modeling domain. Emissions for a base year are

used to evaluate the model's ability to reproduce monitored air quality values. Following validation of the modeling system for a base year, emissions are projected to an attainment year to predict air quality changes in the attainment year due to the emission changes, which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted ozone concentrations inside the modeling domain are at or below the ozone standard or an acceptable upper limit above the standard permitted under certain conditions by EPA's guidance. When the predicted concentrations are above the standard or upper limit, EPA guidance allows an optional weight-of-evidence determination, which incorporates other analyses, such as air quality and emissions trends, to address uncertainty inherent in the application of photochemical grid models. States may use this latter approach under certain circumstances to support the demonstration of attainment.

The EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results. First, the state must develop and implement a modeling protocol. The modeling protocol describes the methods and procedures for the modeling analyses and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (state and local agencies, EPA, the regulated community, and public interest groups). Second, for purposes of developing the information to put into the model, the state must select air pollution days, (i.e., days in the past with high ozone concentrations exceeding the standard) that are representative of the ozone pollution problem for the nonattainment area. Third, the state must identify the appropriate dimensions of the area to be modeled, (i.e., the modeling domain size). The domain should be larger than the designated nonattainment area to reduce uncertainty in the boundary conditions and should include any large upwind sources just outside the nonattainment area. In general, the domain is the local area where control measures are most beneficial to bring the area into attainment. Alternatively, a much larger modeling domain may be established, addressing the impacts of both local and regional emission control measures on a number of ozone nonattainment areas. In both cases, the attainment determination is based on the review of ozone predictions within

the local area where control measures are most beneficial to bring the area into attainment (referred to as the local modeling domain). Fourth, the state must determine the grid resolution. The horizontal and vertical resolutions in the model affect the dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids) may dilute concentrations and may not properly consider impacts of complex terrain, complex meteorology, and land/water interfaces. Fifth, the state must generate meteorological and emissions data that describe atmospheric conditions and emissions inputs reflective of the selected high ozone days. Finally, the state must verify that the modeling system is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests (generally referred to as model validation). Once these steps are satisfactorily completed, the model is ready for use to generate air quality estimates to support an attainment demonstration.

The modeled attainment test compares model predicted one-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the ozone standard. A predicted peak ozone concentration above 0.124 ppm (124 ppb) indicates that the area is expected to exceed the standard in the attainment year. This type of test is often referred to as an exceedance test. The EPA's June 1996 guidance recommends that states use either of two exceedance tests for the one-hour ozone standard: a deterministic test or a statistical test.

The deterministic test requires the state to compare predicted one-hour daily maximum ozone concentrations for each modeled day⁴ to the attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

The statistical test includes a modeled test in which three benchmarks should be passed. First, the number of days with predicted exceedances in defined locations should not be greater than a specified number. Second, for episode days in which modeled exceedances are allowed, predicted daily maxima should not exceed a certain value. This value depends on the severity (in terms of the ability of the meteorology to form high levels of ozone) of the selected episode as well as the shape of distributions of observed daily maxima at sites which currently just attain the NAAQS. Third,

⁴ The initial, "ramp-up" days for each episode are excluded from this determination.

for each day with an allowed exceedance, improvement in the number of hourly occurrences with predicted ozone greater than 124 ppb should be at least 80%. Thus, if the state models a severe day (considering meteorological conditions that are very conducive to high ozone levels) the statistical test provides that a prediction above 0.124 ppm up to a certain upper limit may be consistent with attainment of the standard.

What Additional Analyses May Be Considered?

As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. In light of these limitations, additional analyses may be considered. In particular, EPA's guidance explicitly recognizes that when the modeling does not demonstrate that the area will attain the standard, the state may present additional analyses. The process by which this is done is called a weight-of-evidence determination.

Under a weight-of-evidence determination, the state may rely on, and EPA will consider, factors such as: model performance and results, episode selection, other modeled attainment tests, e.g., relative reduction factor analysis; other modeled outputs, e.g., changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value; actual observed air quality trends; estimated emission trends; analyses of air quality monitored data; the responsiveness of the model predictions to further controls; and whether there are additional control measures that are or will be approved into the SIP but were not included in the modeling analysis. This list is not an exhaustive list of factors that may be considered, and these factors may vary from case to case.

The EPA's guidance does not state how close a modeled attainment test must be to passing to allow consideration of other evidence besides an attainment test to determine attainment. However, the further an area is from passing a modeled attainment test, the more compelling the weight-of-evidence must be.

Besides the Modeled Attainment Demonstration, What Other Issues Must Be Addressed in the Attainment Demonstration SIP?

In addition to the modeling analysis and weight-of-evidence determination demonstrating attainment, the EPA has identified the following key elements which must be present for EPA to approve the one-hour attainment demonstration SIP.

Clean Air Act measures and other measures relied on in the modeled attainment demonstration state implementation plan. The attainment demonstration must incorporate the emission impacts of, and the SIP submittal must address the rule development for, CAA measures and any additional emission control measures needed to achieve attainment. The rules for these emission controls must also have been adopted before the EPA can finally approve the attainment demonstration. The emission controls for these sources must be implemented prior to the beginning of the ozone season in the attainment year.

For purposes of fully approving the state's SIP, the state must adopt and submit all VOC and NO_x control regulations for affected sources within the state and within the local modeling domain as reflected in the adopted emission control strategy and in the attainment demonstration.

The table below presents a summary of the Act's requirements that must be met for each serious and severe nonattainment area for the one-hour ozone NAAQS. These requirements are specified in sections 172 and 182 of the Act.

Table 1—Clean Air Act Requirements for Severe Nonattainment Areas

- New Source Review (NSR) regulations for VOC and NO_x, including an offset ratio of 1.3:1 and a major VOC and NO_x source size cutoff of 25 tons per year (TPY).
- Reasonably Available Control Technology (RACT) for VOC and NO_x.⁵
- Enhanced Inspection and Maintenance (I/M) program.
- 15 percent Rate-Of-Progress (ROP) plan for VOC through 1996 and a Rate-of-Progress plan through 2007.
- 1990 baseline emissions inventory for VOC and NO_x
- Attainment demonstration.
- Clean Fuels program or substitute.

⁵ Areas that are currently attaining the one-hour ozone standard or can demonstrate that NO_x controls will not contribute to or will interfere with attainment can request a NO_x waiver under section 182(f). Milwaukee-Racine is such an area and is currently covered by a NO_x waiver.

- Reformulated gasoline.
- RACM.
- Contingency Measures.
- Periodic emissions inventory and source emission statement regulations.
- Stage II vapor recovery.
- Enhanced monitoring

Photochemical Assessment Monitoring Stations (PAMS).

- Requirement for fees for major sources for failure to attain.

Motorvehicle emissions budget Additionally, the Act requires that the attainment demonstration SIP must estimate the motor vehicle emissions that will be produced in the attainment year and must demonstrate that this emissions level, when considered with emissions from all other sources, is consistent with attainment. For transportation conformity purposes, the estimate of motor vehicle emissions in a control strategy SIP such as an attainment demonstration (converted to a typical ozone season week day level) is defined as the motor vehicle emissions budget. The motor vehicle emissions budget must meet certain adequacy criteria, which are listed in the Transportation Conformity Rule (40 CFR part 93, subpart A, section 93.118), before the budget can be approved as part of the attainment demonstration SIP. When a motor vehicle emissions budget is found to be adequate, it is used to determine the conformity of the transportation plans and programs to the SIP, as required by section 176(c) of the Act. An appropriately identified motor vehicle emissions budget is a necessary part of an attainment SIP.

II. Technical Review of the Submittals

A. Summary of the State Submittals

1. General Information

When Were the Ozone Attainment Demonstration State Implementation Plan Revisions Submitted to the Environmental Protection Agency?

Wisconsin submitted its ozone attainment demonstration SIP revisions to EPA on December 22, 2000. Wisconsin held three public hearings on the ozone attainment demonstration SIP revision. A hearing was held in Kenosha on June 27, 2000; in Milwaukee on June 28, 2000; and in Appleton on June 29, 2000.

What Are the Components of the Wisconsin Attainment Demonstration Submittal?

The Wisconsin Attainment Demonstration submittal includes the following elements:

- (1) A photochemical modeling analysis of a control strategy designed to

achieve attainment in the Wisconsin nonattainment counties and in the rest of the Lake Michigan area.

(2) A rate-of-progress (ROP) plan for reducing VOC and NO_x emissions by the required milestone years of 2002, 2005, and 2007.⁶

(3) VOC and NO_x budgets for transportation conformity based on the final attainment demonstration and ROP plan.

(4) An intrastate NO_x rule for electric generating sources in the nonattainment counties starting in 2002.

(5) A trading rule for NO_x compliance.

(6) A VOC RACT rule for industrial clean-up solvents, a draft rule for plastic parts coating, and an order for Flint Ink.

(7) An excess emissions fee rule for VOCs as required by the CAA.

(8) A request to revise the state's Inspection and Maintenance plan to include NO_x limits.

(9) A commitment to conduct a mid-course review of the attainment status of the Lake Michigan area.

(10) A commitment to recalculate conformity budgets using MOBILE6 within one-year of its formal release, and

(11) A request to revise the maintenance plans for Sheboygan and Kewaunee Counties.

Additionally, Wisconsin submitted information addressing Reasonably Available Control Measures (RACM) for transportation and stationary sources.

In this notice, EPA is not acting on the trading rule, the excess emissions fee rule, the revision to the state's Inspection and Maintenance (I/M) plan, or the request to revise the maintenance plans for Sheboygan and Kewaunee Counties. The state has asked that the trading and averaging provisions not be acted on at this time so that EPA and the WDNR can work together to resolve issues with the rules. EPA will process the I/M revision, the excess emission fee rule, and the maintenance plan revisions in separate rulemakings.

The state submittal package, in combination with previous submittals, addresses the five items upon which EPA conditioned the December 16, 1999, proposed approval (i.e., modeled attainment demonstration, VOC rules, motor vehicle emission budgets, ROP plan, mid-course review). Each of the submitted elements will be discussed in the following sections.

2. What Are the Basic Modeling Components of the Submittal?

Illinois, Indiana, and Wisconsin, as members of the Lake Michigan Air

Directors Consortium (LADCO), used the same ozone modeling approach. The regional approach is documented in a September 27, 2000 technical support document (TSD) entitled "Technical Support Document—Midwest Subregional Modeling—one-hour Attainment Demonstration for Lake Michigan Area." LADCO is a technical organization originally developed by Illinois, Indiana, Wisconsin, and Michigan to deal with ozone air quality problems in the Lake Michigan area. LADCO conducted the majority of the attainment analysis submitted by Wisconsin. The terms LADCO and state are used interchangeably in the following modeling section.

The heart of the modeling system is the Urban Airshed Model-Version V (UAM-V) developed originally for application in the Lake Michigan area. The state used this photochemical model to model ozone and ozone precursors in a multiple, nested grid system. In the horizontal dimension, the extended modeling domain, referred to as Grid M, extends from -92 west longitude/35 degrees north latitude in the southwest corner to -82.28 degrees west longitude/45.37 degrees north latitude in the northeast corner (borders extend from west-central Wisconsin south to northeast Arkansas east to the western tip of North Carolina and north to include most of the lower peninsula of Michigan.) The regulatory modeling was done with 12 kilometer grid resolution. To assess the sensitivity of the model to grid resolution, some modeling was done using four kilometer grids. The modeled results using four kilometer grid size were generally comparable to the 12 kilometer modeling, although model performance was less satisfactory using the four kilometer grids. Additionally, modeling using four kilometer grid resolution requires much more computer resources than using 12 kilometer grid resolution. The use of 12 kilometer grids provided reasonable results and allowed the state to model more days with a variety of control strategies. Since the four kilometer grid modeling did not add any new information to the analysis and showed results generally comparable to 12 kilometer grid modeling, the attainment demonstration was conducted using 12 kilometer grid spacing. In the vertical dimension, seven layers were used to represent the atmosphere over all of Grid M.

What Meteorological Data Was Used?

UAM-V requires three-dimensional hourly values of various meteorological parameters including winds, temperatures, pressure, water vapor,

and vertical diffusivity. The State developed most inputs through prognostic meteorological modeling with RAMS3a Cloud and precipitation fields were developed based on observed National Weather Service data. Early evaluation findings showed that the meteorological model results provided adequate representation of the general airflow features, and good agreement between modeled and measured wind speeds, temperatures, and water vapor. In general, the state determined the results were reasonable and could be used to provide inputs in UAM-V.

What Episodes Were Modeled?

The state used four episodes in the photochemical modeling.

June 22–28, 1991

July 14–21, 1991

June 13–25, 1995

July 7–18, 1995

These episodes were selected because they are representative of typical high ozone episodes in the Lake Michigan area, they reflect a variety of meteorological conditions, there is an intensive data base available from a 1991 field study program, and two were previously modeled for the Ozone Transport Assessment Group (OTAG) studies. While all of the above days were modeled, only a subset of those were used in the attainment demonstration. Some of the days were used for ramp-up purposes. Additionally, only those days that met the model performance specifications were used in the attainment demonstration test.

