

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

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

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[IN136-2; FRL-7088-5]

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

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

**ACTION:** Final rule.

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

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

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

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

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:**

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

The supplemental information is organized in the following order:

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

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

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

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

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

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

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

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

attainment demonstration and the comments received on EPA's August 3, 2001 proposal. This notice of final rulemaking (NFR), however, also addresses the public comments received with regard to the December 16, 1999 NPR.

The attainment demonstration we are approving today demonstrates attainment of the 1-hour ozone standard by the 2007 attainment year.

### III. Are There Related Elements That Need To Be Federally Approved?

There are a number of related elements which are part of the ROP and attainment demonstration. These related elements are detailed in this section along with the citations for approval. Several elements have been acted upon in final form by EPA in previous notices and several are being acted upon in today's notice.

The attainment demonstration SIP revision depends significantly on the new NO<sub>x</sub> emission reductions resulting from the implementation of NO<sub>x</sub> emission control regulations for major EGUs, major non-EGU boilers and turbines, and major cement kilns. Other State emission control regulations, applicable in Lake and Porter Counties, affecting the attainment of the ozone standard and the post-1999 ROP in the ozone nonattainment area have previously been adopted by the State and approved by the EPA.

On September 27, 2001 EPA signed the final rule approving Indiana's NO<sub>x</sub> emission control regulations for major EGUs, major non-EGU boilers and turbines, and major cement kilns. The approval of these State NO<sub>x</sub> control rules is being addressed in a separate rulemaking action.

In the September 14, 2001 **Federal Register** (66 FR 47887) EPA approved Indiana's Cold Cleaner Degreasing rule (326 IAC 8-3-8). This rule and the reductions from this rule are part of the ROP and contingency measure reductions. The approval was effective on October 15, 2001.

In today's notice EPA is taking final action on the post-1999 ROP plan. EPA is also taking final action on all outstanding contingency plan requirements. As proposed in the August 3, 2001 notice, the current ROP plan is adequate to cover the prior contingency requirements. The post-1999 ROP plan meets all outstanding contingency plan requirements, and the State has met all contingency planning requirements. As noted in the August proposal, the post-1999 ROP plan contains excess emission reductions sufficient to provide contingency measures for the 15 percent and post-

1996 ROP plans. It is therefore not necessary for the State to revise the contingency plans for the 15 percent ROP plan and the post-1996 ROP plan. In this action EPA is approving contingency requirements for those plans as effectively being met by the current ROP and contingency plans.

Other related SIP actions are being acted upon in this final notice. These include the Mid-Course Review Commitment from IDEM, and the commitment to recalculate the mobile source transportation conformity budgets within one or two years after MOBILE6 is officially released.

Indiana committed to revise within two years after the official release of MOBILE6, the 2007 attainment demonstration budgets and to revise the ROP conformity budgets. The State air agency (IDEM) has discussed the commitment with the transportation community and has discussed the fact that no new conformity determinations can be made in the second year of the commitment without an adequate MOBILE6 budget. As we proposed on July 28, 2000 (65 FR 46383), the final approval action we are taking today on the 2007 attainment demonstration budgets will be effective for conformity purposes only until revised motor vehicle emissions budgets are submitted and we have found them adequate. In other words, the budgets we are approving today as part of the attainment demonstration will apply for conformity purposes only until there are new, adequate budgets consistent with the States' commitments to revise the budgets. The revised budgets will apply for conformity purposes as soon as we find them adequate.

We are limiting the duration of our approval in this manner because the States have committed to revise them. Therefore, once we have confirmed that the revised budgets are adequate, they will be more appropriate than the budgets we are approving for conformity purposes now. If the revised budgets raise issues about the sufficiency of the attainment demonstration, EPA will work with States on a case-by-case basis.

In this notice EPA is approving the mobile source emissions budgets submitted with both the post-1999 ROP and the attainment demonstration. The budgets for the 2007 attainment year are 9.4 TPD of VOC and 24.29 TPD of NO<sub>x</sub>. The VOC budget for the ROP for 2002 is 13.13 TPD and the VOC budget for 2005 is 10.99 TPD. These budgets were found adequate effective June 13, 2001, as posted on the EPA website at [www.epa.gov/otaq/traq](http://www.epa.gov/otaq/traq) (once there, click on the "conformity" button).

The Mid-Course Review commitment and MOBILE6 commitment are discussed in detail in the August 3, 2001, proposed rulemaking. In today's action, EPA is approving the commitments to conduct a Mid-Course Review and to revise the motor vehicle emissions budgets.

All required State emission control regulations and related SIP elements needed to support the ozone attainment demonstration and the post-1999 ROP plan have been approved by the EPA.

### IV. Did We Receive Public Comments on the Proposed Approval of Indiana's 1-Hour Ozone Attainment Demonstration?

We published a proposed approval of Indiana's 1-hour ozone attainment demonstration SIP revision on August 3, 2001 (66 FR 40802). The public comment period closed on September 4, 2001. We received one set of comments on the proposed rulemaking. Although the comments were not sent to the person listed in the **Federal Register** notice as the one to receive comments, we determined that the commenter intended to submit them in respect to the proposal and, thus are responding to the comments here. A closely related rulemaking was published on December 16, 1999 (64 FR 70514). In that notice, we proposed conditional approval of an earlier 1-hour ozone attainment demonstration, submitted by Indiana on April 30, 1998. We received a number of comments on the December 1999 proposed rulemaking. The 1-hour ozone attainment demonstration SIP revision package submitted by Indiana in December 2000 essentially replaced their earlier 1998 submittal. However, in this final rulemaking, we also address the relevant comments received on our December 1999 proposed conditional approval.

#### A. Comments on the August 3, 2001 Proposal

*Comment:* The commenter states that the plan represents a very important step forward for improving air quality in Lake and Porter Counties, Indiana and that they have long advocated that LaPorte County (to the east of Porter County) should also be designated as nonattainment and included in the SIP.

*Response:* The USEPA agrees that the attainment demonstration plan represents an important step forward for improving air quality in Lake and Porter Counties and indeed for improving air quality in the entire Lake Michigan basin.

The commenter's statement that LaPorte County should be designated nonattainment is outside the scope of

this rulemaking. This rulemaking addresses the approvability of the 1-hour ozone attainment demonstration for the existing nonattainment area and does not address redesignating existing areas. Although LaPorte County has experienced exceedances of the 1-hour standard, it is not monitoring nonattainment for the 1-hour ozone standard. During the past three years (1998 through 2000) the monitoring in LaPorte County recorded only one exceedance day. LaPorte County would need to experience more than three exceedance days over a three-year period to violate the 1-hour ozone standard. Nor does the preliminary 2001 ozone monitoring data indicate a violation of the 1-hour standard. Therefore, the monitoring data does not indicate that LaPorte County should be designated nonattainment for the 1-hour standard. Moreover, EPA sees no need to include LaPorte County as part of the Chicago nonattainment area. It is important to note that LaPorte County is part of the Lake Michigan modeling domain which has been modeled as part of the Chicago-Gary-Lake County attainment demonstration modeling. Thus, the ozone modeling for the Chicago and Milwaukee nonattainment areas (Indiana, Illinois and Wisconsin) indicates that the SIPs for these areas are expected to reduce emissions to an extent that the entire domain will be attaining the 1-hour ozone standard.

