

measures necessary to achieve those reductions. Another component of the attainment demonstration SIP is a motor vehicle emissions budgets for transportation conformity purposes. Transportation conformity is a process for ensuring that the effects of emissions associated with new or improved federally-funded roadways and transit are considered before they are Federally funded or approved. As described in section 176(c)(2)(A) of the CAA, attainment demonstrations necessarily include the estimates of motor vehicle emissions that are consistent with attainment, which then act as a budget or ceiling for the purposes of determining whether federally-supported transportation plans, transportation implementation programs, and projects conform to the attainment demonstration SIP.

II. Background and Current Air Quality Status of the Rhode Island Ozone Nonattainment Area

The Rhode Island ozone nonattainment area is a state wide area. Historically and throughout most of the 1990's, ozone monitors throughout the Rhode Island nonattainment area violated the one-hour ozone standard. Directly downwind of the Rhode Island nonattainment area, there were also a number of other nonattainment areas violating the one-hour ozone standard during the 1990's in Massachusetts, New Hampshire, and in portions of southern Maine.

On June 9, 1999, EPA determined that the Rhode Island serious ozone nonattainment area had attained the 1-hour ozone standard (64 FR 30911).² This determination was based on data collected from 1996–1998. On June 9, 1999, EPA also determined that the Eastern Massachusetts area, the Portsmouth-Dover-Rochester, New Hampshire ozone nonattainment area, and the Portland, Maine ozone nonattainment area had also attained the 1-hour ozone standard based on data collected from 1996–1998. See 64 FR 30911. At the time of these determinations of attainment, there were no areas in any portion of Rhode Island, Eastern Massachusetts, New Hampshire or Maine that violated the one-hour ozone standard.

The Rhode Island nonattainment area continued to have air quality meeting

the one-hour ozone standard in 1999 (based on data from 1997–1999) and in 2000 (based on data from 1998–2000). Based on data collected in 1999–2001, however, the Rhode Island area now has air quality violating the one-hour ozone standard. The violating monitors, based on 1999–2001 ozone data, are in West Greenwich, East Providence, and Narragansett, Rhode Island. Ozone data readings from the monitors for the area from the summer of 2002 now show only the West Greenwich and East Providence monitors registering a violation of the one-hour ozone NAAQS for the three-year period 2000–2002.

III. History and Time Frame for the State's Attainment Demonstration SIP

A. Ozone Transport Assessment Group and the NO_x SIP Call

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

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by states but noting the remaining difficulties in making attainment demonstration SIP submittals.³ Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the states in the eastern half of the country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG)⁴ and provided for the states to submit the attainment demonstration SIPs based on the expected time frames for OTAG to complete its evaluation of ozone transport.

In June 1997, OTAG concluded and provided EPA with recommendations regarding ozone transport. The OTAG generally concluded that transport of ozone and the precursor NO_x is

significant and should be reduced regionally to enable states in the eastern half of the country to attain the ozone NAAQS.

In recognition of the length of the OTAG process, in a December 29, 1997 memorandum, Richard Wilson, EPA's then Acting Assistant Administrator for Air and Radiation, provided until April 1998 for states to submit the following elements of their attainment demonstration SIPs for serious and severe nonattainment areas: (1) Evidence that the applicable control measures in subpart 2 of part D of title I of the CAA were adopted and implemented or were on an expeditious course to being adopted and implemented; (2) a list of measures needed to meet the remaining rate-of-progress (ROP) emissions reduction requirement and to reach attainment; (3) for severe areas only, a commitment to adopt and submit target calculations for post-1999 ROP and the control measures necessary for attainment and ROP plans through the attainment year by the end of 2000; (4) a commitment to implement the SIP control programs in a timely manner and to meet ROP emissions reductions and attainment; and (5) evidence of a public hearing on the state submittal.⁵ This submission is sometimes referred to as the Phase 2 submission. Motor vehicle emissions budgets can be established based on a commitment to adopt the measures needed for attainment and identification of the measures needed. Thus, state submissions due in April 1998 under the Wilson policy should have included motor vehicle emissions budgets.

Building upon the OTAG recommendations and technical analyses, in November 1997, EPA proposed action addressing the ozone transport problem. In its proposal, EPA found that current SIPs in 22 states and the District of Columbia (23 jurisdictions) were insufficient to provide for attainment and maintenance of the one-hour ozone standard because they did not regulate NO_x emissions that significantly contribute to ozone transport. 62 FR 60318 (November 7, 1997). The EPA finalized that rule in September 1998, calling on the 23 jurisdictions to revise their SIPs to require NO_x emissions reductions within the state to a level consistent with a NO_x emissions budget identified in the final rule. 63 FR 57356 (October 27, 1998). This final rule is commonly referred to as the NO_x SIP Call.

² In that notice, EPA also determined the one-hour ozone standard no longer applied to the Rhode Island area. Subsequently, due to continued litigation regarding the 8-hour ozone standard, EPA reinstated the applicability of the one-hour ozone standard in all areas. See 65 FR 45182 (July 20, 2000). EPA, however, did not modify its determination that the Rhode Island area had attained the one-hour ozone standard.

³ Memorandum, "Ozone Attainment Demonstrations," issued March 2, 1995. A copy of the memorandum may be found on EPA's Web site at <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

⁴ Letter from Mary A. Gade, Director, State of Illinois Environmental Protection Agency to Environmental Council of States (ECOS) Members, dated April 13, 1995.

⁵ Memorandum, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM 10 NAAQS," issued December 29, 1997. A copy of this memorandum may be found on EPA's Web site at <http://www.epa.gov/ttn/oarpg/t1pgm.html>.