How Did the States Evaluate Model Performance?

LADCO conducted basecase modeling to evaluate model performance by comparing observed ozone against model predicted ozone. The model performance evaluation included comparisons of the spatial distribution of ozone, the creation and destruction of ozone over time, and the magnitude of measured and predicted values. LADCO modeled four high ozone episodes for use in the attainment demonstration: June and July 1991 and June and July 1995. Basecase modeling involves estimating emissions from the episode time period, developing meteorological data representing the episode, and running the model. The model predicted values are then compared to monitored data from the same time period to evaluate how well the model simulated ozone development and transport. The emissions used in the attainment demonstration were the

⁶ The ROP plan for 1996–1999 is being approved in a separate rulemaking document.

latest available, from 1996. For the 1995 episodes the 1996 emissions were used without any modifications. However, for the 1991 episodes, the 1996 emissions were backcasted to 1991 to allow for a more representative evaluation.

Model evaluation criteria are specified in the Environmental Protection Agency's "Guideline for Regulatory Application of the Airshed Model, EPA-450/4-91-013, July 1991.

This document provides statistical guidelines for unpaired peak accuracy (15–20%), normalized bias (5–15%), and normalized gross error (30–35%). The state and Region 5 placed more emphasis on the unpaired peak accuracy statistical guidelines because of its relevance to the regulatory attainment test methodology. The four LADCO episodes comprise 32 days. Model performance statistics were

produced for all days. However, only those sets of days that generally fell within EPA's guidelines for model performance were used in the strategy runs and ultimately used for the attainment demonstration. Those days are shown in Table 2 below with negative values in the peak accuracy and normalized bias columns indicating days when the model underpredicted.

TABLE 2.—MODEL PERFORMANCE STATISTICS

Date	Peak Acc. 15–20%	Norm. Bias 5–15%	Norm. Gr. Err 30–35%	Date	Peak Acc. 15–20%	Norm. Bias 5–15%	Norm. Gr. Err 30–35%
6/25/91	18.3	19.3	22.9	6/21/95	9.8	–23.2	25.9
6/26/91	–22.3	0.5	22.2	6/22/95	10.1	2.3	16.1
6/27/91	17.8	4.3	17.7	6/23/95	4.1	–6.7	17.9
6/28/91	–10.1	–12.1	19.0	6/24/95	–18.1	–1.6	17.1
7/16/91	–0.8	–15.9	19.0	6/25/95	15.7	8.3	16.3
7/17/91	–13.1	–16.8	20.5	7/12/95	–19.2	–15.2	19.2
7/18/91	–19.4	–2.8	15.9	7/13/95	–17.4	–14.6	18.9
7/19/91	–19.4	–9.6	20.8	7/14/95	–6.7	–4.3	14.6
7/20/91	20.9	11.7	20.8	7/15/95	1.3	15.4	22.6

In addition to providing performance statistics, Wisconsin submitted information comparing the spatial and temporal representation of the surface ozone concentrations with measured ozone values. The model adequately represented the diurnal variation of ozone production and decay and also generally duplicated the locations where the highest ozone was observed. The model did demonstrate a tendency to underpredict the peak measured values on many, but not all, episode days. Overall, it is reasonable to conclude that model performance is acceptable for air quality planning and attainment demonstration purposes.

How Were the Base Year and Future Year Emissions Derived?

The process of demonstrating attainment in the Lake Michigan area involved investigating numerous control strategies ranging from CAA mandated controls only for VOCs and NO_x to full implementation of the SIP Call NO_x controls across the affected areas. A selection of the specific strategies are summarized below:

Base Emissions (1996). The state used the base year inventory to support the performance evaluation modeling as well as future year modeling. The base year emissions are representative of the modeling episode days and produce modeled concentrations that can be compared to monitored concentrations for performance purposes. The base year emissions were also used to project to the future year of interest and then reduced to reflect a specific control strategy. The base year inventory

consisted of emissions for point, area, and mobile sources. Emission rates for point and area sources were provided by either EPA or the states. The emission rates for on-road mobile sources were calculated by EMS-95 based on activity level (i.e., vehicle miles traveled) and the MOBIL5b emission factor model. The latest base year inventory reflects higher speeds than in previous versions, a higher percentage of sport utility vehicles and small trucks, and the excess NO_x produced as a result of built-in defeat devices on heavy-duty diesel vehicles. Biogenic sources were calculated using EPA's Biogenic Emissions Inventory System (BEIS2) model. Isoprene emissions were reduced by 50% in the Ozarks region of Missouri based on analysis of field study data and discussions with EPA.

Future Year Emissions (2007). The state used the future year emissions inventories in the Lake Michigan area modeling that were derived from the base year inventory. Two adjustments were made to the base year inventory to generate future year values. The base year inventory was projected to the 2007 attainment year using growth factors. These adjusted values were then reduced to reflect the various control measures expected to occur by that time.

The growth factors used in the projection of emissions for each source sector are summarized below:

a. **Point sources**—for electric utilities—each state provided company specific data. For certain point sources, a growth factor of "0" was used to reflect shutdowns. All remaining point

source emission categories growth factors were based on the EPA Economic Growth Analysis System (EGAS).

b. **Area Sources**—For base year emission estimates, growth was based on population. For gasoline marketing categories growth was based on projected gasoline sales. EGAS or state specific surrogates were used for other area source emissions.

c. **Mobile sources**—Vehicle miles traveled (VMT) projections were based on transportation modeling.

d. **Biogenic sources**—No growth was assumed.

How Were the 1996 and 2007 Emission Estimates Quality Assured?

To improve the reliability of the modeling source emission inventories, the state emission inventory personnel, the emission modelers, and the photochemical modelers performed several quality assurance (QA) activities. These activities included:

An Emissions Quality Assurance Plan. A LADCO draft emissions quality assurance plan documented a standardized set of data and file checks. This plan identifies the emissions quality assurance procedures to be followed by the state emission inventory personnel. Each state was responsible for quality assurance of its own emissions inventory data before providing these data to the LADCO emission modelers. The quality assurance of the state's data included the review of several EMS-95 emissions reports for consistency with other state-specific emissions data.

Emission Reports. EMS-95 itself performs a number of emission checks and generates reports flagging possible emission errors and summarizing data that can be checked against alternative emissions data sets/reports. LADCO generated these reports in the preparation of the Grid M emissions data and used them for QA efforts.

Review by Photochemical Modelers. The photochemical modelers quality assured the emissions inventories by generating and reviewing spatial plots of emissions by source sector/type. The review was designed to detect anomalies. The modelers also conducted emission total checks against EMS-95 summary reports.

Stack Parameter Checks. A contractor quality assured the point source emissions data. The contractor discovered errors in the stack parameters and other point source data, including potential errors in gas exit velocities, emission rates, and physical stack parameters, for many point sources in the previous versions of the

modeling system emission inventories. This review was distributed to the LADCO states to correct their respective point source emissions data. Some stack data were shifted from the elevated point source data files to the ground-level data files based on adopted screening parameters.

What Control Strategies Were Modeled?

Strategy modeling was used to evaluate the air quality impact of various control scenarios. Over the past several years, the Lake Michigan states modeled 17 different strategies in the analysis. The primary difference between them is the level and spatial distribution of NO_x controls. The following section will discuss just one of those 17 scenarios, the future year attainment strategy. A description of the other strategies is included in the technical support document.

Future Year Attainment Strategy. This control strategy included the following assumptions: Tennessee Valley Authority utility sources at 0.15 pounds

(lb) NO_x/million British thermal units (mmBtu), new VOC controls from the Illinois trading rule, Wisconsin modeled with their adopted state rule, Missouri modeled at SIP Call level of NO_x control, internal combustion engines at CAA level of control, increased vehicle miles traveled (VMT) growth for Southeast Wisconsin, consideration of the proposed diesel sulfur rule, reduced carbon monoxide emissions by 12.5% due to low sulfur and nonroad controls, Wisconsin with inspection and maintenance program NO_x cut-points, revised Chicago area transportation network data, updated/corrected MOBILE5 inputs for Illinois, Wisconsin, and Ohio, new boundary conditions considering reductions in Alabama, Tennessee, and Texas, reduced low-level NO_x emissions due to Tier II/low sulfur and nonroad controls.

Tables 3 and 4 below identify the anthropogenic emissions in tons per day associated with the 1996 baseyear strategy and the future year attainment strategy.

TABLE 3.—ANTHROPOGENIC VOC EMISSIONS SUMMARY (TONS PER DAY)

	Point	Area	Motor veh.	Total
Base	2367	6496	3633	12496
Attainment Strategy	1748	5577	2687	10072

TABLE 4.—ANTHROPOGENIC NO_x EMISSIONS SUMMARY (TONS PER DAY)

	Point	Area	Motor veh.	Total
1996 Base	7720	2740	5681	16141
SR Run 17	3833	2482	3230	9545

What Were the Ozone Modeling Results for the Base Period and for the Future Attainment Period?

Table 5 shows the peak value observed for each episode day, the model predicted ozone concentration

for that episode day (used for the model performance evaluation), the model predicted ozone concentration for the 1996 basecase scenario, the ozone concentration from the 2007 attainment strategy, and the value allowed by the

1996 attainment test guidance. The model concentrations represent the peak value predicted in the Lake Michigan region of the modeling domain. Concentrations above the level of the one-hour ozone limit are in bold.

TABLE 5.—PEAK OBSERVED AND MODELED CONCENTRATIONS

Episode day	Episode observed value	Model perf. value	Modeled 1996 baseyear value	Attainment strategy 2007 value	Guidance allowed value
6/25/91	104	123	123	110	124
6/26/91	175	136	138	117	124
6/27/91	118	139	127	111	124
6/28/91	138	124	102	95	124
7/16/91	130	129	108	103	124
7/17/91	137	119	89	89	124
7/18/91	170	137	108	109	144
7/19/91	170	137	112	111	130
7/20/91	139	168	150	128	130
6/21/95	112	123	122	118	124
6/22/95	119	131	131	119	130
6/23/95	123	128	128	113	124
6/24/95	166	136	136	126	139

TABLE 5.—PEAK OBSERVED AND MODELED CONCENTRATIONS—Continued

Episode day	Episode observed value	Model perf. value	Modeled 1996 baseyear value	Attainment strategy 2007 value	Guidance allowed value
6/25/95	108	125	124	120	124
7/12/95	146	118	118	104	130
7/13/95	178	147	146	124	137
7/14/95	150	140	140	127	146
7/15/95	154	156	156	128	135

Do the Modeling Results Demonstrate Attainment of the Ozone Standard?

To assess attainment of the one-hour ozone standard, LADCO applied two approaches to review the results of emission control strategy modeling. These two approaches are defined in the Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS (June 1996). The first approach is the deterministic approach and requires that the daily peak one-hour ozone concentrations modeled for every grid cell (in the surface level) be at or below the ozone standard for all days modeled. If there are modeled ozone standard exceedances in only a few grid cells on a limited number of days, this approach can still be used through the use of weight-of-evidence information. As can be seen in Table 5, every strategy run has at least four days that exceed the ozone standard of 124 ppb. Consequently, the Lake Michigan area attainment demonstration does not pass the deterministic attainment test as outlined in the guidance.

The second approach allowed is the statistical approach. This approach permits occasional modeled ozone exceedances and reflects an approach comparable to the monitoring form of the one-hour ozone standard. Under the statistical approach, there are three benchmarks related to the frequency and magnitude of allowed exceedances and the minimum level of air quality improvement after application of emission controls. All three benchmarks must be passed in the statistical approach or, if one or more of the benchmarks are failed, a weight-of-evidence analysis must support the attainment demonstration. However, for the Lake Michigan area demonstration, all parties agreed that although the model performance generally fell within EPA's criteria, the model tended to underpredict on a significant number of days. Benchmark 3 provides a safeguard against cases where photochemical grid model predictions meet EPA performance criteria but tend to underpredict observed concentrations.

All three benchmarks and LADCO's results are discussed below.

Benchmark 1. Limits on the number of modeled exceedance days. This benchmark is passed when the number of modeled exceedance days in each subregion is less than or equal to three or N-1 (N is the number of severe days), whichever is less. A subregion is an area roughly equaling 15 square kilometers. A day is considered severe if its "meteorological ozone forming potential" is expected to be exceeded less than twice per year. The technique ranked days based on their ozone forming potential using data from 1951 to 1995.⁷ Any day with a ranking of 87 or less is considered to be severe. The Lake Michigan Area has 10 modeled days that are considered severe. Consequently, the limit on the number of modeled exceedance days for the Lake Michigan area is three. The attainment strategy had no more than one exceedance in any subregion and the exceedances occurred on days identified as severe. The attainment strategy passed benchmark 1.