*Comment:* A commenter has been an active participant in the Indiana NO<sub>x</sub> rulemaking which will provide important contributions to meeting the 1-hour ozone standard. The commenter would like to be notified if EPA does not approve the rules or if they are approved with conditions.

*Response:* The NO<sub>x</sub> SIP rules submitted by Indiana in final form on August 20, 2000, were proposed for approval by the EPA on July 2, 2001, (66 FR 34864). The final rule approving these State rules was signed by the EPA on September 27, 2001 and will be published in a separate rulemaking action.

*Comment:* The commenter urges the EPA to recommend that Indiana use the deterministic test for the required ozone attainment demonstration. The commenter also urges both EPA and IDEM to provide for adequate, local public information and opportunity for comment on the mid-course review now promised for the end of 2004.

*Response:* As noted in the August 3, 2001 NPR (66 FR 40802), Indiana has demonstrated attainment of the 1-hour ozone standard using the UAM. Indiana used UAM data and a statistical approach, as defined in EPA's June 1996

Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS (EPA-454/B-95-007), to demonstrate attainment of the 1-hour ozone standard in the Chicago-Gary-Lake County nonattainment area by November 15, 2007.

The commenter is objecting to the State demonstrating attainment of the 1-hour ozone standard via procedures differing from the deterministic test as discussed in the June 1996 guidance. However, as discussed in more detail in the June 1996 guidance and elsewhere in this final rule, the deterministic test is not the only attainment demonstration test supported by the attainment demonstration requirements of the CAA. The CAA is not prescriptive as to the specific nature of the attainment demonstration, other than that the use of a photochemical dispersion model, such as UAM, is required for serious and above ozone nonattainment areas. The CAA does not prevent the consideration of additional data to support the attainment demonstration. In addition, the EPA has found that the simple use of the photochemical dispersion model through only the deterministic test may not be appropriate for some areas.

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

In 1996, EPA issued guidance<sup>2</sup> to update the 1991 guidance referenced in 40 CFR 50 App. W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances,

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

EPA has applied WOE determinations to all of the current demonstrations under proposal, although except for the Chicago-Gary-Lake County and Milwaukee attainment demonstrations, the modeling results submitted do not pass the recommended "modeled attainment test." These determinations were made based on EPA's best understanding of the problem and relied on a qualitative assessment as well as quantitative assessments of the available information.

With regard to the commitment for a Mid-Course Review and public input on the MCR, EPA intends to issue guidance to the States on the MCR. We appreciate the commenter's concern that the public remain informed including the opportunity for comment on the mid-course review. We will consider your request as the guidance to the States is drafted and finalized.

*Comment:* A commenter agrees with EPA's decision to revisit the existing NO<sub>x</sub> waiver. That waiver was strenuously objected to by a number of local and regional organizations. The commenter urges EPA to remove the waiver for Reasonably Available Control Technology (RACT), New Source

<sup>1</sup> Guidance on the Use Of Modeled Results to Demonstrate Attainment of the Ozone NAAQS. EPA-454/B-95-007, June 1996.

<sup>2</sup> Ibid.

Review (NSR), transportation and general conformity and Inspection and Maintenance (I/M) for Lake and Porter Counties.

*Response:* EPA has carefully reconsidered the basis for the NO<sub>x</sub> waiver for the Chicago-Gary-Lake County area both in the notice which proposed approval of the attainment demonstration and also in this notice. It should be noted that the August 3, 2001 proposed rule (66 FR 40802) proposed to change the basis for the continuance of the NO<sub>x</sub> waiver from an ozone benefit/dis-benefit basis to an avoidance of excess NO<sub>x</sub> emissions reduction basis under section 182(f)(2) of the CAA. Since the State has demonstrated attainment of the 1-hour ozone standard without the use of all possible NO<sub>x</sub> emission controls, the State, under section 182(f)(2) of the CAA qualifies for a NO<sub>x</sub> emissions control waiver for those NO<sub>x</sub> controls not relied on in the ozone attainment demonstration. Since the State does not rely on NO<sub>x</sub> emission reductions from NO<sub>x</sub> RACT, NO<sub>x</sub> NSR, and certain mobile source emission controls under I/M and conformity in the ozone attainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area, the area qualifies for a NO<sub>x</sub> waiver of these NO<sub>x</sub> emission controls. The determination that certain control measures are "excess" is based on the attainment demonstration and is independent of the ozone impacts of the control measures subject to the NO<sub>x</sub> waiver. Therefore, even if ozone control benefits are achievable from some of these NO<sub>x</sub> controls, this is not a basis for denying or withdrawing the NO<sub>x</sub> waiver for these emission control measures.

#### *B. Comments Received on the December 16, 1999, Proposed Conditional Approval*

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

*Response:* EPA's adequacy process for these SIPs has been completed, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We have already responded to any comments related to adequacy when we issued our adequacy findings, and therefore we are not listing the individual comments or responding to them here. Our findings of adequacy and responses to comments can be accessed at [www.epa.gov/otaq/traq](http://www.epa.gov/otaq/traq) (once there, click on the "conformity" button).

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

*Response:* Although the 8-hour ozone standard has been adopted by the EPA, implementation of this standard has been delayed while certain aspects of the standard remain before the United States Circuit Court of Appeals. The States and the EPA have yet to define the 8-hour ozone nonattainment areas and the EPA has yet to issue guidance and requirements for the implementation of the 8-hour ozone standard. In the meantime, it is assumed by the EPA that emission controls implemented to attain the 1-hour ozone standard will be beneficial towards attainment of the 8-hour ozone standard as well. This is particularly true regarding the implementation of NO<sub>x</sub> emission controls resulting from EPA's NO<sub>x</sub> SIP call.

*Comment:* A commenter asks that EPA require full compliance with regulatory requirements now in place that govern the development of attainment strategies, and rigorous implementation of statutory requirements for RACT and RACM.

*Response:* As noted in responses to other comments in this final rule and in the August 3, 2001 proposed rule, the Indiana SIP meets the CAA requirements for the implementation of RACM. In addition, it is noted that the State of Indiana has implemented all required RACT controls for VOC sources in the ozone nonattainment areas in Indiana. As noted elsewhere in this final rule and in the August 3, 2001 proposed rule, the Chicago-Gary-Lake County nonattainment area is currently covered by a waiver from NO<sub>x</sub> RACT controls.

