

### *B. NO<sub>x</sub> Reductions Consistent With the Modeling Demonstration*

On October 27, 1998, EPA completed rulemaking on the NO<sub>x</sub> SIP call which required states to address transport of NO<sub>x</sub> and ozone to other states. To address transport, the NO<sub>x</sub> SIP call established emissions budgets for NO<sub>x</sub> that 23 jurisdictions were required to show they would meet by 2007 through enforceable SIP measures adopted and submitted by September 30, 1999. The NO<sub>x</sub> SIP call is intended to reduce emissions in upwind states that significantly contribute to nonattainment problems. The EPA did not identify specific sources that the states must regulate nor did EPA limit the states' choices regarding where to achieve the emission reductions. The courts have largely upheld EPA's NO<sub>x</sub> SIP Call, *Michigan v. United States Env. Prot. Agency*, 213 F.3d 663 (D.C. Cir. 2000), cert. denied, U.S., 121 S.Ct. 1225, 149 L.Ed. 135 (2001); *Appalachian Power v. EPA*, 251 F.3d 1026 (D.C. Cir. 2001). Although a few issues were vacated or remanded to EPA for further consideration, states subject to the NO<sub>x</sub> SIP call have largely adopted the controls necessary to meet the budgets set for them under the NO<sub>x</sub> SIP call rule. The controls to achieve these reductions should be in place by May 2004.

Rhode Island used the best available NO<sub>x</sub> SIP Call information in its modeling analysis. The modeling analysis is discussed in more detail below. Furthermore, Rhode Island adopted control measures to meet the requirements of the NO<sub>x</sub> SIP call. EPA approved the regulation Rhode Island adopted pursuant to the NO<sub>x</sub> SIP call on December 27, 2000 (65 FR 81748).

### *C. Motor Vehicle Emissions Budgets (MVEBs)*

The EPA believes that attainment demonstration SIPs must necessarily estimate the level of motor vehicle emissions, which when considered with emissions from all other sources (stationary, area and other mobile source), is consistent with attainment. The estimate of motor vehicle emissions is used to determine the conformity of transportation plans and programs to the SIP, as described by CAA section 176(c)(2)(A). For transportation conformity purposes, the estimate of motor vehicle emissions is known as the motor vehicle emissions budget. The EPA believes that appropriately identified motor vehicle emissions budgets are a necessary part of an attainment demonstration SIP. A SIP cannot effectively demonstrate

attainment unless it identifies the level of motor vehicle emissions that can be produced while still demonstrating attainment. See section VII.I. below for the discussion of the motor vehicle emissions budgets included in the Rhode Island attainment demonstration.

### *D. Mid-Course Review*

A mid-course review (MCR), which generally is performed midway between approval of the attainment demonstration and the attainment date, is a reassessment of modeling analyses and more recent monitored data to determine if a prescribed control strategy is resulting in emission reductions and air quality improvements needed to attain the ambient air quality standard for ozone as expeditiously as practicable. See section VII.G. below for additional discussion on Rhode Island's mid-course review.

### *E. Reasonably Available Control Measures (RACM) Analysis*

Section 172(c)(1) of the CAA requires SIPs to contain all RACM and provide for attainment as expeditiously as practicable. EPA has previously provided guidance interpreting the requirements of 172(c)(1). See 57 FR 13498, 13560. In that guidance, EPA indicated its interpretation that potentially available measures that would not advance the attainment date for an area would not be considered RACM. EPA also indicated in that guidance that states should consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date. Further, states should indicate in their SIP submittals whether measures considered were reasonably available or not, and if measures are reasonably available they must be adopted as RACM. Finally, EPA indicated that states could reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, would be economically or technologically infeasible, or would otherwise be inappropriate for local reasons, including costs. The EPA also issued a memorandum re-confirming the principles in the earlier guidance, entitled, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas." John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. Web

site: <http://www.epa.gov/ttn/oarpg/t1pgm.html>.

When EPA presented its statutory argument in support of its RACM policy to the U.S. Court of Appeals for the D.C. Circuit in defense of its approval of the Washington D.C. ozone SIP, the D.C. Circuit found reasonable EPA's interpretation that measures must advance attainment to be RACM. *Sierra Club v. EPA*, 294 F.3d 155, 162 (D.C. Cir. 2002). Specifically, the Court found that:

EPA reasonably concluded that because the Act 'use[s] the same terminology in conjunction with the RACM requirement' as it does in requiring timely attainment, compare 42 U.S.C. 7502(c)(1) (requiring implementation of RACM 'as expeditiously as practicable but no later than' the applicable attainment deadline), with *id.* § 7511(a)(1) (requiring attainment under same constraints), the RACM requirement is to be understood as a means of meeting the deadline for attainment.

*Id.* Moreover, the D.C. Circuit rejected, as a "misreading of both text and context," Sierra Club's arguments that EPA's interpretation of RACM conflicts with the Act's text and purpose and lacks any rational basis. The D.C. Circuit also found reasonable EPA's interpretation that it could consider costs in a RACM analysis and that measures may be rejected if they would require an intensive and costly effort for regulation of many small sources. *Sierra Club v. EPA*, 294 F.3d at 162, 163. See section VII.H. below for additional discussion on Rhode Island's RACM analysis.

### **VI. What Are the Relevant Policy and Guidance Documents?**

This proposal has cited several policy and guidance memoranda. The documents and their location on EPA's web site are listed below; these documents will also be placed in the docket for this proposal action.

#### *Relevant Documents*

1. "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> (file name: "ADDWOE1H").

2. "Serious and Severe Ozone Nonattainment Areas: Information on Emissions, Control Measures Adopted or Planned and Other Available Control Measures." November 24, 1999. OAQPS. U.S. EPA, RTP, NC.

3. Memorandum, "Guidance on Motor Vehicle Emissions Budgets in One-Hour