Benchmark 2. Limits on the values of allowed exceedances. This benchmark sets acceptable upper limits for daily maximum ozone concentrations based on a ranking of severe days. For most severe days, the maximum modeled ozone concentration shall not exceed 130 ppb. For days that are extremely severe (a ranking of 22 or less in the Lake Michigan analysis), the maximum ozone allowed exceedances are higher. As can be seen from Table 5, the attainment strategy produced concentrations that are below the allowed values and thus passed Benchmark 2.

Benchmark 3. Required minimum level of improvement. Under this benchmark, the number of grid cells with modeled peak ozone

concentrations greater than 124 ppb must be reduced by at least 80 percent on each day with allowed modeled ozone standard exceedances. This benchmark is included to provide protection in cases where the model underpredicts observed ozone concentrations; it is not required on days when the model does not underpredict peak values by more than 5%. This benchmark was met for the attainment strategy.

The results of the state modeling indicate that the attainment strategy selected by the state passed all three of the statistical test benchmarks.

What Additional Attainment Information Did the State Provide?

Although the WDNR modeling demonstrates attainment, the state submitted additional analyses. Although not explicitly called for in the guidance, in light of the inherent uncertainties of the modeling analyses, EPA is considering these analyses as components of the weight-of-evidence test.

EPA has developed a draft relative attainment test for use with the eight-hour ozone standard. This guidance is available in a draft document called "Draft Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-hour Ozone NAAQS, May 1999." LADCO applied this relative test to the Lake Michigan area modeling. The relative test used observation-based design values along with modeled data. The observed design value was multiplied by a relative reduction factor representing the change in modeled ozone between the base year run and the future control strategy run. To demonstrate attainment, the projected future design value must be at or below the NAAQS. The results of the relative attainment test conducted by LADCO are consistent with those of the statistical attainment test. Attainment is demonstrated at all monitoring sites with the controls assumed in the attainment strategy. Table 6 shows the values for the monitoring sites with design values above the one-hour NAAQS and the adjusted value for the

⁷ Cox, W.M. and S. Chu (1993), "Meteorologically Adjusted Ozone Trends in Urban Areas: A Probabilistic Approach", *Atmospheric Environment*, 27B, (4) pp. 425-434.

Cox, W.M. and S. Chu, (1996) "Assessment of Interannual Ozone Variation in Urban Areas from a Climatological Perspective", *Atmospheric Environment* 30, pp. 2615-2625.

attainment strategy. Modeled concentrations above the one-hour ozone limit are in bold.

TABLE 6.—RELATIVE REDUCTION ATTAINMENT APPROACH

Monitoring site	Observed design value (ppb)	Attainment strategy (ppb)
Pleasant Praire	131	113
Milwaukee—		
Bayside	128	113
Harrington—Beach	127	109
Sheboygan	125	108
Manitowoc	127	108
Michigan City	140	119
Holland	133	117
Muskegon	132	117
Mid-lake	140	122

WDNR also supplemented the photochemical modeling with additional air quality analyses. These additional analyses included air quality trends and methods that evaluate the effectiveness of VOC and NO_x controls.

The WDNR attainment demonstration TSD shows the number of exceedance days (monitors recording an hourly value over 124 ppb) and the number of “hot” days (i.e., over 90 degrees Fahrenheit) for the period 1981 through 1999. The number of ozone exceedances in the 1990s (89) is significantly lower than the number of exceedances in the 1980s (207). The trends show a clear decrease in the number of exceedance days through the 1980s with a flattening out in the 1990s. Additionally, the 1980s had 194 hot days compared to the 1990s hot days numbering 162. This provides evidence that the air quality improvement seen throughout the two decades is not the sole result of favorable meteorological conditions but rather that VOC and NO_x emission reduction programs implemented over the time period are reducing the amount of ozone being monitored in the Lake Michigan area.

Wisconsin also examined ozone trends information with techniques that filter out the influences of varying meteorology on the ozone concentrations. The state used three methods and the results indicated that daily peak one-hour ozone concentrations at most sites in the Lake Michigan area decreased until the mid-1990s and then leveled off, or slightly increased. A supplementary result found statistically significant downward trends at two sites in southeast Wisconsin, a statistically significant upward trend at a far downwind site, and statistically insignificant trends elsewhere.

The state also examined ozone precursor trends, although data on precursors is extremely limited. Only one site in Milwaukee has as much as 10 years of data. This data shows a decline in VOC concentrations since the mid-1980s. The NO_x data shows a flat to slight decline over the same 10 year period. This information indicates that reductions in VOC emissions have been very effective at reducing ozone levels and that a future control strategy with regional NO_x reductions combined with local VOC reductions should be beneficial. The Lake Michigan area Photochemical Assessment Monitoring Stations (PAMS) began operation in the mid-1990s and will in the future provide useful information on ozone precursor trends.

Lastly, the state used three observation-based analyses to evaluate the relative effectiveness of VOC and NO_x control strategies. The MAPPER program used monitoring data to estimate the extent of photochemical reactivity conditions in the Lake Michigan area. Receptor modeling was used to develop control curves for VOC-ozone and NO_x-ozone. And lastly, “indicator” species or ratios of species were used to distinguish between areas where VOC emission reductions versus NO_x emission reductions were most effective. These three analyses indicate that a control strategy featuring regional NO_x emission reductions combined with local VOC controls will be most effective at reducing ozone concentrations in the Lake Michigan area.

In summary, the trends analyses show that there has been considerable progress toward attainment of the one-hour ozone standard in the Lake Michigan area due to the implementation of emission control measures. Monitored levels of ozone have declined significantly over the past 20 years, especially during the 1980s. The reduction in ozone to this point can be attributed largely to the VOC control programs. Future improvements in ozone will rely more on regional NO_x controls. The air quality analysis information is consistent with the overall modeled attainment strategy submitted by WDNR which consists of local VOC controls and regional NO_x controls.

3. State Nitrogen Oxide (NO_x) Rule

What Are the Details of Wisconsin's State NO_x Reduction Rule?

Wisconsin submitted its NO_x regulations to EPA for inclusion in its SIP in response to two requirements: (1) the attainment demonstration

requirement that the southeast Wisconsin area will attain the one-hour ozone standard as expeditiously as practicable but no later than 2007, and (2) the rate-of-progress (ROP) provision of the Act that Wisconsin achieve a nine-percent reduction in emissions in each of successive three-year periods until the attainment date of 2007. The reduction of NO_x is not specifically required as part of this area's attainment demonstration or ROP plan, because Wisconsin is not one of the 19 states and the District of Columbia required to reduce NO_x as a result of the EPA's NO_x SIP Call. However, Wisconsin has chosen to reduce NO_x emissions to claim credit toward both the attainment and ROP requirements. Under these circumstances, there is no specific guidance that directly addresses the review or approvability of the submitted NO_x rules. EPA has reviewed the rules, however, to determine consistency with general SIP requirements and, in particular, whether the emission limits are enforceable, are SIP approvable, and will achieve the reductions attributed to them. In general, the Wisconsin NO_x reduction rule contains two basic elements; (1) Combustion optimization and NO_x emission performance standards for existing sources in the nonattainment counties of Kenosha, Milwaukee, Manitowoc, Ozaukee, Racine, Washington, and Waukesha as well as in Sheboygan, and (2) NO_x emission performance standards for new sources in the six severe nonattainment counties (same as above except for Manitowoc and Sheboygan counties). The rules impact electric utility boilers as well as other stationary combustion sources. Details of the rule are discussed in the technical support document.

Is the NO_x Rule Approvable?

The emission limits and combustion optimization on the affected units have appropriate monitoring, recordkeeping, and reporting requirements to make them enforceable. Some sections of the rule contain “Director's Discretion” language that would allow the state to approve alternatives to monitoring methods without EPA concurrence. The WDNR has supplemented its package with a letter, dated May 28, 2001, clarifying the “Directors Discretion” language. In the letter, WDNR notes that the approval process is outlined in section NR 439.06 of the Wisconsin Administrative Code. That section, which EPA has approved as part of Wisconsin's SIP, requires the state to submit alternative or equivalent compliance methods to EPA as source specific SIP revisions. The alternative methods do not become effective until

approved by EPA. This clarification adequately addresses the EPA concerns.

The WDNR also submitted trading/averaging rules for those sources affected by the NO_x reduction rule. Because of concerns that EPA had raised regarding the approvability of this part of the rule, WDNR has requested that EPA not rulemake on the trading/averaging rules at this time. The NO_x rules have independent monitoring, reporting, and recordkeeping requirements and can be approved without the trading and averaging provisions. However, the trading/averaging rules did provide important compliance flexibility to a limited number of sources affected by the NO_x rule. EPA will continue to work with WDNR to develop an approach that provides appropriate flexibility.

4. Volatile Organic Compounds Reasonably Available Control Technology Rules

What Is Required?

Under section 182(b)(2) of the Act, ozone nonattainment areas that are classified as moderate or above must implement RACT to control VOC emissions from stationary sources. Sections 182(b)(2)(A) and (B) require these areas to implement RACT for those source categories for which EPA develops control technology guidelines (CTG). Section 182(b)(2)(C) requires that states develop and implement RACT for major sources of VOCs for which EPA has not issued a CTG document. The EPA was required to develop a CTG for industrial solvent cleaning by November 15, 1993. However, because EPA has not issued a final CTG for industrial solvent cleaning, the requirement of section 182(b)(2)(C) is applicable.

Industrial Solvent Cleaning Operations. As part of the December 2000 SIP package, Wisconsin submitted rules to control VOC emissions from industrial solvent cleaning operations. Sources in the six county severe area with maximum theoretical emissions of 25 tons per year or more, and sources in Kewaunee, Manitowoc, and Sheboygan counties with emissions of 100 tons per year or more are covered by this rule.

Although EPA failed to develop a CTG for industrial solvent cleaning, EPA did develop an Alternative Control Techniques Document (ACT) for industrial cleaning solvents. In the ACT, EPA recommends a two-phased approach. First, facilities would adopt a solvent accounting system to track the use and cost of cleaning solvents used in the plant. Then, plant managers and/or state agencies would take action to

reduce emissions, using the information obtained from the accounting system.

Is the VOC RACT Rule for Industrial Clean Ups Approvable?

The VOC RACT rule adopted by Wisconsin is consistent with EPA's guidance. The state appropriately established the rule to cover industrial solvent cleaning operations at major sources in its nonattainment areas. Rather than merely setting up an accounting system and leaving it to the individual plants to determine what action to take, the state prescribed specific VOC content limits, work practice standards, recordkeeping requirements, and add-on control options. The limits and work practice standards all appear to be appropriate for the operations that they are designed to control and are based largely on rules developed by California's South Coast Air Quality Management District. The provision that allows sources to use solvents that have a composite partial vapor pressure of less than or equal to 10 mm of mercury at 20 degrees celsius, rather than meeting the specific VOC content limits, is consistent with the recommendations EPA made for cleaning solvents in the Lithographic Printing Act.

Plastic Parts Coating Operations. Wisconsin submitted a draft non-CTG RACT rule for plastic parts coating operations. The rule will regulate plastic parts coating in three broad industry segments: automotive/transportation, business machines, and miscellaneous. The miscellaneous category includes items such as signs, weather stripping, and shutters.

In the Alternative Control Techniques Document (ACT) mentioned above, EPA presented two suggested control levels based on reformulation for the automotive/transportation and business machine sectors: level 1, a less stringent option and level 2, a more stringent option. In addition, EPA presented an alternative control option, level 4, for automotive/transportation exteriors. This level of control was based on newer, more accurate data. Wisconsin adopted the more stringent level of control, level 2, with the following exceptions: (1) For automotive/transportation interior air-dried nonclear coatings, Wisconsin set a limit between control levels 1 and 2; (2) for automotive/transportation exteriors the state adopted control level 4; (3) for business machine prime coats, the state set level 1 controls; and (4) for business machine nonclear coatings, the state set a limit between control levels 1 and 2. In addition, Wisconsin adopted VOC limits for miscellaneous plastic parts

coating, which went beyond what was suggested in the ACT. The state applied these limits to the appropriate sources based on the areas' nonattainment classification and included appropriate recordkeeping requirements. EPA believes the state regulations meet the requirements of the Act as interpreted in EPA's RACT policy.

Are the Plastic Parts Coating Regulations Approvable?

Although the rules submitted in December 2000 are draft, the state has committed to submit a final plastic parts coating RACT rule in time for consideration in our final rulemaking. EPA is recommending approval of the rules if the final rules submitted by the state are substantially the same as the draft rules. If the state significantly modifies the draft rules, EPA would need to provide an additional opportunity for comment before it could take a final approval action.