Section 172(c)(1) of the CAA requires SIPs to contain RACM and provides for areas to attain as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of section 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered to be RACM. EPA also indicated in that guidance that States should consider all potentially available emission control

measures to determine whether they are potentially available for implementation in an area and whether they would advance the attainment date. Further, States should indicate in their SIPs whether emission control measures considered were reasonably available or not, and, if measures are reasonably available, they must be adopted by the States as RACM. Finally, EPA indicated that States could reject emission control measures as not being RACM because they would cause substantial widespread and long-term adverse impacts, or would be economically or technologically infeasible. The EPA also issued a recent memorandum reconfirming the principles in the earlier guidance. The newer memorandum is titled, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas," from John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web site Planning and Standards. November 30, 1999. Web site: <http://www.epa.gov/ttn/oarpg/tlpgm.html>.

As noted in the August 3, 2001 proposed rule, the State's SIP has addressed the implementation of RACM, and we have determined that the SIP adequately meets the RACM requirements of the CAA. We addressed the implementation of emission control measures in the Lake and Porter County area for both mobile and stationary sources. We determined that the State could not significantly advance the 1-hour ozone standard attainment date through the implementation of emission controls not already adopted by the State. In addition, as we noted in the August 3, 2001 proposed rule, although we encourage areas to implement available RACM as potentially cost-effective methods to achieve emission reductions in the short term, we do not believe that section 172(c)(1) of the CAA requires implementation of potential RACM measures that either needlessly require costly implementation efforts or produce relatively small emissions reductions that will not be sufficient to allow an area to achieve attainment in advance of full implementation of all other required measures.

In addition to emission control measures already implemented locally, Indiana relies in large part on emission reductions from outside of the area resulting from EPA's NO<sub>x</sub> SIP call rule or section 126 NO<sub>x</sub> rule (65 FR 2674, January 18, 2000) to reach attainment of the ozone standard. In the NO<sub>x</sub> SIP call (63 FR 57356), we concluded that NO<sub>x</sub> emission reductions from various upwind States were necessary to

provide for timely attainment of the 1-hour ozone standard in nonattainment areas in various downwind States, including Indiana on both counts. The NO<sub>x</sub> SIP call established requirements for control of sources of significant emissions in the relevant upwind States. These NO<sub>x</sub> emission reductions are not expected to be fully implemented until May 2004.

The ozone attainment demonstration for Indiana indicates that the ozone reduction benefit expected to be achieved from the regional NO<sub>x</sub> emission reductions is substantial. We have seen no evidence for similar ozone benefits resulting from Indiana-specific emission controls not already adopted by the State that would significantly advance the attainment date for the Chicago-Gary-Lake County ozone nonattainment area earlier than 2007. Therefore, EPA concludes, based on the available documentation, that the emission reductions from additional emission control measures will not advance attainment, and, thus, none of the possible additional emission control measures can be considered to be RACM for the purposes of section 172(c)(1) of the CCA.

Given the above, it is concluded that Indiana has met the requirements for RACT and RACM as requested by the commenter.

*Comment:* The commenter states that none of the air quality plans for severe ozone nonattainment areas demonstrate attainment in the manner required by section 182(c)(2)(A) of the CAA. Each State's photochemical grid modeling clearly predicts continued nonattainment of the 1-hour ozone standard, with predicted ozone peak concentrations well above the NAAQS. The Weight-Of-Evidence (WOE) approach does not satisfy the CAA's mandate to assure attainment of the ozone standard by the deadline, nor does it comply with the requirement of a modeled demonstration of attainment. EPA may not lawfully approve SIPs based on modeling that has been expressly prohibited by the rule.

Note that a number of commenters made related comments on the ozone attainment demonstrations (including those from states other than Indiana) reviewed in the December 16, 1999 proposed rules. These related comments are also addressed here.

*Response:* Under section 182(c)(2) and (d) of the CAA, serious and severe ozone nonattainment areas were required to submit by November 15, 1994, demonstrations of how they would attain the 1-hour ozone standard. Section 182(c)(2)(A) of the CAA provides that "[t]his attainment

demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective." As described in more detail below, the EPA allows states to supplement their photochemical modeling results, with additional evidence designed to account for uncertainties in the photochemical modeling, to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) of the CAA that the attainment demonstration "be based on photochemical grid modeling," because the modeling results constitute the principal component of EPA's analysis, with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

The flexibility granted to EPA under section 182(c)(2)(A) of the CAA is reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, "The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in [40 CFR part 51 Appendix W] (Guideline on Air Quality Models)." <sup>3</sup> 40 CFR 51.112(a)(1). However, the regulations further provide, "Where an air quality model specified in appendix W \* \* \* is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment \* \* \*." Appendix W, in turn, provides that, "The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas," but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR 51 App. W section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991, but EPA envisioned

<sup>3</sup> The August 12, 1996 version of "Appendix W to Part 51—Guideline on Air Quality Models" was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule, that will not take effect until the rulemaking process for them is complete.

the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to use both the photochemical grid model, and additional analytical methods approved by EPA.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: the deterministic test or the statistical test. Under the deterministic test, a predicted (attainment year, 2007 for the Chicago-Gary-Lake County ozone nonattainment area) 1-hour ozone concentration above 0.124 parts per million (ppm) indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (i.e., modeled) 1-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).<sup>4</sup>

In 1996, EPA issued guidance <sup>5</sup> to update the 1991 guidance referenced in 40 CFR 50 App. W, to make the modeled attainment test more closely reflect the form of the NAAQS (i.e., the statistical test described above), to consider the area's ozone design value and the meteorological conditions accompanying observed exceedances, and to allow consideration of other evidence to address uncertainties in the modeling databases and application. When the modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment. The EPA's guidance recognizes these limitations, and provides a means for

<sup>4</sup> Guidance on the Use Of Modeled Results to Demonstrate Attainment of the Ozone NAAQS. EPA-454/B-95-007, June 1996.

<sup>5</sup> Ibid.

considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a Weight-Of-Evidence (WOE) determination. Under a WOE determination, the state can rely on, and EPA will consider in addition to the results of the modeled attainment test, other factors such as other modeled output (e.g., changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances, and predicted change in the ozone design value); actual observed air quality trends (i.e., analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further emission controls.

In 1999, EPA issued additional guidance<sup>6</sup> that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled ozone design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the 1-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be “no exceedances” in the future model predictions. The method outlined in EPA’s 1999 guidance uses the highest measured design value across all sites in the nonattainment area for each of three years. These three “design values” represent the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model predicts the change in ozone from the base period to the future attainment date.