Flint Ink Facility Order

On October 30, 2000, Wisconsin submitted a revision to its SIP for ozone to establish RACT for the Flint Ink facility located in Milwaukee. The SIP revision requires the use of lids, which is a common VOC control technology. The SIP revision includes an exemption for paste ink, which uses an oily disperser rather than solvents. The Flint Ink facility currently has fully enclosed screens for its existing horizontal mills. The SIP revision requires Flint Ink to comply with leak monitoring and repair provisions. Solvents used for cleaning ink manufacturing equipment must contain no more than 7.5 pounds of VOC per gallon of solvent and be kept in closed containers except while used for cleaning.

Is the Flint Ink SIP Revision Approvable?

The requirements set forth in the Flint Ink SIP revision are appropriate RACT measures and are approvable.

5. Nitrogen Oxide Waiver Revision Why Is the Waiver Being Revised?

On January 26, 1996, EPA promulgated a NO_x waiver under section 182(f) of the Act for the Lake Michigan ozone nonattainment areas (61 FR 2428). The basis for granting the waiver at the time was that modeling indicated that NO_x reductions in the area would not contribute to or might interfere with attainment of the ozone standard in the nonattainment area. In that rulemaking, EPA granted exemptions from the Reasonably Available Control Technology (RACT) and New Source Review (NSR)

requirements for major stationary sources of NO_x and from certain vehicle inspection and maintenance (I/M) and general and transportation conformity requirements for ozone nonattainment areas within the Lake Michigan area modeling domain, including southeast Wisconsin. The rulemaking also stated that EPA would reexamine the effectiveness of NO_x control when acting on the final attainment demonstration for areas within the region. The final demonstration, submitted in December 2000, includes a regional NO_x reduction strategy as the principle means for achieving attainment in the area.

The attainment strategy modeling runs include the Wisconsin NO_x control regulations described earlier. This modeling demonstrates attainment with NO_x reductions from the following counties: Kenosha, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, and Waukesha. The NO_x controls in the counties include emission limits at large coal fired power plants, emission limits or technology requirements for large industrial sources, implementation of pass/fail cutpoints for motor vehicle inspection and maintenance, and enhanced new source performance standards for major new sources in the six-county severe nonattainment area. The modeling demonstrates that the one-hour ozone standard will be attained due to implementation of the controls stemming from Wisconsin's NO_x and I/M cutpoint rules alone. Consequently, any additional NO_x requirements beyond those described above would be "excess reductions" since they would be in excess of the reductions shown to be needed to attain the ozone standard, as defined in section 182(f)(2) of the Act. In this notice, EPA is proposing to revise the waiver to indicate that the basis for the waiver has changed from being that NO_x reductions in the area "would not contribute to (or might interfere with) attainment" to additional NO_x reductions beyond those submitted by the state are "excess reductions" and are not required for attainment of the ozone standard. While the basis for the NO_x waiver is changed, the effect of the waiver on RACT for major NO_x sources, Lowest Achievable Emission Rate Technology for major new sources in the above mentioned counties, and offsets for major new sources locating in these counties does not change. The waiver is only being modified to no longer apply to the I/M program.

6. Post-1999 Rate-Of-Progress Plan

This section is divided into the following discussions.

A. The Wisconsin Post-1999 ROP Plan

- (1) What is a post-1999 ROP plan?
- (2) What Wisconsin counties are in the Milwaukee-Racine ozone nonattainment area?
- (3) Who is affected by the Wisconsin post-1999 ROP plan?
- (4) What criteria must a post-1999 ROP plan meet for approval?
- (5) What are the special requirements for claiming NO_x reductions within and outside the nonattainment area boundary and VOC reductions outside the nonattainment area boundary?
- (6) How did Wisconsin calculate the needed post-1999 ROP emission reduction requirement?
- (A) The apportionment of VOC and NO_x emission reductions for each milestone year.
- (B) Baseline emissions.
- (C) Milestone year emission target levels.
- (D) Projected emission growth levels.
- (E) Emission reductions needed to achieve post-1999 ROP, net-of-growth.
- (7) What are the criteria for acceptable post-1999 ROP control strategies?
- (8) What are the emission control measures in Wisconsin's post-1999 ROP plan?
- (A) VOC Control Strategies
- (B) NO_x Control Strategies
- (9) Are the emission control measures and calculated emission reductions acceptable, and is the post-1999 ROP plan approvable?

B. Contingency Plan

- (1) What are the requirements for contingency measures?
- (2) How do Wisconsin's attainment demonstration and post-1999 ROP plan SIPs address the contingency measure requirements?
- (3) Do the Wisconsin attainment demonstration and post-1999 ROP plan meet the contingency measure requirements?

A. The Wisconsin Post-1999 ROP Plan

(1) *What Is a Post-1999 ROP Plan?* An ROP plan is a strategy to achieve timely periodic reductions of emissions that produce ground-level ozone in areas that are not attaining the ozone National Ambient Air Quality Standards (NAAQS). A post-1999 ROP plan demonstrates how ozone-forming VOC emissions affecting an area will be reduced by three percent per year averaged over three year intervals from 1999 to the area's attainment date.

ROP plans are a requirement of section 182 of Act. Section 182(c)(2)(B) requires states with ozone nonattainment areas classified as serious and above to adopt and implement plans to achieve periodic reductions in VOC emissions after 1996. The requirement is intended to ensure that an area makes steady progress toward attainment of the ozone NAAQS and doesn't delay reductions until the

attainment year. The first three-year plan, called the "post-1996 ROP plan" should have achieved emission reductions by November 15, 1999. Many states found it difficult to meet the November 15, 1994, submittal date for an attainment demonstration and post-1996 ROP plan, due primarily to an inability to address or control ozone transport. We recognized the efforts made by the states and the challenges in developing technical information and control measures with respect to these submittals in a memorandum entitled "Ozone Attainment Demonstrations," dated March 2, 1995, from Mary D. Nichols, Assistant Administrator for Air and Radiation. The memorandum, in effect, provided new time frames for these SIP submittals and divided the required SIP submittals into two phases. Phase I included post-1996 ROP plans, providing for 9% emission reductions that were to be achieved by the end of 1999. Phase II included the post-1999 ROP plans, providing the remaining ROP SIP measures to be achieved from 1999 through the area's attainment date. Because the Milwaukee-Racine ozone nonattainment area is classified as a severe area, the latest attainment date for the area is November 15, 2007. The state has used this as its attainment date and thus, must show ROP through 2007.

The post-1999 ROP plan will contribute to continued progress toward and ultimate attainment of the ozone standard by the November 15, 2007, attainment date for the Milwaukee-Racine ozone nonattainment area.

Wisconsin submitted a post-1996 plan in 1997. We are taking rulemaking action on the post-1996 ROP plan in a separate **Federal Register** notice. The remainder of the ROP requirement, the post-1999 ROP emission reductions, must also be achieved at a rate of three percent per year relative to the 1990 baseline emissions, net of growth of emissions, averaged over three-year periods.

In lieu of achieving part or all of the post-1999 reductions only from VOC emissions, under section 182(c)(2)(C) of the Act, the post-1999 ROP plan may provide for reductions of NO_x emissions. The substitution of NO_x emission reductions is discussed below in more detail.

In general, the post-1999 ROP plan should contain: (1) Documentation showing how the state calculated the emission reduction(s) needed on a daily basis to achieve the ROP VOC and NO_x emission reductions; (2) a description of the control measures used to achieve the emission reductions; and (3) a description of how the state determined the emission reductions achievable from

each control measure. As discussed in more detail below, Wisconsin's post-1999 ROP plan adequately addresses all of these elements.

EPA's TSD for this proposed action contains the details of Wisconsin's post-1999 ROP plan. You may obtain the TSD for this proposed rulemaking from the Region 5 office at the address indicated above.

(2) *What Wisconsin Counties Are in the Milwaukee-Racine Ozone Nonattainment Area?* The Milwaukee-Racine ozone nonattainment area includes the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha.

(3) *Who is Affected by the Wisconsin Post-1999 ROP Plan?* The VOC and NO_x control measures in Wisconsin's plan affect a variety of industries, businesses, and motor vehicle owners. To meet the post-1999 ROP emission reduction requirements, Wisconsin established NO_x emission rates for stationary source Electric Generating Units (EGU) and non-EGUs through adoption of a state rule (NR 428). Additional NO_x emission reduction credits are claimed for implementation and enforcement of NO_x cutpoints established through the state's motor vehicle inspection and maintenance program. On-board diagnostic testing of automobiles must be incorporated into the state's overall I/M testing program. The state submitted the NO_x regulations identified in the post-1999 ROP plan for stationary and mobile sources as separate SIP revisions, which must be federally approved prior to or at the same time as the full and final approval of the post-1999 ROP plan. Wisconsin's NO_x stationary source rule (NR428) was submitted in December 2000 as part of the one-hour ozone attainment demonstration and is being approved in another section of this rulemaking. The state also submitted the revision to the motor vehicle inspection and maintenance program for NO_x cutpoints, and we will take action on that revision through a separate **Federal Register** notice and comment rulemaking process.

Wisconsin also claimed VOC emission reductions as a result of continued implementation of the following federally promulgated programs: Phase II of the reformulated gasoline program, on-board diagnostic testing of automobiles, National Low Emission Vehicle (NLEV), Tier 2 and low sulfur fuel.

In aggregate, these VOC and NO_x emission reductions are expected to achieve the post-1999 ROP plan emission reduction requirement.

(4) *What Criteria Must a Post-1999 ROP Plan Meet for Approval?* Section 182(c)(2)(B) establishes the elements that a post-1999 ROP plan must contain for approval. These elements are: (1) an emission baseline; (2) an emission target level; (3) an emission reduction estimate to compensate for emission growth projections and to reach the ROP emission reduction goal; and (4) emission reduction estimates for the plan's control measures. Through these elements, the plan must illustrate that the nonattainment area will achieve a three percent per year average of VOC and/or NO_x emission reductions over each three year interval from 1999 through 2007.

We have issued several guidance documents for states to use in developing approvable post-1996 ROP plans that also apply to post-1999 plans. These documents address such topics as: (1) the relationship of ROP plans to other SIP elements required by the Act; (2) calculation of baseline emissions and emission target levels; (3) procedures for projecting emission growth; and (4) methodology for determining emission reduction estimates for various control measures, including federal measures.

Our January 1994, policy document, *Guidance on the Post-1996 Rate-Of-Progress Plan and the Attainment Demonstration* (post-1996 policy), provides states with an appropriate method to calculate the emission reductions needed to meet the ROP emission reduction requirement. A complete list of ROP guidance documents is in the TSD for this rulemaking.

(5) *What Are the Special Requirements for Claiming NO_x Reductions Within and Outside the Nonattainment Area Boundary and VOC Reductions Outside the Nonattainment Area Boundary?* If a post-1999 ROP plan relies, in part, on NO_x reductions, it is subject to certain additional requirements. As noted above, under section 182(c)(2)(C) of the Act, a plan can substitute NO_x reductions for VOC if the resulting reduction in ozone concentrations is at least equivalent to the ozone reductions that would occur under a plan that relies only on VOC reductions. As required by section 182(c)(2)(C), we issued policy concerning the conditions for demonstrating equivalency (see "NO_x Substitution Guidance," December 1993). Our NO_x substitution policy provides that a ROP plan based in part on a NO_x substitution strategy must show that the sum of the creditable VOC and NO_x reduction percentages (relative to 1990 baseline emissions) equals or exceeds a total of

nine percent (that is the total percentage for a three year interval). Moreover, the state must provide technical justification that the NO_x reductions will reduce ozone concentrations within the nonattainment area.

On December 29, 1997, we issued a policy memorandum entitled, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM₁₀ NAAQS" (December 1997 policy). This policy provides additional guidance on the types of emission reductions that are creditable towards ROP. This guidance provides for flexibility by recognizing emission reductions to meet the post-1996 ROP requirement from areas outside the nonattainment area that contribute to air quality in the nonattainment area. The geographic expansion for emission reductions occurring outside the nonattainment area is limited to an area within 100 kilometers from the nonattainment area boundary for VOC reductions and within 200 kilometers for substitution of NO_x reductions in the absence of additional justification and support from the state. These reductions are subject to the same restrictions as if they were obtained within the nonattainment area. NO_x emissions from sources outside the nonattainment area that are being substituted must be included in the baseline ROP emissions and target ROP reduction calculation.

This policy also applies to measures mandated by the Act and implemented by states that achieve reductions in ozone either from outside or within the nonattainment area including the regional NO_x SIP, Maximum Achievable Control Technology (MACT), Title IV NO_x.

Consequently, NO_x reductions from outside the Milwaukee-Racine ozone nonattainment area, but within 200 kilometers of the nonattainment area boundary, are creditable in the post-1999 ROP plan, as are VOC emission reductions from outside but within 100 kilometers of the nonattainment area boundary. Since Manitowoc and Sheboygan counties are within 100 kilometers of the nonattainment area boundary, both VOC and NO_x emission reductions from those counties are creditable toward post-1999 ROP. The emission reductions from these two counties were accounted for in the 1-hour attainment demonstration modeling which projects attainment of the 1-hour ozone standard in the Milwaukee-Racine nonattainment area by 2007. We believe that the 1-hour ozone modeled attainment demonstration supports the creditability of these outside nonattainment area

VOC and NO_x reduction for post-1999 ROP purposes.

The December 1997 policy also states that there are specific requirements for a nonattainment area which has been granted a NO_x waiver that want to claim NO_x reductions from outside the nonattainment area, but within the state's boundaries. This can be done the State provides an adequate technical justification that the substitution would result in a reduction in ozone concentrations in the nonattainment area with the NO_x waiver. Furthermore, states can claim ROP credits for NO_x reductions from within the nonattainment area for which a NO_x waiver was approved, provided the claim for ROP credits is accompanied by a showing that such NO_x reductions will lead to lower ozone concentrations in the nonattainment area and an amended NO_x waiver request with modeling data supporting the revised NO_x waiver. We granted a NO_x waiver for the Milwaukee-Racine ozone nonattainment area on January 26, 1996 (61 FR 2428). Wisconsin submitted urban-air shed modeling conducted by LADCO in cooperation with the Lake Michigan States of Wisconsin, Indiana, Illinois and Michigan as the basis of the

one-hour ozone attainment demonstration modeling. The attainment demonstration modeling, which we are proposing to approve elsewhere in this **Federal Register** document, takes into account an attainment strategy for Wisconsin that incorporates the NO_x emission reductions achieved from the implementation of the I/M NO_x cutpoints in the State's I/M program and the state's stationary source NO_x rule, in conjunction with VOC emission reductions, from both within and outside the Milwaukee-Racine nonattainment area. This modeling shows that the post-1999 ROP VOC and NO_x emission reductions will decrease ozone concentrations to a level that demonstrates projected attainment of the one-hour ozone standard in the Milwaukee-Racine ozone nonattainment area by 2007. Wisconsin, therefore, satisfies the requirement that NO_x reductions inside a NO_x waiver area must reduce ozone concentrations within the nonattainment area to be creditable as ROP reductions.

Moreover, both Sheboygan and Manitowoc counties were granted a NO_x waiver with the January 26, 1996 approval. Consequently, Wisconsin

submitted an amended NO_x waiver for these two counties, as well as the six-county Milwaukee-Racine nonattainment area, which we are proposing to approve elsewhere in this **Federal Register** notice. In conclusion, Wisconsin has satisfied the requirements for claiming NO_x ROP credits inside the NO_x waiver area, as well as in areas outside the nonattainment area.

(6) How Did Wisconsin Calculate the Needed ROP Reduction Requirement?

(a) The apportionment of VOC and NO_x emission reductions for each milestone year. The post-1999 ROP plan is based on a combination of VOC and NO_x emission reductions both inside and outside of the Milwaukee-Racine ozone nonattainment area but within 200 kilometers of the boundary. To achieve the 9 percent emission reduction for each three-year milestone year, Wisconsin chose the VOC/ NO_x emission reduction combinations presented in Tables 1 and 2.

Tables 7 and 8 summarize the state's post-1999 ROP calculations for determining the target levels and needed ROP emission reductions for each milestone year.

TABLE 7.—REQUIRED VOC REDUCTION BY 2002, 2005, AND 2007

[Rate of progress summary for the Milwaukee-Racine Post-1999 ROP plan area]

Calculation of VOC reduction needs for each milestone year	VOC emissions (tons/day)		
	2002	2005	2007
1990 VOC Emissions	536.4	536.4	536.4
1990 Rate-of-Progress Base Year Emission Inventory (Anthropogenic Only)	406.97	406.97	406.97
Total Non-creditable Emission Reductions from FMVCP and RVP expected by milestone year	81.26	83.06	83.26
1990 Adjusted Base Year Inventory (minus RVP and FMVCP)	325.71	323.91	323.71
Percent VOC Reduction for ROP	3.5	2	1
VOC ROP Reduction (Percent VOC Reduction for ROP * Adjusted Base Year Emissions)	11.40	6.48	3.24
FMVCP Fleet Turnover Correction Factor (FTC) (difference between previous milestone year and applicable milestone year FMVCP implementation)	3.3	1.8	0.2
Previous Milestone Year Target Level of Emissions	248.74	234.04	225.76
Milestone Year Target Level of Emissions (Previous Milestone Year Target level—percent VOC ROP—FTC)	234.04	225.76	222.32
Projected Milestone Year Anthropogenic Emissions	240.57	241.65	242.46
Required Reductions by Milestone Year to Meet the Rate-of-Progress Requirements (Projected—Target Level)	6.53	15.89	20.14

TABLE 8.—REQUIRED NO_x REDUCTION BY 2002, 2005, AND 2007

[Rate of progress summary for the Milwaukee-Racine Post-1999 ROP plan area]

Calculation of NO _x reduction needs for each milestone year	NO _x emissions (tons/day)		
	2002	2005	2007
1990 NO _x Emissions	396.32	396.32	396.32
1990 Rate-of-Progress Base Year Emission Inventory (Anthropogenic Only)	396.32	396.32	396.32
Total Non-creditable Emission Reductions from FMVCP and RVP expected by milestone year	33.2	35.5	36.2
1990 Adjusted Base Year Inventory (minus RVP and FMVCP)	363.12	360.82	360.12
Percent NO _x Reduction for ROP	5.5	7	5
NO _x ROP Reduction (Percent NO _x Reduction for ROP * Adjusted Base Year Emissions)	19.97	25.26	18.01
FMVCP Fleet Turnover Correction Factor (FTC) (difference between previous milestone year and applicable milestone year FMVCP implementation)	4.7	2.3	0.7
Previous Milestone Year Target Level of Emissions	367.82	343.15	315.59

TABLE 8.—REQUIRED NO_x REDUCTION BY 2002, 2005, AND 2007—Continued
[Rate of progress summary for the Milwaukee-Racine Post-1999 ROP plan area]

Calculation of NO _x reduction needs for each milestone year	NO _x emissions (tons/day)		
	2002	2005	2007
Milestone Year Target Level of Emissions (Previous Milestone Year Target level—percent NO _x ROP—FTC)	343.15	315.59	296.88
Projected Milestone Year Anthropogenic Emission	389.3	367.9	353.86
Required Reductions by Milestone Year to Meet the Rate-of-Progress Requirements (Projected—Target Level)	46.15	52.31	56.98

Under our post-1996 policy, the following steps may be used to calculate the needed emissions reduction:

(1) Establish the emission baselines for VOC and NO_x;

(2) Calculate the emission target level to meet the overall 9 percent reduction by the end of each three-year interval or milestone years 2002, 2005 and 2007;

(3) Estimate the projected emission growth that would occur if no ROP emission reduction takes place;

(4) Subtract the projected emission level from the emission target to determine the VOC and NO_x emission reduction needed, net of growth.

Application of these methods to Wisconsin's post-1999 ROP calculations is discussed below.

(b) *Baseline emissions.* The Act requires that the baseline emissions represent 1990 anthropogenic emissions on a peak ozone season weekday basis. Peak ozone season weekday emissions represent the average VOC and NO_x daily emissions that occur on weekdays during the peak three-month ozone period of June through August. The base year inventory for post-1999 ROP purposes must include 1990 base year emissions for the six county nonattainment area as well as for certain sources in Manitowoc and Sheboygan counties. Base year emissions from Manitowoc and Sheboygan counties must be included because Wisconsin is taking credit for emission reductions that occur in these counties.

We approved Wisconsin's 1990 base year emission inventory for the Milwaukee-Racine area and Sheboygan and Manitowoc counties on June 15, 1994, 59 FR 30702. Therefore, the area has a comprehensive and accurate inventory of emissions from all relevant sources of VOC and NO_x in the nonattainment area.

Wisconsin identified the 1990 VOC and NO_x base year emission inventories as the basis for the post-1999 ROP calculations with several updates to reflect annual daily vehicle miles travelled (VMT), vehicle type mix, speed distribution for the 6-county area, average speed by HPMS class for

Sheboygan and Manitowoc counties, and conversion factors to estimate summer weekday VMT. The total 1990 VOC and NO_x emissions are 536.4 tpd and 396.32 tpd, respectively. The Act requires adjusting the ROP baseline for VOC and NO_x to exclude emissions reductions achieved by the federal Motor Vehicle Control Program (FMVCP), and federal Reid Vapor Pressure (RVP) regulations promulgated before November 15, 1990, state regulations required to correct deficiencies in existing VOC RACT regulations, and state regulations required to correct deficiencies in existing I/M programs. Because these regulations were promulgated or required before the 1990 amendments to the Act, the Act prohibits states from claiming ROP reductions from these regulations. To achieve an accurate ROP target, the state must adjust the baseline to reflect these noncreditable reductions. The resulting inventory is called the "adjusted base year inventory."

Wisconsin determined the emission reductions associated with the noncreditable FMVCP and RVP programs by using the MOBILE5a model.

Wisconsin determined that the VOC RACT rule corrections in the state were technical in nature and, therefore, did not require any adjustments to the 1990 emission inventory. Wisconsin was not required to implement an I/M program before the 1990 amendments, and thus did not make adjustments to the 1990 emission inventory for I/M corrections.

Wisconsin provided the 1990 ROP adjusted base year emission inventories for VOC and NO_x for each milestone year.

(c) *Milestone year emission target levels.* After the adjusted base year emission inventory is established, the next step is to calculate the VOC and NO_x emission target level for each milestone year. For the post-1999 plan the milestone years are 2002, 2005, and 2007. The target level of emissions represents the maximum emissions that an area can emit for each of those

milestone years while complying with the ROP requirement. Our post-1996 policy provides the method for calculating VOC and NO_x target levels. In general, the milestone year target levels of emissions for VOC and NO_x are determined by adjusting the baseline to account for (1) the percent reduction required to meet the ROP requirement, and (2) the fleet turnover correction (FTC) factor for each milestone year from the previous milestone year target level. In this case, the previous milestone targets for milestone years 2002, 2005 and 2007 are 1999, 2002 and 2005, respectively.

The FTC factor represents the emission reduction that has occurred under the pre-1990 Act FMVCP and RVP regulations between consecutive milestone years, for the post-1999 plan, from 1999 to 2002, 2002 to 2005 and 2005 to 2007. Since the previous milestone year target level and the ROP reduction do not factor in these reductions, the FTC factor is necessary to accurately calculate the emission level that must be achieved by each milestone year.

For the Milwaukee-Racine area's post-1999 ROP plan, it would not be appropriate to use the 1999 VOC target level from the post-1996 ROP plan to calculate the 2002 target level because that plan covered a different geographic area than the post-1999 ROP plan. Thus, Wisconsin recalculated the 1999 VOC target level consistent with the Act.

With respect to the NO_x target level calculations, since the area did not claim NO_x credits in the post-1996 plan, a 1999 NO_x target level of emissions does not exist. The 1999 NO_x target level is then replaced with the 1990 ROP NO_x base year inventory.

Wisconsin provides the methodology and documentation used to determine the VOC and NO_x target levels. The target levels are presented in Tables 1 and 2, above, for VOC and NO_x.

(d) *Projected emission growth levels.* To account for source emission growth between 1990 and each milestone year 2002, 2005 and 2007, the state must develop projected emission inventories

for VOC and NO_x. The projected emission inventories represent the emissions expected in each milestone year if no post-1999 ROP control measures are implemented. The TSD for the post-1999 ROP plan discusses Wisconsin's emission projections for each source category and pollutant.

In general, for NO_x, 1990 actual emissions were used as the basis for projected NO_x emissions, with the exception of point sources, where 1995, 1996 or 1997 emissions, normalized to 1990 were used. We believe that the use of actual normalized 1995, 1996 or 1997 emissions as the basis for 2002, 2005 and 2007 projections is likely to produce a more accurate projection than 1990 emissions, because the projection period is shorter, 7–12 years versus 12–17 years. For VOC, Wisconsin used 1990 emissions as the base year for projections.

Growth factors were either based on Economic Growth Analysis System (EGAS) or were state derived, and were consistent with those projections used in LADCO's attainment demonstration modeling. State specific factors were used when EGAS factors were determined to be inappropriate.

On-road projections were based on the MOBILE5a model with adjustments for Phase 2 RFG (NO_x only), Tier 2 standards/low sulfur gasoline, and excess emissions effect of heavy-duty diesel defeat devices. The state submittal provides mobile input and output files.

Wisconsin based growth projections on VMT coordinated with the Wisconsin Department of Transportation and the Metropolitan Planning Organizations. In addition, Wisconsin added a 7.5 percent growth buffer was added to VMT forecasts to minimize the probability of a transportation conformity failure. Transportation conformity means that the level of emissions from the transportation sector (cars, trucks and buses) must be consistent with the requirements in the SIP to attain and maintain the air quality standards. Section 176(c) of the Act requires conformity of transportation plans, programs and projects to an implementation plan's purpose of attaining and maintaining the air quality standards.