<sup>6</sup> “Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.” U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: <http://www.epa.gov/ttn/scram>.

The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area’s base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year. Modeling results also show that emission control strategies designed to reduce areas of peak ozone concentrations generally result in similar ozone reductions in all core areas of the modeling domain, thereby providing some assurance of attainment at all monitors.

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

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

then averaged those three design values, to determine the area’s base ozone design value. This approach is appropriate because, as just noted, the 1990 emissions contributed to each of those periods, and there is no reason to believe the 1990 (episodic) emissions resulted in the highest or lowest of the three design values. Averaging the three years is beneficial for another reason: It allows consideration of a broader range of meteorological conditions—those that occurred throughout the 1988–1992 period, rather than the meteorology that occurs in one particular year or even one particular ozone episode within that year. Further more, EPA relied on three-year averaging only for purposes of determining one component, i.e.—the small amount of additional emission reductions not modeled—of the WOE determination. The WOE determination, in turn, is intended to be part of a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to attain.

A commenter on our December 1999 proposed ozone rules criticized the component of this WOE factor that estimates ambient improvement because it does not incorporate complete modeling of the additional emissions reductions. However, the regulations do not mandate, nor does EPA guidance suggest, that States must model all control measures being implemented. Moreover, a component of this technique—the estimation of the future ozone design value—should be considered a model predicted estimate. Therefore, results from this technique are an extension of “photochemical grid” modeling and are consistent with Section 182(c)(2)(A). Also, a commenter believes EPA has not provided sufficient opportunity to evaluate the calculations used to estimate additional emission reductions. EPA provided a full 60-day period for comment on all aspects of the proposed rules. EPA has received several comments on the technical aspects of the approach and the results of its application, as discussed above and in the responses to the individual SIPs.

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

up to 3 exceedances in 3 years at every monitoring site, and, therefore, in every grid cell. If the model over-predicts observed concentrations, predicted controls may be further overestimated. EPA has considered other evidence, as described above through the weight of evidence determination.

When reviewing a SIP, the EPA must make a determination that the control measures adopted are reasonably likely to lead to attainment. Reliance on the WOE factors allows EPA to make this determination based on a greater body of information presented by the States and available to EPA. EPA's decision was further strengthened by each State's commitment to check progress towards attainment in a mid-course review and to adopt additional measures, if the anticipated progress is not being made.

A commenter further criticized EPA's technique for estimating the ambient impact of additional emissions reductions not modeled on grounds that EPA employed a rollback modeling technique that, according to the commenter, is precluded under EPA regulations. The commenter explained that 40 CFR 51 App. W section 6.2.1.e. provides, "Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies." Section 14.0 of appendix W defines "rollback" as "a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately." Under this approach if 20 percent improvement in ozone is needed for the area to reach attainment, it is assumed a 20 percent reduction in VOC emissions would be required. There was no approach for identifying NO<sub>x</sub> reductions. The "proportional rollback" approach is based on a purely empirically/mathematically derived relationship. EPA did not rely on this approach in its evaluation of the attainment demonstrations. The prohibition in Appendix W applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. For the demonstrations under proposal, EPA used a locally derived (as determined by the model and/or observed changes in air quality) ratio of change in emissions to change in ozone to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone. For example, if monitoring or modeling results indicate that ozone was reduced

by 25 ppb during a particular period, and that VOC and NO<sub>x</sub> emissions fell by 20 tons per day and 10 tons per day respectively during that period, EPA developed a ratio of ozone improvement related to reductions in VOC and NO<sub>x</sub>. This formula assumes a linear relationship between the precursors and ozone for a small amount of ozone improvement, but it is not a "proportional rollback" technique. Further, EPA uses these locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions<sup>7</sup>—not the core control strategies—would reduce ozone levels and thereby strengthen the weight of evidence test. EPA uses the UAM to evaluate the core control strategies. This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback to determine the ambient impact of the entire set of emissions reductions required under the attainment SIP. The limited use of adjustment factors is acceptable for practical reasons: It obviates the need to expend more time and resources to perform additional modeling. In addition, the adjustment factor is a locally derived relationship between ozone and its precursors based on air quality observations and/or modeling which is more consistent with recommendations referenced to in Appendix W and does not assume a direct proportional relationship between ozone and its precursors. In addition, the requirement that areas perform a mid-course review (a check of progress toward attainment) provides a margin of safety.

A commenter expressed concerns that EPA used a modeling technique (proportional rollback) that was expressly prohibited by 40 CFR part 51 Appendix W without expressly proposing to do so in a notice of proposed rulemaking. However, the commenter is mistaken. As explained above, EPA did not use or rely on a proportional rollback technique in the relevant rulemaking<sup>8</sup> but used UAM to evaluate the core control strategies and then applied its WOE guidance.

<sup>7</sup> Not applicable to the Chicago area ozone attainment demonstration addressed in this final rule, but applicable for other ozone nonattainment areas for which EPA is also publishing final rules.

<sup>8</sup> The rulemaking referred to here is not a proposed rule covering the ozone attainment demonstration for the Chicago-Gary-Lake County nonattainment area. Rather, the rulemaking referred to here is a proposed rule for an area found to have a shortfall in a state's ozone attainment demonstration. This type of proposed rule generally applied to one of the Northeastern States. This paragraph of the response is not applicable to the Indiana ozone attainment demonstration.

Therefore, because EPA did not use an "alternative model" to UAM, it did not trigger an obligation to modify Appendix W. Furthermore, EPA did propose to use the November 1999 guidance, "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled," in the December 16, 1999 NPR and has responded to all comments received on that guidance elsewhere in this final rule.

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

As another WOE factor, for areas within the NO<sub>x</sub> SIP Call domain, results from the EPA regional modeling for NO<sub>x</sub> controls as well as the Tier2/Low Sulfur program were considered. Also, for all of the areas, EPA considered recent changes in air quality and emissions. For some areas, this was helpful because there were emission

reductions in the most recent years that could be related to observed changes in air quality, while for other areas there appeared to be little change in either air quality or emissions. For areas in which air quality trends, associated with changes in emissions levels, could be discerned, these observed changes were used to help decide whether or not the emission controls in the plan would provide progress towards attainment.

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

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

Therefore, we can not determine whether the monitor values exceed the NAAQS by a wider margin than the UAM predictions for 1999. In summary, there is little evidence to support the conclusion that high exceedances in 1999 will continue to occur after adopted control measures are implemented.

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

*Comment:* A commenter notes that the SIP revisions addressed in the December 16, 1999 proposed rules claim emission reduction credits from relatively recent national EPA rulemakings for surface coatings and consumer products. In most cases, the emission reduction credit claimed is based on EPA estimates of emission reductions from proposed versions of these rules. The final versions of these rules, however, are weaker than the proposed rules in a number of key respects. Therefore, the emission credits claimed for these national rules must be recalculated to reflect only the actual emission reductions that can be expected under the EPA rules as finally adopted.

*Response:* We respond to this comment by addressing each of EPA's rules for surface coatings and consumer products.

#### *Architectural and Industrial Maintenance (AIM) Coatings*

EPA's March 22, 1995 memorandum<sup>9</sup> allowed States to claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, States relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR Part 59 Subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum. In accordance with EPA's final regulation, States have assumed a 20 percent reduction from AIM coatings source categories in its attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. EPA believes that all emission reductions from the AIM coatings national regulation will occur by 2002, and, therefore, are creditable in the attainment and ROP plans.

#### *Autobody Refinish Coatings Rule*

According to EPA's guidance<sup>10</sup> and proposed national rule, many States have claimed a 37 percent VOC emission reduction from this source category based on a proposed rule. However, EPA's final rule, "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings," published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide. The 37 percent emission reduction from EPA's

<sup>9</sup> "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules," March 22, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to Air Division Directors, Regions I-X.

<sup>10</sup> "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule," November 27, 1994, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I-X.



proposed rule was an estimate of the total nationwide emission reduction. Since this number was an overall average, it was not applicable to any specific area. For example, in California the reduction from the national rule is zero because its rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. If an area were unregulated before the national rule, the 40 percent emission reduction would be our estimate except for one rule change made between proposal and final: The exemption of lacquer topcoats. As a result of that exemption, the estimated percentage reduction for previously unregulated areas is about 36 percent. Therefore, most areas will need to make up the approximately 1 percent difference in the reductions to be achieved from the final program and those assumed based on the proposed program. This emission reduction shortfall, is not considered to be the basis for disapproval of the current ozone attainment demonstration and post-1999 ROP plan, which contain total emission reduction surpluses exceeding this shortfall.

#### Consumer Products Rule

According to EPA's guidance<sup>11</sup> and proposed national rule, States have claimed a 20-percent VOC emission reduction from this source category. The final rule, "National Volatile Organic Compound Emission Standards for Consumer Products," (63 FR 48819), published on September 11, 1998, will result in a 20-percent emission reduction. Therefore, the reductions obtained by States from the final national rule are consistent with the emission reduction credit which was claimed.

*Comment:* A commenter states that the attainment and ROP demonstrations in most States are flawed because they assume a vehicle fleet mix that does not accurately reflect the growing proportion of sport utility vehicles (SUVs) and gasoline trucks, which pollute more than conventional cars. EPA and the States have not followed a consistent practice in updating ozone modeling to account for changes in vehicle fleets. The underestimation of emissions from this can be significant. Therefore, if the motor vehicle emissions inventory has not been updated to prepare the current SIP

submission, the SIP should be disapproved.

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

*Comment:* A commenter (as well as other commenters responding to EPA's December 16, 1999 ozone proposed rules) notes that the CAA requires nonattainment plans to provide for implementation of all RACM as expeditiously as practicable. The SIPs at issue in the December 16, 1999 proposed rules do not meet these requirements. The plans contain only a limited set of emission control measures, and fail to offer any justification for the States' failure to adopt numerous available measures that were specifically identified by EPA and others. In addition, the SIPs contain no demonstration or claim that the emission control schedules are the earliest practicable ones.

The commenter notes that the Phase II NO<sub>x</sub> limits agreed to by Ozone Transport Commission States are clearly RACM, as they are widely in effect. States that have adopted such measures have not adopted enforceable NO<sub>x</sub> RACT limits for all relevant facilities within their jurisdiction. It is not sufficient for States to assert that they will adopt additional NO<sub>x</sub> emission controls if needed. The CAA requires each SIP to include all RACM now, and to show that such measures have been adopted in legally enforceable forms.

*Response:* Section 172(c)(1) of the CAA 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 172(c)(1). See 57 FR 13498, 13560. In

that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA concluded that a measure would not be reasonably available if it would not advance attainment. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM. Finally, EPA indicated that states could reject potential RACM measures either because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. 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. Web site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

More specifically with respect to the Chicago-Gary-Lake County nonattainment area, as noted elsewhere in this final rule and in the August 3, 2001 proposed rule, we have determined that the Indiana SIP does provide for the implementation of RACM. The State has been granted a waiver from adopting and implementing NO<sub>x</sub> RACT requirements in the nonattainment area. Therefore, these emission controls are not RACM for this area. Finally, the State has adopted and is implementing regional NO<sub>x</sub> controls, which have been demonstrated to support the attainment of the ozone standard.

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 any of the four areas to achieve attainment in advance of full implementation of all other required measures. Because we believe that additional control measures

<sup>11</sup> "Regulatory Schedule for Consumer and Commercial Products under Section 183(e) of the Clean Air Act", June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I—X.

are not reasonably available for the Lake and Porter Counties nonattainment area, EPA believes that the attainment date proposed for approval is as expeditious as practicable.

*Comment:* A commenter states that the air quality plans are deficient with respect to Transportation Control Measures (TCMs). The plans contain no or few serious new measures to reduce growth in vehicle travel. Most plans do not seriously consider the possibility of major expansion of transit service, reduced or zero transit fares, pricing strategies, etc. There is also substantial evidence that significant air quality benefits can be achieved by modifying land development patterns to limit urban sprawl and to facilitate transit use. The commenter cites several examples that would apply to this issue. The States have generally not included any of these types of measures in their SIPs, and have offered no justification for the failure to do so.

*Response:* EPA has long advocated that States consider the kinds of control measures that the commenters have suggested, and EPA has indeed provided guidance on those measures. See, e.g., <http://www.epa.gov/otaq/transp.htm>. In order to demonstrate that they will attain the 1-hour ozone NAAQS as expeditiously as practicable, some areas may need to consider and adopt a number of measures—including the kind that EPA itself evaluated in the RACM analysis for the three serious areas—that even collectively do not result in many emission reductions. Furthermore, EPA encourages areas to implement technically available and economically feasible measures to achieve emissions reductions in the short term—even if such measures do not advance the attainment date—since such measures will likely improve air quality. Also, over time, emission control measures that may not be RACM now for an area may ultimately become feasible for the same area due to advances in control technology or more cost-effective implementation techniques. Thus, areas should continue to assess the state of control technology as they make progress toward attainment and consider new control technologies that may in fact result in more expeditious improvement in air quality.

The EPA's approach toward TCMs as RACM and the RACM requirement is grounded in the language of the Clean Air Act. Section 172(c)(1) states that a SIP for a nonattainment area must meet the following requirement, "In general.—Such plan provisions shall provide for the implementation of all reasonably available control measures as

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

The term "reasonably available control measure" is not actually defined in the definitions in the CAA. Therefore, the EPA interpretation that potential measures may be determined not to be RACM if they require an intensive and costly effort for numerous small area sources is based on the common sense meaning of the phrase, "reasonably available." A measure that is reasonably available is one that is technologically and economically feasible and that can be readily implemented. Ready implementation also includes consideration of whether emissions from small sources are relatively small and whether the administrative burden, to the States and regulated entities, of controlling such sources was likely to be considerable. As stated in the General Preamble, EPA believes that States can

reject potential measures based on local conditions including cost. 57 FR 13561.

As described in the August 3, 2001 proposal, Indiana has considered a wide range of TCMs for the Lake and Porter County area. Indiana has implemented a number of TCMs using the Congestion Mitigation and Air Quality Program funds. These TCMs have not been included for credit in the SIP. Indiana has not included TCMs in the SIP, however, Indiana has met the ROP requirements and can meet the attainment demonstration requirements without taking credit for the generally small pollutant reductions from the implemented TCMs. The EPA has concluded that Indiana has considered and implemented all reasonably available TCMs. Any measures that have not been implemented and included would provide only marginal air quality improvements at significantly greater expense or with significant implementation barriers. All additional TCMs will not advance the attainment date because the TCMs will give only marginal improvements or are unreasonable because they are too difficult to implement.

*Comment:* A commenter noted that a 1993 STAPPA report recommended adoption of a California or South Coast Air Quality Management District (SCAQMD) controls or emission limits for various source categories. The commenter mentions further possible control measures as well, and notes that none of the States offered consideration of these emission control measures accompanied by reasoned explanations for their rejection.

*Response:* The State has completed the adoption of the ozone attainment demonstration and its associated emissions control strategy. We have determined that the SIP, as currently adopted by the State, addresses the implementation of RACM. Section 172(c)(1) of the CAA requires SIPs to contain RACM and provides for areas to attain as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of section 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered to be RACM. EPA also indicated in that guidance that States should consider all potentially available emission control measures to determine whether they are potentially available for implementation in an area and whether they would advance the attainment date. Further, States should indicate in their SIPs whether emission control measures considered were

reasonably available or not, and, if measures are reasonably available, they must be adopted by the States as RACM. Finally, EPA indicated that States could reject emission control measures as not being RACM because they would cause substantial widespread and long-term adverse impacts, or would be economically or technologically infeasible. This policy has been detailed in other comments addressing RACM and comments suggesting other measures that could have been considered for implementation.

As stated in the August 3, 2001 proposal, the State of Indiana, along with the other Lake Michigan Air Directors Consortium (LADCO) states,<sup>12</sup> considered a wide range of measures for their reduction potential, cost and ease of implementation. The State of Indiana has implemented measures which have met the required ROP reductions and have also been modeled to achieve attainment of the 1-hour ozone standard in the attainment demonstration, which demonstrates that the Lake Michigan area can achieve attainment of the 1-hour ozone standard by the 2007 attainment date. Indiana relies in large part on emission reductions from outside of the Lake and Porter County area resulting from EPA's NO<sub>x</sub> SIP call rule or section 126 NO<sub>x</sub> rule (65 FR 2674, January 18, 2000) to reach attainment of the ozone standard. In the NO<sub>x</sub> SIP call (63 FR 57356), we concluded that NO<sub>x</sub> emission reductions from various upwind States were necessary to provide for timely attainment of the 1-hour ozone standard in nonattainment areas in various downwind States, including Illinois on both counts. The NO<sub>x</sub> SIP call established requirements for control of sources of significant emissions in the relevant upwind States. These NO<sub>x</sub> emission reductions are not expected to be fully implemented until May 2004. The ozone attainment demonstration for Indiana indicates that the ozone reduction benefit expected to be achieved from the regional NO<sub>x</sub> emission reductions is substantial. We have seen no evidence for similar ozone benefits resulting from Indiana-specific emission controls not already adopted by the State that would significantly advance the attainment date for the Chicago-Gary-Lake County ozone nonattainment area earlier than 2007. Therefore, EPA concludes, based on the

available documentation, that the emission reductions from additional emission control measures will not advance attainment, and, thus none of the possible additional emission control measure can be considered to be RACM for the purposes of section 172(c)(1) of the CCA.

*Comment:* A commenter states that MVEBs in the State plans are by definition inadequate because the plans do not demonstrate timely attainment or contain the emission reductions required for all RACM. The commenter asserts that the EPA may not find as adequate a MVEB that is derived from a SIP that is inadequate for the purposes for which it is submitted. The commenter believes that none of the MVEBs in the state plans addressed in the December 16, 1999 proposed rules are consistent with either the level of emissions achieved by implementation of all RACM, nor are they derived from SIPs that provide for attainment.

*Response:* As noted above and in the August 3, 2001 proposed rule, we have determined that the State's air quality plan does reflect the adoption and implementation of RACM. The plan also contains MVEBs based on the plan's ozone attainment demonstration. Therefore, we disagree with the commenters assertion that we cannot approve the plan's MVEBs.

*Comment:* A commenter notes that the CAA requires the SIPs to include a program to provide for the enforcement of the adopted control measures. Most plans address this requirement, however, none of the plans clearly set out programs to provide for enforcement of the various emission control strategies relied on for emission reduction credit.

*Response:* State enforcement program elements are contained in SIP revisions previously approved by EPA under obligations for enforceable emission limitations set out in section 110 of the CAA. Once approved by the EPA, there is no need for States to readopt and resubmit their enforcement programs with each and every SIP revision generally required by other sections of the CAA.

To the extent that the ozone attainment demonstration and ROP plan depends on specific State emission control regulations, it must be noted that the individual regulations have undergone review by the EPA. The regulations (rules) contain specific enforcement mechanisms, such as record keeping and reporting requirements, which the EPA has approved. These regulations also provide for periodic State inspections and reviews of the affected sources.

EPA's reviews of these regulations includes reviews of the enforceability of the regulations. Rules that are not enforceable are generally not approved by the EPA. It is not necessary for the State to submit separate enforcement program plans for these regulations other than those required under section 110 of the CAA, as noted above.

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

*Response:* EPA met with the commenter and discussed the technology described in the comment. Since the HFC-152a is VOC exempt, its use would give a VOC reduction compared to the use of VOCs, such as pentane or butane, as blowing agents. EPA, however, has not studied this technology exhaustively. It is each State's prerogative to specify which measures it will adopt in order to achieve the additional VOC reductions it needs. In evaluating the use of HFC-152a, States may want to consider claims that products made with this blowing agent are comparable in quality to products made with other blowing agents. Also, the question of the over-all long term environmental effect of encouraging emissions of fluorine compounds would be relevant to consider. This is a technology which States may want to consider, but ultimately, the decision of whether to require this particular technology to achieve the necessary VOC emissions reductions must be made by each affected State. Finally, EPA notes that under the Significant New Alternatives Policy (SNAP) program, created under CAA section 612, EPA has identified acceptable foam blowing agents, many of which are not VOCs (<http://www.epa.gov/ozone/title6/snap/>).

*Comment:* A commenter agrees with the concept of a mid-course review, but recommends that it be done in 2004 rather than 2003. In 2003, anticipated NO<sub>x</sub> controls will have only been in effect for one ozone season. IDEM does not believe that critical planning decisions should be based on a single year's worth of data, given how weather dependent ozone levels can be. USEPA should revise the approval to provide

<sup>12</sup>To find regional solutions to the ozone nonattainment problems in the Lake Michigan, the States of Illinois, Indiana, Michigan, and Wisconsin have organized and participated in LADCO, in which all four States are represented in various ozone modeling analyses and control strategy reviews.

that the mid-course review is done in 2004, after a second year of ozone season data is available.

*Response:* EPA understands the issue of timing. However, the timing issue involves balancing two critical factors. On the one hand, for a MCR to be useful in flagging the need to make changes to an emissions control strategy in time to affect attainment by the attainment date (by November 15, 2007 for the Chicago nonattainment area), it needs to be done sufficiently in advance of the attainment date. On the other hand, the MCR would be able to discern more accurately whether progress is being made if there were sufficient emission reductions that occurred in the time period between the attainment demonstration modeling and the time the MCR is performed. Thus, in reviewing a state's commitment regarding the performance of a MCR for any specific area, EPA must appropriately accommodate these two factors. In general, EPA believes that the states should perform the MCR for ozone nonattainment areas within the NO<sub>x</sub> SIP Call region (which includes Illinois) immediately following the first ozone season (April 15 through October 15 for the Chicago nonattainment area) during which sources are required to comply with the state's NO<sub>x</sub> SIP. Because the Court extended the source compliance deadline for the NO<sub>x</sub> SIP Call until May 31, 2004, EPA generally believes that for areas in the Eastern United States, the most appropriate time to perform the MCR would be following the 2004 ozone season.

The December 16, 1999 NPRs for the ten serious and severe ozone nonattainment areas noted that, for serious areas with an attainment date extension to 2005 or earlier, it would be impracticable to perform a mid-course review per se. The NPRs asked the states to commit instead to an early assessment of whether attainment will be achieved. See for example 64 FR 70319 at 70325 (NPR for the Western Massachusetts ozone nonattainment area). Thus, EPA did not base its recommendation for the MCR in 2003 on the assumption that the 18 to 24 month period between completion of the MCR and November 2005 would be a sufficient period to ensure attainment for serious nonattainment areas by 2005. EPA, however, continues to believe that for areas with an attainment date of 2007, the best balance in terms of timing for the MCR is to ensure that the area has several years between completion of the MCR and its attainment date in order for the state and EPA to assess the need for the state (or perhaps upwind states) to adopt and implement additional controls. Due to the court-

ordered delay in the mandatory source compliance date under the NO<sub>x</sub> SIP Call, EPA believes that performing the MCR by the end of 2004 best accommodates the need for emission controls to be implemented and the need for EPA and states to have time to take action in response to the MCR.

With regard to the timing of the MCR for severe nonattainment areas versus serious nonattainment areas, as noted above, we conceptually agree with the commenter. Performing the MCR after the implementation of significant emission controls and after assessing the ozone data for the time period following the implementation of these emission controls would provide a more robust MCR with fewer assumptions regarding the impacts of the emission controls on ozone levels. Nonetheless, to allow for sufficient time to prepare and implement supplemental emission controls, if needed, prior to the ozone standard attainment deadline, the MCR must be conducted several years prior to the attainment deadline. A sufficient lead time of 2 to 3 years is believed to be reasonable. Therefore, for a severe ozone nonattainment area with a 2007 attainment deadline, the MCR should be conducted no later than late 2004. Indiana's commitment to conduct the MCR by the end of 2004 meets this recommendation.

Please note from the August 3, 2001 proposed rule that we are proposing to approve Indiana's commitment to conduct the MCR by the end of 2004, after the implementation of the State's NO<sub>x</sub> emission control rules in compliance with EPA's NO<sub>x</sub> SIP Call. This timing may not allow the State to collect and quality assure ozone data from the entire 2004 ozone season (the State is allowed up to 90 days following a calendar quarter to quality assure the ozone data and submit the data to the EPA) following "normal" quality assurance schedules and to include all of these data in the 2004 MCR. The State may have to expedite the quality assurance of the 2004 ozone data to include as many of the 2004 ozone data as possible in the MCR. On the other hand, the State should be able to project the impacts of the NO<sub>x</sub> emission control rules using new or available ozone modeling and the 2001-2003 ozone data to draw some MCR conclusions.

Conducting a MCR by the end of 2004 will make it difficult for the State to fully quality assure and incorporate the ozone season ozone data for 2004 into the MCR while still allowing time for preparation of the MCR and public review and input into this process. Nonetheless, as noted above, the use of current ozone data is only one metric

that may be taken into consideration in this process. In addition, the State will be able to take into consideration ozone data through 2003 which should be quality assured well before the production of the MCR. The State may also choose to pursue expedited quality assurance of the 2004 data if the State considers that to be an overwhelming need for the purposes of preparing the MCR, although such data use is not required by the EPA.

We assume that the State will use all available data in the preparation of the MCR. To the extent 2004 data are available, the state is encouraged to make use of such data.

*Comment:* Given the current status of the EPA's NO<sub>x</sub> SIP Call rule, a commenter recommends that the EPA continue to allow Indiana and the other LADCO states the flexibility to adjust their plans for ozone and precursor emission reductions from upwind areas.

*Response:* Since this comment was submitted the "status" of the NO<sub>x</sub> SIP Call has largely been resolved. On March 3, 2000, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) upheld EPA's rules in most respects. EPA and the States are moving forward to implement those portions of the rule that have been upheld. The court remanded two issues to EPA, and EPA has provided that the States did not need to address in the SIPs due in October 2000, the small portion of the budget allocated with these remanded issues. EPA intends to address these remanded issues through notice and comment rulemaking and, as appropriate, establish a schedule for states to submit SIPs addressing those outstanding portions of the SIP Call budgets.

*Comment:* A commenter believes that it is unnecessary to force states to rely upon the level of NO<sub>x</sub> reductions anticipated from the NO<sub>x</sub> SIP Call to achieve their attainment goals if more recent modeling and monitoring data show that sufficient reductions can be attained by other less stringent means.

*Response:* EPA's modeling to determine the region-wide impacts of the NO<sub>x</sub> SIP call clearly shows regional transport of ozone and its precursors is impacting nonattainment areas several states away and NO<sub>x</sub> control benefits for lowered downwind ozone concentrations are not limited to nearby nonattainment areas. Reductions in ozone transport associated with the collective application of the NO<sub>x</sub> emission budgets in upwind States are expected to provide substantial benefits in downwind areas, 63 FR 57447. The purpose of the NO<sub>x</sub> SIP Call was to address long range ozone transport. EPA

has not mandated that any State rely on NO<sub>x</sub> emissions from the NO<sub>x</sub> SIP call as part of their attainment demonstration. However, a decision by a State not to rely on these reductions for purposes of attainment does not alleviate that State's burden to reduce NO<sub>x</sub> emissions to benefit downwind nonattainment areas in other States.

*Comment:* A commenter urges EPA not to include language in the rulemaking that will hinder the LADCO states efforts to achieve their goals. These states are continuing to evaluate both the level and type of controls in their respective states to solve the 1-hour ozone problem and the longer range ozone transport issue.

*Response:* This final approval approves rules and modeling which the State has chosen to address the 1-hour ozone problem. This final rule, in no way, hinders the LADCO States from considering additional emission controls to further lower local ozone concentrations and to further reduce the transport of ozone downwind.

Note that this comment was made relative to our December 16, 1999 proposed rule. This proposed rule was essentially replaced by the August 3, 2001 proposed rule, and, subsequent to the publication of the December 16, 1999 proposed rule, Indiana has completed its ozone nonattainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area and has adopted the NO<sub>x</sub> emission control rules required by EPA's NO<sub>x</sub> SIP Call to reduce the downwind transport of ozone.

*Comment:* The commenter supports the efforts of the EPA to help bring the Chicago-Gary-Lake County nonattainment area into compliance with the 1-hour ozone NAAQS and applauds the efforts of the LADCO states to cooperatively address this regional problem.

*Response:* The EPA appreciates the support of the commenter and agrees that LADCO has done an excellent job of selecting and evaluating ozone attainment strategies.

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

*Response:* We have completed our review of the adequacy of these SIPs, and we have found the motor vehicle emissions budgets in all of these SIPs to be adequate. We responded to all comments related to adequacy when we issued our adequacy findings, and therefore we are not listing the individual comments or responding to

them here. You may access our findings of adequacy and responses to comments at [www.epa.gov/otaq/traq](http://www.epa.gov/otaq/traq) (once there, click on the "conformity" button). EPA regional contacts are identified on the web site.

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

*Response:* The Phase II attainment demonstrations that rely on Tier 2 emission reduction credit contain commitments to revise the motor vehicle emissions budgets after MOBILE6 is released. As noted elsewhere in this final rule, Indiana has committed to revising the motor vehicle emission budgets within two years after EPA releases the MOBILE6 emission factor model.

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

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

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

*Response:* EPA agrees. The motor vehicle emissions budgets in the Indiana ozone attainment demonstration reflect the motor vehicle control measures in the attainment demonstration.

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

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

*Comment:* If a state fails to follow through on its commitment to submit the revised motor vehicle emissions

budgets using MOBILE6, EPA could find a failure to submit a portion of a SIP, which would trigger a sanctions clock under section 179.

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

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

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

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

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

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

*Response:* This comment is not germane to this rulemaking, since the

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

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

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

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

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

## V. Final Rulemaking Action

In this rulemaking action, we are fully approving Indiana's 1-hour ozone attainment demonstration SIP submitted on December 21, 1999, as meeting the requirements of sections 182(c)(2) and (d) of the CAA. Specifically, we are approving the following elements of the SIP: 1) the modeled attainment demonstration, 2) a post-1999 ozone ROP plan with associated ROP motor vehicle emissions budgets, 3) a revision to the NO<sub>x</sub> waiver, 4) contingency measure plans for both the ozone attainment demonstration and the post-1999 ROP plan, 5) the motor vehicle

emissions budgets for the 2007 attainment year, until such time that a revised budget is submitted and found adequate for conformity purposes as called for by the state in its commitment to recalculate and apply a revised budget for conformity within two years of the formal release of MOBILE6, 6) the RACM analysis, 7) the commitment to conduct a mid-course review of the attainment status of the Lake Michigan area, and 8) an agreed order between U.S. Steel (currently USX Corporation) and the IDEM signed by IDEM on March 22, 1996, which requires U.S. Steel to establish a coke plant process water treatment plant at its Gary Works. Today's action finalizes approval of Indiana's 1-hour ozone attainment demonstration SIP revision.

## VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal Government and Indian tribes, or on the distribution of power and responsibilities between the federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a

federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

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

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

This rule will be effective December 13, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by January 14, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen Oxides, Ozone, Volatile Organic Compounds.

Dated: October 15, 2001.

**David A. Ullrich,**

*Deputy Regional Administrator, Region 5.*

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

**PART 52—[AMENDED]**

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

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

**Subpart P—Indiana**

2. Section 52.770 is amended by adding paragraph (c)(145) to read as follows:

**§ 52.770 Identification of Plan.**

\* \* \* \* \*

(c) \* \* \*

(145) Indiana submitted on December 17, 1997, as part of the 9% Rate of Progress Plan, an agreed order between U.S. Steel and the Indiana Department of Environmental Management. Section 3 of Exhibit E requires U.S. Steel to establish a coke plant process water treatment plant at its Gary Works.

(i) Incorporation by Reference.

(A) Section 3 of Exhibit E of the March 22, 1996, Agreed Order between U.S. Steel (currently USX Corporation) and the Indiana Department of Environmental Management.

3. Section 52.777 is amended by adding paragraph (y) to read as follows:

**§ 52.777 Control strategy: photochemical oxidants (hydrocarbons).**

\* \* \* \* \*

(y) Lake and Porter Counties Attainment Demonstration Approval— On December 21, 2000, Indiana submitted a 1-hour ozone attainment demonstration plan as a requested revision to the Indiana State

Implementation Plan. This approval includes: A modeled demonstration of attainment, a plan to reduce ozone precursor emissions by 3 percent per year from 2000 to 2007, and associated conformity budgets for 2002 and 2005, a revision to the NO<sub>x</sub> waiver, a contingency measures plan for both the ozone attainment demonstration and the post-1999 ROP plan, the conformity budgets for the 2007 attainment year, until such time that revised budgets are submitted and found adequate for conformity purposes as called for by the state in its commitment to recalculate and apply a revised budget for conformity within two years of the formal release of MOBILE6, the RACM analysis, the commitment to conduct a mid-course review of the attainment status of the Lake Michigan area, and an agreed order between U.S. Steel (currently USX Corporation) and the IDEM signed by IDEM on March 22, 1996, which requires U.S. Steel to establish a coke plant process water treatment plant at its Gary Works. Today's action finalizes approval of Indiana's 1-hour ozone attainment demonstration SIP revision.

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