Wisconsin projects on-road mobile source emissions for VOC and NO_x with a number of programs and assumptions incorporated into the emissions modeling. The programs/assumptions are: (a) An increase in NO_x emissions in eight counties due to residual emissions increases after 90% retrofit of defeat devices from the heavy-duty diesel

consent decree; (b) inclusion of NLEV vehicles based on local data and forecasts (MOBILE5a default distributions were not used); (c) low sulfur gasoline in eight counties in 2005 and 2007; (d) Tier 2 vehicles in 2005 and 2007; (e) On-board diagnostics (OBD) for model year 1996 and new vehicles; and (f) Phase 2 reformulated gasoline (RFG). Inclusion of these assumptions/programs into the modeling, in general, decreases the projected emissions. Wisconsin's May 25, 2001 supplement identifies several of these programs as VOC control programs for ROP purposes, and as a result, Wisconsin removed these VOC emission reductions from the projected emissions to avoid double counting of the emission reductions. None of these on-road mobile programs has been identified as a ROP measure for NO_x and thus continues to be incorporated into the emission projections. The total projected VOC and NO_x emissions for 2002, 2005 and 2007 for the entire eight county plan area and as identified by Wisconsin are in Tables 1 and 2, above.

(e) *Emission reductions needed to achieve post-1999 ROP, net-of-growth.* Based on the emission inventories and calculations, the NO_x emission reductions needed for the Milwaukee-Racine ozone area to meet the post-1999 ROP requirement for 2002, 2005, and 2007 are 46.15 tpd, 52.31 tpd, and 56.98 tpd, respectively. The required VOC emissions reductions to meet the post-1999 ROP requirement for 2002, 2005, and 2007 are 6.53 tpd, 15.89 tpd and 20.14 tpd, respectively. For both VOC and NO_x, this is the difference between the projected emissions with growth and with no post-1999 ROP controls and the target level of emissions calculated for each milestone year. Refer to Tables 1 and 2, above.

(7) *What Are the Criteria for Acceptable Post-1999 ROP Control Strategies?* Under section 182(b)(1)(C) of the Act, emission reductions claimed for ROP must be creditable to the extent that the reductions have actually occurred before the applicable ROP milestone date, that is by November 15 of each milestone year, 2002, 2005 and 2007. Furthermore, to be creditable, emission reductions must be real, permanent, and enforceable.

The post-1999 plan must also adequately document the methods used to calculate the emission reduction for each control measure. Our policy as described in the "General Preamble for the Implementation of Title I of the CAA amendments of 1990" (General Preamble) (57 FR 13498), provides that, at a minimum, the methods should meet the following four principles: (1)

Emission reductions from control measures must be quantifiable; (2) control measures must be enforceable; (3) interpretation of the control measures must be replicable; and, (4) control measures must be accountable.

Section 182(b)(1)(D) of the Act prescribes limits on what control measures states can include in ROP plans. All permanent and enforceable control measures occurring after 1990 are creditable with the following exceptions: (1) FMVCP requirements promulgated by January 1, 1990; (2) RVP regulations promulgated by November 15, 1990; (3) Reasonably Available Control Technology (RACT) "Fix-Up" regulations required under section 182(a)(2)(A) of the Act; and (4) Inspection and Maintenance (I/M) program "Fix-Ups" as required under section 182(a)(2)(B) of the Act.

(8) What Are the Emission Control Measures in Wisconsin's Post-1999 ROP Plan?

(a) *VOC control strategies.* The VOC control measures identified in Wisconsin's post-1999 ROP plan are Phase 2 reformulated gasoline, on-board diagnostic testing of automobiles, NLEV, Tier 2 and low sulfur gasoline programs. The VOC emission reductions from each of these federal control programs is in Table 9, below. Phase 2 RFG is required in certain areas including the Milwaukee-Racine area and was introduced in 2001. Under section 182(c)(3) of the Act, Wisconsin must incorporate OBD testing into its overall I/M program. This test uses the emissions diagnostic system that manufacturers must include on all 1996 and newer automobiles. Wisconsin is phasing this required test into its program starting in May 2001 and is expected to submit a revision to the I/M SIP this summer. EPA must finally approve the OBD testing revision to the I/M SIP prior to full and final approval of the post-1999 ROP plan. Federal regulations for NLEV, Tier 2 motor vehicle emission standards and low sulfur gasoline motor vehicle emissions were promulgated by EPA (See 40 CFR parts 9, 80, 85 and 86) and will continue to reduce motor vehicle emissions. The VOC emission reductions from all these control measures were determined with the MOBILE5a model.

(b) *NO_x Control Strategies.* Wisconsin adopted a rule, NR 428, to reduce NO_x emissions from stationary sources, which it submitted to us as a SIP revision. NR 428 establishes system NO_x emissions for electric generating units starting at the end of 2002. NO_x emission limits for most of the utility boilers during the ozone season

established by the rule are 0.33 lbs/mmBTU effective on December 31, 2002, 0.29 lbs/mmBTU effective on December 31, 2005, and 0.28 lbs/mmBTU effective on December 31, 2007. The limits are applicable to sources in the eight county area. Emission reductions are estimated by applying the specific emission limits to each known source for each milestone year.

NR 428 also establishes NO_x emission rates and combustion optimization requirements for Non-EGUs, or existing large sources other than utilities based on the unit's capacity and utilization, starting at the end of 2002. Emission reduction estimates are based on historical data. Wisconsin applied the performance standards on a projection of potentially affected sources based on an analysis of 1995 data.

NR 428 also establishes annual NO_x emission limits for new stationary sources based on unit capacity. This part of the rule is intended to capture sources that are not covered under the new source review or prevention of significant deterioration permitting provisions. The effective date for new sources is February 1, 2001. The emission reductions estimates were based on permitting trends of the past few years.

The emission reductions estimated from these controls are in Table 9.

The state submitted NR 428 to us as a SIP revision. We are proposing to approve NR 428 elsewhere in this **Federal Register**. NR 428 must be fully and finally approved no later than the time we fully approve the post-1999 ROP plan.

The compliance schedule in NR 428 for EGU emission rates and performance standards is December 31 of 2002, 2005, and 2007 and December 31, 2002 for non-EGU. A strict reading of the Act would require that the 2002, 2005 and 2007 ROP milestones be met by November 15 of that year, i.e. 9% by November 15, 2002, and 2005, and 6%

by November 15, 2007. Although, some sources will comply in time to achieve emission reductions prior to the compliance date and in time to reduce emissions prior to the post-1999 ROP milestone date, some may not. It is difficult to determine what emission reductions will be achieved by November 15, 2002, 2005 and 2007. However, we believe that it is reasonable and appropriate to allow ROP credit for these emission reductions during the milestone periods, 00–02, 03–05, and 06–07, for the reasons discussed below.

- It would be severe to penalize Wisconsin for missing the November 15 milestone date by 6 weeks. Wisconsin believes that sources will be upgrading in advance to meet the December 31 compliance date established by its rule to avoid disruption in power supply.
- Wisconsin's ozone season starts on April 15. Consequently, a rule with a November 15 compliance date would have the same net effect as a rule with a December 31 compliance date. The net effect being ozone precursor reductions prior to the next ozone season, April 15 of 2003, 2006 and 2008. Because both November 15 and December 31 occur before the start of the next ozone season, the ambient air quality benefit that would be gained by advancing the compliance date by six weeks would be de minimus and would not justify the implementation of additional measures in the Milwaukee-Racine area for purposes of the post-1999 plan. See "Approval and Promulgation of Implementation Plans; Phoenix, Arizona Ozone Nonattainment Area, 15 Percent Rate of Progress Plan and 1990 Base Year Emission Inventory," proposed rule on January 26, 1998 (63 FR 3687) and final rule of May 27, 1998 (63 FR 28898).

Wisconsin's control strategy also includes emission reduction credits from the Enhanced Motor Vehicle Inspection and Maintenance Program NO_x Cutpoints. The Enhanced I/M

program has operated in the six county Milwaukee-Racine severe area as well as Sheboygan county since December 1995. NO_x limits for this program were suspended but became effective on May 1, 2001. Wisconsin's rule AM-27-00 established enforceable limits on NO_x emissions for the I/M program. The emission reductions expected from the I/M NO_x cutpoints are in Table 9, below. Reduction estimates were determined through the MOBILE5a model. EPA published a conditional approval of Wisconsin's I/M SIP revision on January 12, 1995 (60 FR 2881). Wisconsin submitted a revision on December 30, 1998 and another revision is expected this summer. EPA must finally approve these revisions to the I/M SIP prior to full and final approval of the post-1999 ROP plan.

We have issued several policy documents, listed in the TSD for this proposed rulemaking, which provide guidance for states to use in quantifying emission reductions. We have also developed the MOBILE5a model for the states to calculate emission reductions from mobile sources.

Wisconsin appropriately used our policy documents and MOBILE5a model for calculating emission reductions for VOC and NO_x. Wisconsin obtained the necessary data for quantifying the source baselines and emission reductions from a variety of sources as previously discussed. Where Wisconsin had to develop its own assumptions regarding emission reductions, it justified the assumptions adequately based on existing data.

Table 9 summarizes the state's VOC and NO_x emission reduction claims for the post-1999 ROP control measures, and the amount of reductions we find approvable. Overall, Wisconsin's ROP plan provides for 11.8 tpd, 19.6 tpd and 24.5 tpd of VOC emission reductions and 56.47 tpd, 69.24 tpd, and 71.88 tpd of NO_x emission reductions by 2002, 2005 and 2007, respectively.

TABLE 9.—SUMMARY OF CONTROL MEASURES AND EMISSION REDUCTIONS
[Control measures summary for the Milwaukee-Racine area]

Control measures within the 6 County Milwaukee-Racine severe ozone nonattainment area and Manitowoc and Sheboygan Counties (within 100 kilometer boundary area) to meet ROP requirement	VOC emission reductions (tpd)			NO _x emission reductions (tpd)		
	2002	2005	2007	2002	2005	2007
Utility—System Emission Rate, 0.33 .....	.....	.....	.....	38.07	.....	.....
Utility—System Emission Rate, 0.29 .....	.....	.....	.....	.....	53.34	.....
Utility—System Emission Rate, 0.28 .....	.....	.....	.....	.....	.....	58.68
Performance Standards for Existing Facilities .....	.....	.....	.....	4.6	4.6	4.6
Performance Standards for New Sources .....	.....	.....	.....	0.2	1.2	1.8
Motor Vehicle Inspection and Maintenance (I/M) NO _x Cutpoints .....	.....	.....	.....	13.6	10.1	6.8
Phase 2 RFG	5.80	5.80	5.80	.....	.....	.....
OBD Testing	1.40	3.40	4.40	.....	.....	.....
Fleet Effect of NLEV, Tier 2, and Low Sulfur Fuel	4.60	10.40	14.30	.....	.....	.....

TABLE 9.—SUMMARY OF CONTROL MEASURES AND EMISSION REDUCTIONS—Continued
[Control measures summary for the Milwaukee-Racine area]

Control measures within the 6 County Milwaukee-Racine severe ozone nonattainment area and Manitowoc and Sheboygan Counties (within 100 kilometer boundary area) to meet ROP requirement	VOC emission reductions (tpd)			NO _x emission reductions (tpd)		
	2002	2005	2007	2002	2005	2007
Total Emission Reductions From Control Measures	11.80	19.60	24.50	56.47	69.24	71.88

Tables 10 and 11 summarize and demonstrate that Wisconsin's post-1999 ROP plan will achieve sufficient VOC and NO_x emission reductions to satisfy the ROP requirement and target levels.

TABLE 10.—COMPARISON OF REQUIRED EMISSION REDUCTIONS TO CONTROL MEASURE EMISSION REDUCTIONS AND TARGET LEVELS TO PROJECTED CONTROLLED EMISSIONS FOR VOC

Year	Required emission reductions	Control measures emission reductions	Target levels	Projected controlled emissions
2002	6.53	11.8	234.04	228.77
2005	15.89	19.6	225.76	218.72
2007	20.14	24.5	222.32	212.33

TABLE 11.—COMPARISON OF REQUIRED EMISSION REDUCTIONS TO CONTROL MEASURE EMISSION REDUCTIONS AND TARGET LEVELS TO PROJECTED EMISSIONS FOR NO_x

Year	Required emission reductions	Control measures emission reductions	Target levels	Projected controlled emissions
2002	46.15	56.47	343.15	332.83
2005	52.31	69.24	315.59	298.66
2007	56.98	71.88	296.88	281.99

(9) *Are the emission control measures and calculated emission reductions acceptable, and is the post-1999 ROP plan approvable?* The emission control measures and associated emission reductions are creditable for purposes of

the post-1999 ROP plan, and the plan is approvable provided that NR 428, the state's stationary NO_x rule, the OBD testing of automobiles and the I/M NO_x cutpoints SIP revisions to the I/M program are fully and finally approved

into the SIP prior to or at the same time as the post-1999 ROP plan. Table 12 provides the status of the VOC and NO_x control measures with respect to state adoption, SIP approval or federal promulgation.

TABLE 12.—FEDERAL APPROVAL OR PROMULGATION OF CONTROL MEASURES IN THE MILWAUKEE-RACINE AREA POST-1999 RATE-OF-PROGRESS PLAN

Control measure	Status of rules
Phase 2 RFG	Federal Regulation, 40 CFR 80, Subpart D, February 16, 1994 (59 FR 7716).
NLEV	Federal Regulation, 40 CFR Parts 9, 85 and 86, January 6, 1998 (63 FR 925).
Tier 2; Low Sulfur Fuel	Federal Regulation, 40 CFR Parts 80, 85 and 86, February 10, 2000 (65 FR 6698).
Stationary Source NO _x Rule	State rule (NR 428) adopted and submitted to EPA on 12/22/00 as SIP revisions. Region 5 is reviewing and processing the submittal. The rule must be fully and finally approved prior to approval of the post-1999 ROP plan.
Motor Vehicle Inspection and Maintenance—NO _x Cutpoints and OBD Testing.	Conditional Approval on January 12, 1995 (60 FR 2881). Revision submitted on December 30, 1998. Additional supplement is expected from the State by summer 2001. NO _x Cutpoints and OBD testing must be fully and finally approved prior to approval of the post-1999 ROP plan.

B. Contingency Plan

(1) *What are the requirements for contingency measures?* Section 172(c)(9) of the Act required states with ozone nonattainment areas classified as moderate and above to adopt contingency measures by November 15, 1993. Such measures were to provide for the implementation of specific

emission control measures if an ozone nonattainment area failed to achieve ROP or failed to attain the NAAQS within the time-frame specified under the Act. Section 182(c)(9) of the Act requires that, in addition to the contingency measures required under section 172(c)(9), the contingency measure SIP revisions for serious and above ozone nonattainment areas must

also provide for the implementation of specific measures if the area fails to meet any applicable milestone in the Act. The contingency measures must take effect without further action by the state or by the EPA Administrator upon failure by the state to: meet ROP emission reduction milestones; achieve attainment of the one-hour ozone NAAQS by the Act's required deadline;

or achieve other applicable milestones of the Act.

Our policy, as provided in the April 16, 1992 "General Preamble," states that the contingency measures, in total, must generally be able to provide for a 3 percent reduction of 1990 VOC baseline emissions beyond the ROP reduction required for each particular milestone year.

While all contingency measures must be fully adopted rules or measures, states can use the measures in two different ways. A state can choose to implement contingency measures before the milestone deadline. Alternatively, a state may decide not to implement contingency measures until an area has actually failed to achieve a ROP or attainment milestone. In the latter situation, the state must implement the contingency measure within one year following identification of a milestone failure.

Finally, EPA believes that it is illogical to penalize states for early implementation of contingency measures by requiring additional adopted contingency measures to backfill the early implemented measures. But, if an area fails to attain, demonstrate RFP or misses a milestone, then additional contingency measures are needed and must be adopted. (See August 13, 1993, memorandum from G.

T. Helms, "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas").

The additional 3 percent reduction would ensure that progress toward attainment occurs at a rate similar to that specified under the Reasonable Further Progress (RFP)(also called the Rate of Progress or ROP) requirements for severe areas (3 percent per year) and that the state will achieve these reductions while conducting additional control measure development and implementation as necessary to correct the shortfall in emissions reductions or to adopt newly required measures necessary to reach attainment.

2. *How do Wisconsin's attainment demonstration and post-1999 ROP plan SIPs address the contingency measure requirements?* EPA approved a contingency plan for Wisconsin with the approval of the 15% ROP plan on March 22, 1996 (61 FR 11735). The contingency plan contained four contingency measures: Class C reformulated gasoline (RFG) in moderate counties, Class B RFG in severe counties, federal non-road engine standards and federal consumer and commercial products. All of these measures have been implemented and are thus no longer valid as contingency measures, with the exception of Class C

RFG in moderate counties. Therefore, Wisconsin must provide a new contingency plan.

Wisconsin's December 22, 2000 one-hour attainment demonstration submittal suggests that, since contingency measures do not have to be implemented until a year after a milestone failure, *i.e.* 2003, 2006 and 2008, and our policy allows early implementation of contingency measures, the state's stationary source NO_x rule, in particular emission reductions that will be achieved from electric generating units and VOC emissions from OBD testing, will achieve the necessary emission reductions to meet the 3% contingency plan requirement. The submittal provides calculations illustrating what the contingency plan emission reduction requirement is (in tpd) and demonstrates that the contingency measure requirement will be met with the reductions achieved by OBD testing and the state's stationary source NO_x rule.

The state also commits to work with EPA to address any additional shortfalls that may occur due to unforeseen circumstances.

The contingency requirement for each milestone year is in Table 13 with the VOC/ NO_x apportionment of the 3% identified by Wisconsin:

TABLE 13.—CONTINGENCY REQUIREMENTS

Pollutant	2002	2005	2007
1990 Adjusted VOC ROP Base Year Emission Inventory for Milestone Year	325.71	323.91	323.71
Percent of Contingency from VOC	0.12	0.3	0.6
Required VOC Contingency	0.39	0.97	1.94
1990 Adjusted NO _x ROP Base Year Emission Inventory for Milestone Year	363.12	360.82	360.12
Percent of Contingency from NO _x	2.88	2.7	2.4
Required NO _x Contingency	10.46	9.74	8.64

Thus, consistent with the apportionment of VOC and NO_x in Wisconsin's post-1999 ROP plan, the contingency plan must provide for 0.39 tpd, 0.97 tpd and 1.94 tpd of VOC reductions and 10.46 tpd, 9.74 tpd and 8.64 tpd of NO_x reductions, by 2003, 2006 and 2008, respectively, in addition

to the required post-1999 ROP reductions, to satisfy the contingency measure requirements of the Act.

(3) Do the Wisconsin Attainment Demonstration and Post-1999 ROP Plan Meet the Contingency Measure Requirements? The following tables present a comparison of the needed emission reductions for post-1999 ROP

and contingency measures and the emission reductions provided by the control measures in the post-1999 ROP plan. Again, Wisconsin identified the state's stationary source NO_x rule and OBD testing as the measures that would achieve the required contingency emission reductions.

TABLE 14.—COMPARISON OF NEEDED AND CREDITABLE EMISSION REDUCTIONS FOR 2002

VOC Reduction Needed for 3.5 percent ROP (tpd)	6.53
VOC Reduction Needed for 0.12 percent Contingency (tpd)	0.39
Total VOC Reductions Needed for ROP and Contingency (tpd)	6.92
Total Creditable VOC Reduction (tpd)	11.8
NO _x Reduction Needed for 5.5 percent ROP (tpd)	46.15
NO _x Reduction Needed for 2.88 percent Contingency (tpd)	10.46
Total NO _x Reductions Needed for ROP and Contingency (tpd)	^a 56.61

TABLE 14.—COMPARISON OF NEEDED AND CREDITABLE EMISSION REDUCTIONS FOR 2002—Continued

Total Creditable NO _x Reduction (tpd)	⁶ 56.47
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⁸ Although the total creditable NO_x emissions are about 0.1 tpd less than the total required NO_x emission reductions necessary for ROP and contingency in 2002, there are enough excess VOC emission reductions (about 1.6%) that are anticipated to cover the contingency and ROP requirement. Thus, the contingencies are acceptable.

TABLE 15.—COMPARISON OF NEEDED AND CREDITABLE EMISSION REDUCTIONS FOR 2005

VOC Reduction Needed for 2.0 percent ROP (tpd)	15.89
VOC Reduction Needed for 0.3 percent Contingency (tpd)	0.97
Total VOC Reductions Needed for ROP and Contingency (tpd)	16.86
Total Creditable VOC Reduction (tpd)	19.6
NO _x Reduction Needed for 7.0 percent ROP (tpd)	52.31
NO _x Reduction Needed for 2.7 percent Contingency (tpd)	9.74
Total NO _x Reductions Needed for ROP and Contingency (tpd)	62.05
Total Creditable NO _x Reduction (tpd)	69.24

TABLE 16.—COMPARISON OF NEEDED AND CREDITABLE EMISSION REDUCTIONS FOR 2007

VOC Reduction Needed for 1 percent ROP (tpd)	20.14
VOC Reduction Needed for 0.6 percent Contingency (tpd)	1.94
Total VOC Reductions Needed for ROP and Contingency (tpd)	22.08
Total Creditable VOC Reduction (tpd)	24.5
NO _x Reduction Needed for 5 percent ROP (tpd)	56.98
NO _x Reduction Needed for 2.4 percent Contingency (tpd)	8.64
Total NO _x Reductions Needed for ROP and Contingency (tpd)	65.62
Total Creditable NO _x Reduction (tpd)	71.88

Since the contingency measures will be implemented early, *i.e.* in advance of an identified milestone or attainment failure, Wisconsin states that it will work with EPA to address any failure or shortfall should one occur despite the early implementation of the contingency measures.

In summary, Wisconsin adequately demonstrates that the post-1999 ROP and attainment demonstration control strategy will achieve VOC and NO_x emission reductions sufficient to achieve the required post-1999 ROP toward attaining the 1-hour ozone NAAQS as well as satisfy the contingency provisions for the Milwaukee-Racine ozone nonattainment area. We are, therefore, proposing to approve Wisconsin's post-1999 ROP plan in this action.

7. Transportation Conformity

Did the State Address Transportation Conformity in the Submittal and Did the State Adopt Motor Vehicle Emission Budgets?

Section 176(c) of the Act requires a showing that regional transportation plans, and transportation improvement programs, conform to the emissions budgets for the mobile sector in the

applicable implementation plan, in this case for the milestone years of 2002, 2005, and 2007. Conformity motor vehicle emissions budgets (MVEB) must address both VOC and NO_x emissions for nonattainment areas. The MVEBs must be developed using consistent air quality and transportation planning assumptions, and include the impact of emission control programs incorporated in ROP plans and attainment demonstrations.

The WDNR attainment demonstration submittal included ROP MVEBs for VOC and NO_x for 2002 and 2005 for the six-county Milwaukee nonattainment area, the Manitowoc nonattainment area, and the Sheboygan maintenance area. The submittal also included a ROP/attainment MVEB for 2007 for the above areas. EPA's conformity regulation (40 CFR 93.118(e)(4)) identifies the minimum criteria to judge the adequacy of motor vehicle emission budgets for conformity purposes. The six adequacy criteria and a description of how the submittal addresses them are listed below.

a. The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his designee) and was

subject to a state public hearing. The WDNR submitted the rate-of-progress/attainment demonstration package on December 22, 2000, by letter signed by Tommy Thompson, Governor. The state held a public hearing from June 27–29, 2000.

b. Before the control strategy SIP revision or maintenance plan was submitted to EPA, consultation among federal, state, and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns were addressed. The WDNR developed the motor vehicle emission budgets for both the attainment demonstration and the ROP plan through a consultative process. Transportation stakeholders from the Metropolitan Planning Organizations (MPO), state Department of Transportation, Federal Highway Administration, and EPA participated in this process. Documentation of this process was included in the submittal.

c. The motor vehicle emissions budget(s) is clearly identified and precisely quantified. The MVEB's for 2002, 2005, and 2007 are clearly identified and precisely quantified in Table 17 below.

TABLE 17.—MOTOR VEHICLE EMISSION BUDGETS

Area	2002 ROP		2005 ROP		2007 ROP/Attainment	
	VOC (tpd)	NO _x (tpd)	VOC (tpd)	NO _x (tpd)	VOC (tpd)	NO _x (tpd)
Milwaukee	43.5	103.5	36.7	84.1	32.2	71.4
Manitowoc	5.4	10.0	5.2	8.8	5.2	8.3
Sheboygan	4.5	9.4	3.7	7.4	3.3	6.4

d. The motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission). The ROP MVEB's for 2002 and 2005, and the MVEB for the 2007 ROP/attainment year are consistent with the requirements for ROP reductions and attainment, as delineated in EPA guidance. The UAM-V modeling, submitted to support the demonstration of attainment, shows that Wisconsin can reach attainment of the standard with the control strategies described in the submittal.

e. The motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan. The budgets for 2002 and 2005 ROP, and 2007 ROP/attainment are calculated appropriately using the control strategies identified in the ROP plan and the attainment demonstration. The emissions inventory estimates and the VMT estimates used in the ROP and attainment plan were used to calculate the budgets.

f. Revision to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures, impacts on point and area source emissions; any changes to established safety margins and reason for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled). The 2002 and 2005 ROP budgets are new budgets and do not replace any previously established budgets. The 2007 ROP/attainment demonstration budgets, when found adequate, will replace the 2007 VOC and NO_x budgets that were established by the April 30, 1998 attainment demonstration submittal. The 2007 budgets in the December 22, 2000 submittal are well documented and impacts on all sources including point, area and mobile sources are considered. This

information is based on the most up to date planning assumptions available.

g. EPA review of the state's compilation of public comments and response to comments. EPA has reviewed the public comments submitted to the state during the state public comment period. The state received four comments on the development and assumptions used in the motor vehicle emissions budgets. There were no adverse public comments on the proposed budgets for Milwaukee, Sheboygan, and Manitowoc counties.

Additionally, the state submitted conformity budgets in conjunction with its April 1998 one-hour ozone submittal. EPA found those budgets adequate on an interim basis in May 2000, but required the state to resubmit budgets consistent with its December 2000 attainment demonstration. EPA also required the state to commit to revise the 2007 attainment year budget from the December 2000 attainment demonstration within one-year from the formal release of MOBILE6 to more accurately represent the emission estimates associated with the Tier 2/ Low Sulfur gasoline program. In its December 2000 submittal, Wisconsin committed to recalculate the 2002 and 2005 ROP budgets and the 2007 ROP/attainment budgets in the attainment demonstration "in a timely fashion." In a letter dated May 28, 2001, the state clarified this commitment to mean within one year from the formal release of MOBILE6.

Today's proposed action to approve the 2002 and 2005 ROP budgets and the 2007 attainment budgets contained in the December 2000 submittal would be effective for conformity purposes only until the revised motor vehicle emissions budgets are submitted and EPA has found them adequate. We are proposing to limit the duration of our approval in this manner because we would only approve the attainment demonstration and its budget contingent on the State's commitment to revise the budget within one year of the formal release of MOBILE6. Therefore, once the state has revised its budgets and EPA has established an effective date for the adequacy of the revised budgets, the revised budget (recalculated with

MOBILE6) would apply for conformity purposes. If the revised budgets raise issues about the sufficiency of the attainment demonstration, EPA will work with the state to address those issues. If the revised budgets show that motor vehicle emissions budgets are lower than the budgets we are proposing to approve today, a reassessment of the attainment demonstration's analysis will be necessary before reallocating the emission reductions or assigning them as a safety margin. In other words, the area must assess how its attainment demonstration is impacted by using MOBILE6 vs. MOBILE5 before it reallocates any apparent emission reductions resulting from the use of MOBILE6.

8. Commitment To Conduct a Mid-Course Review

In response to EPA's December 16, 1999, notice of proposed conditional approval, the state submitted a commitment to perform a mid-course review (MCR) of its attainment demonstration. The 1996 attainment test guidance discusses the need for periodic reviews of the monitoring, modeling, and inventory data to assess whether original attainment strategies need to be refined. A MCR is a reassessment of modeling analyses and more recent monitored air quality data to determine if a prescribed control strategy is resulting in emission reductions and air quality improvements needed to attain the ambient air quality standard for ozone as expeditiously as practicable but no later than the statutory date. The state submitted its commitment in a letter dated February 22, 2000, from Lloyd Eagan, Director, Bureau of Air Management to Mr. Francis X. Lyons, Region 5 Administrator. The letter commits to perform a reassessment of the attainment status of the one-hour ozone nonattainment areas in the Lake Michigan region by December 31, 2003.⁹

⁹ Because the regional NO_x controls resulting from the SIP Call measures in upwind states will not be implemented until 2004, the WDNR may change the date of the MCR from 2003 to 2004 to coincide with the SIP Call NO_x reductions. EPA would consider that change acceptable.

9. Reasonably Available Control Measures (RACM)

What Are the Requirements for RACM Technology? Section 172(c)(1) of the Act requires SIPs to contain RACM as necessary to provide for attainment as expeditiously as practicable. EPA has previously provided guidance interpreting the RACM requirements of section 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA stated that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in the 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 the SIP submittals whether the measures considered are reasonably available or not, and if the measures are reasonably available, they must be adopted as RACM. Finally, EPA indicated that states could reject potential RACM either because they would not advance the attainment date or would cause substantial widespread and long-term adverse impacts. States could also consider local conditions, such as economics or implementation concerns, in rejecting potential RACM. The EPA also issued a recent memorandum on this topic, "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.

How Does the State Analysis Address the RACM Requirement? The Wisconsin RACM analysis discusses the reasonableness and effectiveness of both additional transportation control measures and additional stationary source control measures. The state concludes that there are no control measures, above and beyond what the state is already implementing, that would advance the Act's specified attainment date of 2007. Furthermore, the reductions from any potential additional RACM measures are very small compared to the ROP reductions that will be reached by 2007.

Consideration and Implementation of Transportation Control Measures (TCMs). This section describes the analysis the state submitted to evaluate and implement available transportation control measures (TCMs) in the Milwaukee-Racine area. The WDNR and the Wisconsin Department of Transportation used the 1996 Regional

Travel Demand Strategy (TDS) as a blueprint for actions considered for implementation in southeastern Wisconsin in place of the Employee Commute Options program. The state-selected actions included in the Regional TDS strategy were selected on the basis of their implementation feasibility. The emissions reduction potential of the TDM actions are very small. The total VOC and NO_x emission reduction potential of the strategy for 2007 is estimated to be 0.26 tons per hot summer weekday and 0.46 tons per hot summer weekday, respectively.

A technical committee was developed to evaluate TCM's as part of a working dialogue between WDNR and transportation stakeholders. The committee consists of representatives from the DNR, the Department of Transportation, the Southeastern Wisconsin Regional Planning Commission, and Citizens for a Better Environment. The committee evaluated a full list of potential TCMs on VMT reduction, NO_x and/or VOC emission reductions, cost per ton, implementation timeline, and feasibility (e.g., administrative costs, funding, political/public acceptance). Although the state may consider this list of measures for future SIP actions and planning, the measures would not be effective at advancing the attainment date earlier than 2007.

Stationary Source and Area Sources RACM Analysis. The state has pursued all reasonable VOC RACT, implemented enhanced I/M requirements and reformulated gasoline, and must show no growth in emissions based on growth in VMT for a 10-year period after the attainment demonstration. The nonattainment area has a waiver from EPA regarding NO_x control requirements, specifically NO_x RACT, New Source Review, and certain NO_x vehicle inspection/maintenance requirements. As part of the attainment demonstration and the 2002–2007 rate-of-progress analysis, the WDNR evaluated which NO_x control measures might prove beneficial to timely ozone attainment in the region. It found that NO_x reductions from the use of NO_x cutpoints for vehicles in the I/M program, selective NO_x limitations on some of the major point sources, and tightened emission limits for many new NO_x sources would be beneficial. The NO_x reduction from these programs from 2000–2007 is roughly 96 tons per day. More rapid attainment depends on the speed of the vehicle and off-road equipment fleet transition to newer technology and on the speed of the regional NO_x controls associated with the NO_x SIP Call. Given the status of the

NO_x waiver in the nonattainment area, the implementation of select NO_x control programs in Wisconsin, and the regional NO_x reductions expected from the SIP Call, the state concludes that no further stationary source control measures, beyond those considered in the attainment demonstration, can impact the state's attainment status for the years 2002–2006.

Additionally, the photochemical modeling accompanying the state submittal shows that ozone concentrations in the Lake Michigan region stem from local and regional emissions. NO_x and VOC emissions in the Wisconsin portion of the modeling domain represent a small portion of regional emissions and since the state has already implemented emission control programs as required by the Act for severe areas (considering the NO_x waiver), there are no reasonable control measures available to the state that will accelerate attainment of the standard. This conclusion is indicated in the modeling documentation submitted by the state in support of the SIP revision. The documentation contains a sensitivity run evaluating the incremental impact of one of the more substantial emission reduction measures, Tier II/low-sulfur gasoline. This measure is expected to reduce VOC emissions by about 200 tons per day and NO_x emission by about 700 tons per day across the larger regional modeling domain known as grid M. This level of reduction resulted in a decrease in ozone peak values in the modeling domain of roughly 1–2 ppb. Reductions of VOC and NO_x across Wisconsin due to the implementation of the Tier II/low-sulfur gasoline program are about 15 tons per day and 70 tons per day, respectively. Reductions within the nonattainment area would be even less. Any of the control measures that Wisconsin did not select for implementation as part of its ROP or attainment program are significantly smaller in terms of reduction potential than the Tier II/low-sulfur program. Thus, their contribution to improving ozone air quality would be much less than 1 ppb and would not advance attainment of the ozone standard earlier than 2007.

Modeling conducted by LADCO and EPA has shown that regional reductions of NO_x are required for the Lake Michigan area to attain the ozone standard. Sensitivity tests showed that without regional reductions in NO_x and boundary ozone levels, VOC must be reduced as much as 90% in the Lake

Michigan area to achieve attainment.¹⁰ This level of VOC reduction is obviously not possible without extremely harsh and expensive measures. The Ozone Transport Assessment Group (OTAG) process and resultant NO_x SIP Call reduction requirements apply in areas upwind of the Milwaukee-Racine nonattainment area and provide for boundary level ozone reduction. These reductions, in combination with local controls, are instrumental in the area achieving attainment.

Does the Milwaukee-Racine Attainment Demonstration Submittal Meet the RACM Requirement? The EPA has reviewed the submitted attainment demonstration documentation, the process used by the control agencies to review and select TCMs, other possible reduction measures for point and area sources, and the emissions inventory for the Milwaukee-Racine area. Although EPA encourages areas to implement available RACM measures as potentially cost effective methods to achieve emissions reductions in the short term, EPA does not believe that section 172(c)(1) requires implementation of potential RACM measures that either require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow the area to achieve attainment in advance of full implementation of all other required measures.

The attainment demonstration for the Milwaukee-Racine severe nonattainment areas indicates that the ozone benefit expected from regional NO_x reductions is substantial. In addition, many of the measures designed to achieve emissions reductions from within the nonattainment area will not be fully implemented prior to the 2007 nonattainment date. Therefore, EPA concludes, based on the available documentation, that since the reductions from potential RACM measures do not nearly equate to the reductions needed to demonstrate attainment, none of the measures could advance the attainment date prior to full implementation of the SIP call and full implementation of the ROP measures, and thus there are no additional potential local measures that can be considered RACM for this area.

III. Proposed Actions

EPA is proposing action on several different components of the Milwaukee-Racine one-hour ozone attainment

demonstration package submitted by WDNR on December 22, 2000. Most of the components are approvable as submitted. One requires action by the WDNR to be found fully approvable. Consequently, EPA is proposing approval of most components and parallel processing one component.

EPA is proposing approval of: The modeled attainment demonstration, the NO_x rule, the revision to the NO_x waiver, the rule to control VOCs from industrial solvent cleaning operations, the SIP order requiring VOC control for Flint Ink, the conformity budgets for the 2007 attainment year, until such time that a revised budget is submitted and found adequate for conformity purposes as called for by the state in its commitment to recalculate and apply a revised budget for conformity within one year of the formal release of MOBILE6, the RACM analysis, the commitment to conduct a mid-course review of the attainment status of the Lake Michigan area, and the post-1999 ROP plan. EPA is also proposing to approve, with a disapproval in the alternative, the draft rule requiring VOC controls from plastic parts coating operations. The plastic parts coating operations rule will proceed with a final approval if the final rule is not significantly different from the draft and is submitted before September 1, 2001. If the final rule is not submitted in a timely fashion, EPA will proceed with a disapproval without reproposing.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it does

not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism

¹⁰ Lake Michigan Ozone Study—Lake Michigan Ozone Control Program Project Report, Volume II—Overview, December 1995.

implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the federal-state relationship under the Act, preparation of flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action proposes to approve pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: June 21, 2001.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 01–16567 Filed 6–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FL–T5–2001–01a; FRL–7006–4]

Clean Air Act Proposed Full Approval of Operating Permit Program; State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval.

SUMMARY: EPA proposes to fully approve the operating permit program of the Florida Department of Environmental Protection (FDEP).

Florida’s operating permit program was submitted in response to the directive in title V of the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities’ jurisdiction. EPA granted interim approval to Florida’s Title V operating permit program on September 25, 1995. The State revised its program to satisfy the conditions of the interim approval and this action proposes approval of those revisions. Also, other program changes made by the State since the interim approval are being proposed for approval as part of this action.

DATES: Comments on the program revisions discussed in this proposed action must be received in writing by August 31, 2001.

ADDRESSES: Written comments on this action should be addressed to Gracy R. Danois, Air Permits Section, Air & Radiation Technology Branch, EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8909. Copies of Florida’s submittals and other supporting documentation relevant to this proposed action are available for inspection during normal business hours at EPA Region 4, Air & Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8909.

FOR FURTHER INFORMATION CONTACT: Gracy R. Danois, Air Permits Section, EPA Region 4, at (404) 562–9119 or danois.gracy@epa.gov.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?

What is being addressed in this document?

What are the program changes that EPA is approving?

What is involved in this final action?

What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the title V operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the title V operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable