

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[DC052-7007, MD143-3102, VA129-5065; FRL-7484-6]

**Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia; Post 1996 Rate-of-Progress Plans and One-Hour Ozone Attainment Demonstrations****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is conditionally approving the severe ozone nonattainment area State Implementation Plan (SIP) revision for the Metropolitan Washington severe ozone nonattainment area. This SIP revision includes the one-hour severe ozone attainment demonstration, the 1996-1999 portion of the severe area rate-of-progress (ROP) plan and transportation control measures for the Metropolitan Washington DC ozone nonattainment area (the Washington area) submitted by the District of Columbia's Department of Health (DoH), by the Maryland Department of the Environment (MDE) and by the Virginia Department of Environmental Quality (VADEQ). EPA is conditioning approval on commitments submitted by DoH, MDE and VADEQ to submit adopted control measures that qualify as contingency measures to be implemented for failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999 and adopted contingency measures that will be implemented should the area fail to attain by the November 15, 2005 severe ozone attainment deadline or fail to achieve any post-1996 three-percent year emissions reduction requirement. Approval is also conditioned on commitments that require the Washington area jurisdictions to submit a revised rate-of-progress plan that includes emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005, an updated attainment demonstration that reflects revised MOBILE6-based motor vehicle emissions budgets, a revised analysis of reasonably available control measures (RACM) and to revise the attainment demonstration as necessary to reflect the revised budgets and RACM analysis. Approval is also conditioned on the Washington area jurisdictions submitting a SIP revision that meets all

of the requirements of a severe area SIP including, but not limited to lower major stationary source thresholds, revised offset ratios, any required transportation control strategies and a fee requirement for major sources should the area fail to attain by 2005.

**EFFECTIVE DATE:** This final rule is effective on May 19, 2003.**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.**FOR FURTHER INFORMATION CONTACT:** Christopher Cripps, (215) 814-2179, or by e-mail at [cripps.christopher@epa.gov](mailto:cripps.christopher@epa.gov).**SUPPLEMENTARY INFORMATION:** The use of "we," "us," or "our" in this document refers to EPA.

This **SUPPLEMENTARY INFORMATION** section is organized to address the following questions:

- I. What Action Is EPA Taking Today?
- II. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemakings for the 1996-1999 ROP Plan and Attainment Demonstration?
- III. What Comments Were Received on the Proposed Conditional Approvals and How Has EPA Responded to them?
- IV. Applicability of Revised Motor Vehicle Emissions Budgets
- V. Final Action
- VI. Statutory and Executive Order Reviews

**I. What Action Is EPA Taking Today?**

EPA is taking a final action to conditionally approve the Washington area severe ozone nonattainment SIP. This SIP revision includes previously submitted attainment demonstration and 1996-1999 ROP plan SIPs and contingency measures that now apply to the Washington area as a severe area ozone nonattainment area. EPA is issuing a final conditional approval on the basis that the Washington area jurisdictions must revise and submit a severe area SIP that is consistent with the principle that attainment must be achieved as expeditiously as possible but no later than the severe ozone area attainment deadline of November 15, 2005 and that the previously submitted attainment demonstration and ROP SIPs must include contingency measures,

RACM, motor vehicle emissions budgets that are consistent with a severe attainment deadline and all of the remaining severe ozone nonattainment area requirements. On February 3, 2003 (68 FR 5246), EPA proposed to conditionally approve these SIP revisions as a severe area attainment demonstration and only the 1996-1999 portion of the Washington area's ROP obligation in accordance with section 110(k)(4) of the Clean Air Act (CAA), on the basis of commitments from DoH, MDE and VADEQ to remedy these certain limited inadequacies. EPA has since determined that the severe ozone nonattainment requirements in their entirety are inseparable from the overall Washington Area attainment demonstration. EPA is therefore authorized to conditionally approve the attainment demonstration as a whole based on commitments submitted on April 7 and 8, 2003, from Maryland, the District and Virginia, respectively, to submit measures to complete the severe area requirements to revise the previously submitted SIPs listed in Tables 1 and 2 of this notice to be consistent with and to include all of the section 182(d) requirements of a severe ozone nonattainment area SIP. The specific commitments submitted by the Washington area jurisdictions are to:

(A) Revise the 1996-1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(B) Revise the severe area ROP to provide emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(C) Revise the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(D) Revise the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(E) Update the Washington area severe attainment demonstration to

reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(F) Revise the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(G) Revise the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(H) Revise the major stationary source threshold to 25 tons per year.

(I) Revise Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

(J) Revise new source review offset requirements to require an offset ratio of at least 1.3 to 1.

(K) Submit as part of the SIP a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) should the area fail to attain by November 15, 2005.

(L) Submit as part of the SIP a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the ROP requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

Details on EPA's analysis of the previously submitted SIP revisions and their adequacy with respect to the requirements of a severe ozone nonattainment area are explained in detail in the proposal notice and will not be restated here.

Under the CAA, EPA is required to approve or disapprove a State's

submission no later than 12 months after the submission is determined or deemed complete. On November 13, 2002, the Sierra Club filed a complaint in the United States District Court for the District of Columbia (District Court) against the EPA (*Sierra Club v. Whitman*, No. 1:02CV02235(JR)) claiming, among other things, that the EPA had not issued a final action on several SIP revisions (those listed in Tables 1 and 2 of this document) submitted by the District, Maryland and Virginia for the Washington area. On December 18, 2002, the District Court issued an order directing the EPA to publish, by February 3, 2003, a notice of proposed rulemaking on these SIP revisions and to publish by April 17, 2003, a final rule on these SIP revisions. This final rulemaking action complies with the Court's Order to publish a final action on these SIP revisions by April 17, 2003.

Tables 1 and 2 identify the submittal and amendment dates for the ROP plans and attainment demonstrations for which EPA is taking final action to conditionally approve.

TABLE 1.—1996–1999 ROP PLANS

	DC	MD	VA
Initial submittal dates .....	November 10, 1997 .....	December 24, 1997 .....	December 19, 1997.
Amendment dates .....	May 25, 1999 .....	May 20, 1999 .....	May 25, 1999.

TABLE 2.—ATTAINMENT DEMONSTRATIONS

	DC	MD	VA
Initial submittal dates .....	April 24, 1998 .....	April 29, 1998 .....	April 29, 1998.
Amendment dates .....	October 27, 1998 .....	August 17, 1998 .....	August 18, 1998.
Supplemental dates .....	February 16, 2000 .....	February 14, 2000 (MD SIP No. 00–01).	February 9, 2000.
Supplemental dates .....	March 22, 2000 .....	March 31, 2000 (MD SIP No. 00–02).	March 31, 2000.

**II. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemakings for the 1996–1999 ROP Plan and Attainment Demonstration?**

Under section 110(k)(4) of the CAA, the EPA “may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.” In the Notice of Proposed Rulemaking published on February 3, 2003 (68 FR 5246), EPA proposed to conditionally approve the Washington

area severe attainment demonstration and 1996–1999 portion of the ROP plan on the basis that the Washington area jurisdictions had committed to submit to EPA by April 17, 2004 revised SIPs that meet the following conditions.

(A) Revise the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(B) Revise the Washington area severe attainment demonstration to include a

contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(C) Update the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(D) Revise the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(E) Revise the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration adopted control measures as necessitated by such analysis.

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

In EPA's Notice of Proposed Rulemaking published on February 3, 2003 (68 FR 5246) EPA proposed conditional approval of the Washington area's severe area attainment demonstration and the 1996–1999 portion of the severe area ROP obligation. EPA also proposed disapproval in the alternative to preserve the court-ordered schedule to issue a final rule by April 17, 2003 in the event that EPA could not issue a final conditional approval with respect to either or both the attainment demonstration and 1996–1999 ROP plan. EPA received comments from the Virginia Department of Transportation on March 5, 2003 supporting EPA's proposed conditional approval. These comments will not be addressed here. On March 5, 2003 EPA also received comments from the Sierra Club. The Sierra Club's March 5 comments specifically incorporate by reference comments submitted by the Sierra Club and others on February 14, 2000, October 30, 2000, November 15, 2000, November 20, 2000, September 9, 2002, and December 13, 2002.

To the extent that the previously submitted comments are germane to the current action, EPA generally incorporates by reference its prior responses to those comments published at 66 FR 586, January 3, 2001, and 68 FR 5246, February 3, 2003. We respond with particularity to many of the previously submitted comments (1) to the extent that events occurring after publication of EPA's prior responses require that our prior responses be updated and revised or (2) to the extent that we feel that consolidating prior responses helps create a more comprehensive record for the current rulemaking. The following discussion summarizes and responds to particular comments.

#### A. Comments in the March 5, 2003

##### 1. Conditional Approval

*Comment:* The commenter argues that EPA cannot conditionally approve the Washington area SIPs for various reasons. First, the commenter alleges that even EPA concedes that it cannot fully approve the SIPs based on various defects noted by the D.C. Circuit court in *Sierra Club v. Whitman*, 294 F.3d 155, 163 (D.C. Cir. 2002), therefore, EPA cannot conditionally approve the SIPs. The commenter further alleges that conditional approval cannot be used to circumvent or postpone statutory deadlines, and that conditional approval will prevent the Washington area from attaining the ozone standard as expeditiously as possible, prevent achievement of Post-1999 ROP and prevent timely implementation of contingency measures in the event the area fails to achieve timely rate-of-progress or attainment. The commenter also asserts that conditional approval cannot be used when a state has failed to submit a relevant substantive SIP component at all; that the SIP components at issue were due on November 15, 1994; that the States' commitments do not identify "specific enforceable measures" to be adopted by a date certain; that the commitments are to fix major components not minor details; that conditional approval is not allowable here because EPA has already allowed the States to defer submission of various required SIP components for more than one year; and finally, that all of the defects the commenter has identified means any conditional approval would violate section 110(l) of the Act.

*Response:* The commenter misconstrues the conditional approval mechanism. Conditional approval under section 110(k)(4) is quite different from full approval under section 110(k)(3) of the Act, which the Court of Appeals considered in *Sierra Club*. Conditional approval is a statutory technique that allows EPA to give a limited form of approval to SIPs that do not meet all of the standards for full approval, but where a substantive SIP also includes commitments made by the states to remedy limited, identified deficiencies through the adoption of specific enforceable measures by a date certain. 42 U.S.C. 7410(k)(4). Here, the States have committed to undertake various analyses and ultimately adopt specific enforceable measures as appropriate to remedy the deficiencies in the currently submitted SIP revisions. Based on the fact that the SIP contains most of the substantive components for the required plans as well as commitments to correct

limited deficiencies, which EPA received after the court ruling, the statute provides for EPA to conditionally approve the SIPs even though the court found that EPA could not fully approve them. The Court of Appeals did not address whether EPA could conditionally approve the SIPs as the issue of conditional approval was not before the court and the States had not made appropriate commitments at the time of the court ruling.

With respect to the assertion that EPA cannot use the conditional approval mechanism to allow areas to avoid a statutory deadline, and the complaint about SIP submittal deadlines that have long passed, EPA is dealing in this case with a SIP that was submitted by the States, reviewed by EPA and approved by EPA in January 2001 through notice-and-comment rulemaking. EPA's approval was then vacated by the Court of Appeals on July 2, 2002, after judicial review. Whatever the merits of any argument about delays that occurred previously, EPA must now take action on the SIPs under court order based on the submittal before the agency. That submittal consists of the previously submitted SIP and the recently submitted commitments by the States to conduct the appropriate analyses and submit any necessary measures to rectify certain limited defects in the SIPs. EPA believes it is appropriate to conditionally approve the SIPs that the States have recently committed to revise to satisfy deficiencies which were the basis for vacatur by the Court of Appeals. The States could not have been expected to remedy these deficiencies previously as EPA had in fact approved the SIPs without noting any such deficiencies prior to the court ruling. The States have now committed to revise the SIPs on an expeditious schedule that is no later than one year following EPA's final action. Furthermore, EPA notes that there is nothing in the statute that limits the use of conditional approval to SIP revisions that are submitted by the statutory due date. Nor does the statute link the period for conditional approval to the time by which the SIP was due. Finally, EPA has never before conditionally approved these SIPs nor have the States previously made commitments to submit all of these portions of the attainment demonstration within a year. For these reasons, EPA believes it is reasonable to use this tool in this case.

The commenter further claims that a conditional approval will delay timely attainment. However, the commitments are to submit any necessary additional measures by April 2004 while the attainment date for the area is not until

November 2005, so all deficiencies will be cured at least 18 months prior to the attainment date and will therefore not delay timely attainment because the States will need to ensure any necessary emission controls are in place by the beginning of the 2005 ozone season. One year should provide sufficient time to implement any necessary controls. To the extent the commenter addresses alleged deficiencies in the 2005 attainment date itself, these comments will be addressed in section III.A.2. of this document responding to comments on the attainment demonstration.

The commenter next claims that EPA cannot use the conditional approval mechanism where states have failed to submit a substantive SIP component at all, alleging that in this case various parts of the attainment demonstration, such as ROP plans, contingency measures and RACM, constitute separate SIP components. EPA had indeed argued in *Sierra Club, supra*, that these were separate SIP requirements and for that reason the attainment demonstration should have been upheld without them. However, the Court of Appeals agreed with the contrary argument, which was actually made by the commenter, and held that ROP plans, RACM and contingency measures are actually parts of the overall Washington Area attainment demonstration and must be included within it. See *Sierra Club v. Whitman*, 285 F.3d at 163–64 (D.C. Cir. 2002). The attainment demonstration includes many components in addition to these. The attainment demonstration already demonstrates attainment no later than November 15, 2005, based on photochemical grid modeling and a suite of adopted and SIP approved control measures that reduce local emissions down to the allowable levels established by the photochemical grid modeling. A list of these control measures can be found in the notice of proposed rulemaking for this action. See 68 FR at 5252–5253 and at 5255–5256, February 4, 2003. Given that these items to which the States have committed are a part of the overall Washington area attainment demonstration rather than separate SIP components, EPA concludes that it is authorized to conditionally approve an attainment demonstration that contains commitments to submit limited components of the attainment demonstration.

The commenter then argues that these elements of the attainment demonstration are so significant that the SIPs cannot be conditionally approved without them. However, the primary portions of the attainment

demonstration are the adopted control measures themselves coupled with the modeling demonstration showing that implementation of these measures will result in attainment by the requisite date. The RACM analysis merely analyzes potential additional measures to determine whether any could advance the attainment date; the post-1999 ROP analysis addresses interim progress prior to the attainment date; and the contingency measures address measures to be implemented in the event rate-of-progress or attainment is not timely achieved. Although all of these elements are important portions of the overall attainment demonstration SIP, EPA does not believe that any of them amount to such a significant portion of the attainment demonstration that the demonstration cannot be conditionally approved based on the States commitment to complete the additional analyses along with adoption of any necessary additional measures in the short term. EPA addresses the commenters specific concerns about the substance of these three SIP portions elsewhere in responding to comments regarding the individual elements of the attainment demonstration.

Further, the commenter alleges that conditional approval is inappropriate in this case because the States have purportedly not made commitments to adopt specific enforceable measures as required by section 110(k)(4). In contrast, EPA believes that the commitments submitted by the States do indeed commit the States to ultimately adopt specific enforceable measures if such measures are determined to be needed based on further analysis. The commitment letters specifically state that the States will submit adopted contingency measures requisite to satisfy the contingency measure requirements for various circumstances relating to ROP and attainment. The States further commit not only to conduct the various RACM and mobile modeling analyses, but also to revise the attainment demonstration itself as appropriate in light of these analyses. EPA believes that there can be no interpretation of these commitment letters other than a conclusion that the States have committed to submit specific enforceable measures to support the revised attainment demonstration if necessary. However, since the States have submitted additional commitment letters for various reasons described elsewhere in this document, the States have clarified in those letters their intent to submit specific measures in support of the demonstrations, if

appropriate. It is true that the States have not yet identified the specific measures that could ultimately be adopted, however it would be impossible for them to do so in advance of conducting the requisite RACM and modeling analyses.

The commenter argues that contingency measures should not be the subject of a conditional approval in DC because it is likely that by the summer of 2003 it could be determined that the DC area will fail to attain in 2004 and the contingency measures would then be triggered. However, contingency measures are not required to be implemented under the Act until an area fails to attain by the applicable attainment date. (CAA section 172(c)(a)). The statute does not require implementation of contingency measures prior to the attainment date based on a projection that the area will not attain when the attainment date is reached. Given that the States have committed to submit all necessary contingency measures by April 2004, any needed contingency measures would be available for implementation should EPA make a determination by May 15, 2006 under section 181(b)(2) of the Act that the area failed to attain by November 15, 2005.

We also disagree with the commenters' allegation in comments previously submitted on September 9, 2002 that the motor vehicle emissions budgets (MVEBs) in the attainment demonstration do not reflect the potential to lower the MVEB through transportation related control measures should the area fail to attain or to meet ROP requirements. With respect to those contingency measures that would be triggered by the failure to attain, the attainment year MVEB would never account for these contingency measures because such measures would never be triggered until after the attainment year. Should those contingency measures be triggered, it would be appropriate at that time for the state to revise the budgets to reflect implementation of such measures in future years, but this cannot be done in advance of implementation of the measures as it is unclear whether the measures would ever in fact be implemented.

Similarly, with respect to contingency measures triggered by the failure to meet ROP, the obligation to account for those contingency measures is not triggered until it has been determined that the area has failed to meet its ROP requirements. EPA is allowing the Washington area jurisdictions to demonstrate the first required post-1999 nine percent ROP (which was due under the statute by November 15, 2002), as

expeditiously as practicable, if control measures currently in the SIPs, or already promulgated by EPA, did not achieve the required nine percent reduction by November 15, 2002. (See 68 FR 3418). Therefore, the date for fulfilling the first post-1999 ROP requirement lies in the future, and the requirement to implement any needed contingency measures for failure to meet that ROP has not been, and may not ever be, triggered. This is true, too, for the 1999 ROP requirement. It has not yet been determined that the Washington area did, or did not, meet its 1999 ROP requirement and the requirement to implement contingency measures for failure to meet the 1999 ROP requirement has not yet been (and may not ever be) triggered. As with any contingency measures that would be implemented for a future failure to attain, because the obligation to implement contingency measures for failure to meet the post-1999 ROP requirements has not arisen, the area has no obligation to account for these measures in the attainment demonstration MVEB.

Finally, the commenter argues that all the defects it has asserted entail that any conditional approval would violate section 110(l) of the Act, which prohibits EPA from approving a SIP revision that would interfere with any applicable requirement of the Act. However, EPA has concluded that the submitted attainment demonstration, coupled with the commitments the States have made to remedy the deficiencies in their demonstrations, fully satisfy all of the applicable requirements of the Act requisite to support a conditional approval.

## 2. Attainment Demonstration

### a. RACM and Attainment as Exponentially as Practicable.

*Comment:* The commenter argues that the submitted SIPs do not provide for attainment as expeditiously as practicable, as required by the Act, because the States have not properly analyzed whether any additional RACMs could advance the 2005 attainment date.

*Response:* EPA acknowledges that the RACM analyses in the SIPs are not sufficient, as noted by the Court of Appeals in *Sierra Club, supra*. However, the attainment demonstration does provide for attainment by 2005, a date consistent with the outside statutory date for attainment for severe ozone nonattainment areas and one that is only two years away. EPA therefore concludes, in light of the States commitments to conduct a RACM analysis and submit any additional

measures determined to constitute RACM within a year, that it is appropriate to conditionally approve the attainment demonstration SIPs at this time. Should the RACM analyses determine that there are in fact potential RACM that could advance the attainment date, then EPA could approve an earlier attainment demonstration including such measures. However, in advance of completion of such RACM analyses EPA believes on the basis of the attainment demonstration before it that the SIP does demonstrate attainment as expeditiously as practicable. This preliminary conclusion is neither arbitrary nor capricious given the short period of time until the attainment date. Although no final conclusions can be reached until the RACM analyses are completed, given the time necessary for implementation of measures EPA believes it is unlikely that sufficient measures could be adopted and implemented to allow the Washington area to reach attainment by the 2004 ozone season. Specifically, the state process for developing control requirements in the form of SIP revisions, providing a public hearing, and adopting SIP revisions, typically takes at least a full year. In addition, the state typically allows a period of at least a year, often longer, for sources to implement required controls. Even if these process were significantly accelerated, it is highly unlikely that controls would be implemented by the start of the 2004 ozone season.

### b. Demonstration of Attainment by 2005.

*Comment:* We received comments declaring that the attainment demonstration, and EPA's analysis of it, look only at ozone levels in 2005, not 2003 and 2004. The comments assert that to demonstrate attainment by November 15, 2005, the demonstration of attainment must show that no monitor in the nonattainment area will have an average of more than 1.0 expected exceedance per year for the period 2003–2005 but that the demonstration does not address the entire period. The comments cite § 50.9 of 40 CFR part 50.

*Response:* EPA disagrees with the comment. While EPA does agree that § 50.9 of 40 CFR part 50 establishes the form of the 1-hour ozone standard in terms an annual average number of expected exceedances, EPA's guidance for conducting an attainment demonstration are a reasonable interpretation of the requirements for an attainment demonstration required under section 182(c) of the CAA in light of the form of the ozone NAAQS.

Air quality models do not know what year is being modeled, only the emissions levels and the meteorology. The meteorology component would be the same for any year because historical weather episodes are modeled.

Under EPA's modeling guidance the States are required to model severe episodes corresponding to those weather conditions thought to generate high levels of ground level ozone. In contrast, all monitored exceedances count towards a determination of whether all monitors are actually meeting the standard under the standard set in 40 CFR 50.9 and appendix H to 40 CFR part 50. A monitored value of 0.125 ppm counts as one exceedance to the same extent as a value of 0.150 ppm. Modeling demonstrating that the most severe episodes will yield few or no exceedances will be consistent with elimination of exceedances on less severe weather days.

As EPA stated in the technical support for this rule, the modeling demonstration considered severe episodes: the ozone forming potential rank is very high for one day—July 20, 1991. This is the thirteenth most severe day out of approximately the last 50 years, one that is likely to recur only once every 4 to 5 years on average. This type of day is not likely to occur often enough to be a major causative factor for nonattainment, especially since the emission controls modeled in this plan should eliminate ozone exceedances for all but the most meteorologically severe days.

EPA has concluded that the modeling analysis allows anthropogenic emissions in the Washington area of 360 tons per day of VOC and 538 tons per day of NO<sub>x</sub>.

To reduce future year emissions to levels consistent with the modeling demonstration, the attainment demonstration has to provide for enough emission reductions net of growth to reduce emissions down to the levels allowed by the attainment modeling demonstration. Therefore, the attainment demonstration has to provide for emission reductions to accomplish two purposes: first, the plan has to offset growth in emissions due to increases in emissions-related activity to reduce emissions to the base year levels; and, second, the plan has to produce sufficient additional reductions beyond that needed to offset post-1990 growth to reduce emissions to the levels allowed by the attainment modeling demonstration.

When viewed from this perspective, the Post-1996 ROP plan for the 1999 milestone (hereafter "the 1996–1999 ROP plan") had to achieve reductions

net of growth of 128.3 tons per day of VOC and 116.2 tons per day of NO<sub>x</sub> to make the ROP targets. The plan actually achieved creditable reductions net of growth of 143.7 tons per day VOC and 123.0 tons per day NO<sub>x</sub>. The demonstration of ROP for the 1999 milestone year in Post-1996 plan clearly did not rely upon controls beyond reasonably available control technology (RACT) at large NO<sub>x</sub> sources. Even though the potential benefits of beyond-RACT controls were calculated, the 1996–1999 ROP plan did not rely upon those controls and did not rely upon Phase II of the RFG program which was implemented in January 2000.

The attainment modeling considered the effects of the OTC Phase II NO<sub>x</sub> controls. The benefits for these controls would have been 93 tons per day in 1999. 70 tons per day of reduction were achieved from the District's and Maryland's Phase II NO<sub>x</sub> rules which were implemented commencing May 1, 2002.<sup>1</sup> Major further reductions will occur in 2003 from the implementation of the NO<sub>x</sub> SIP call rules in Maryland and Virginia and beyond RACT controls on the two major utility sources in Virginia.<sup>2</sup> Thus, by 2003, the local NO<sub>x</sub> emissions would be close to the levels required by the local area modeling.

The Phase II RFG program is projected to yield 23.5 tons per day of VOC reductions in 2005 versus a little less than 16 in 1999. Much of this additional benefit would have been achieved in calendar year 2000 when the second phase of the program was implemented to achieve the mandated additional VOC reductions over and above that required by the first phase.

The attainment plan requires reductions net of growth of 148.5 tons per day of VOC and 192.9 tons per day of NO<sub>x</sub> to reduce emissions to the levels allowed by the attainment modeling demonstration. These are 4.8 tons per day of VOC and 69.9 tons per day of NO<sub>x</sub> lower than the reductions credited to the Post-1996 for the 1999 milestone. The creditable emissions reductions net of growth by 2005 are 151.8 tons per day of VOC and 327.9 tons per day of NO<sub>x</sub>. The Post-1999 reductions are mainly used to offset growth in emissions after 1999 once the RFG and Phase II NO<sub>x</sub> rules are in place.

The Plan's local emissions levels are very close to that required under the local air quality modeling in 1999 once

the RFG and Phase II NO<sub>x</sub> rules are considered. Significant reductions in upwind NO<sub>x</sub> will not commence sooner than May 31, 2004, under the NO<sub>x</sub> SIP call and related federal requirements. EPA believes modeling a 2003 year case would merely show continued exceedances due to transport. For a 2004 year, EPA believes that the resources needed to develop the necessary inventories, process them for incorporation into the air quality model and to perform the actual air quality modeling would not add any value. The emissions levels would be expected to be essentially the same as for 2005 because the 2005 plan is projected to exceed the emission reduction requirements set by the modeling demonstration.

*c. The Ozone Standard.*

*Comment:* The commenter stated that EPA had based its proposed approval of the attainment demonstration on the assumption that the 1-hour ozone standard is 0.125 ppm, when the actual standard is 0.12 ppm.

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

Although the 1-hour NAAQS itself includes no discussion of specific data handling conventions, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard. EPA has clearly communicated the data handling conventions for the 1-hour ozone NAAQS in regulation and guidance documents. In the 1990 Amendments to the CAA, Congress expressly provided that "[e]ach regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this Act, as in effect before the date of the enactment of the Clean Air Act Amendments of 1990 shall remain in effect according to its terms \* \* \*". Thus, under the amended CAA, Congress expressly carried forth EPA interpretations set forth in guidance such as the guideline documents interpreting the NAAQS.

As early as 1977, two years before EPA promulgated the 1-hour ozone

NAAQS, EPA provided in guidance that the level of the standard dictates the number of significant figures to be used in determining whether the standard was exceeded (see "Guidelines for the Interpretation of Air Quality Standards," OAQPS No. 1.2–008, February 1977). In addition, the regulations governing the reporting of annual summary statistics from ambient monitoring stations for use by EPA in determining national air quality status clearly indicate the rounding convention to be used for 1-hour ozone data (40 CFR part 58, appendix F). In 1979, EPA issued additional guidance specific to ozone in which EPA provided that "the stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (.005 rounds up), and, therefore, 0.125 ppm is the lowest concentration value in excess of the level of the standard." See "Guideline for the Interpretation of Ozone Air Quality Standards," EPA–450/4–79–003, at p. 6. EPA's guidance on air quality modeling is consistent with those Guidelines. See, e.g., Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, July 1996.

*d. Modeled Demonstration of Attainment.*

*Comment 1:* The commenter alleges that photochemical grid modeling shows that the Washington area will not attain the ozone standard by the November 2005 attainment date and because the "weight of evidence" (WOE) analysis used by EPA to conclude that the Washington area has demonstrated attainment by November 2005 is not authorized by the Act or by EPA rules. The comments claim that the modeling demonstration and WOE used in the attainment demonstration for the Washington area do not meet requirements of section 182(c) of the CAA and EPA's own regulations for photochemical grid modeling and other analytical methods, that the WOE is an alternative method to photochemical grid modeling which has not been shown to be equally effective to the Urban Airshed Model (UAM), and that WOE is a proscribed rollback method. Also, the commenter claims the most recent modeling guidance is flawed because: it is allegedly a rollback technique; because it allegedly allows the averaging across 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 and, thus,

<sup>1</sup> These controls have been approved into the SIPs. See 65 FR 78416, December 15, 2000, and 65 FR 80783, December 22, 2000.

<sup>2</sup> These controls have been approved into the SIPs. See 66 FR 55099, November 1, 2001, and 66 FR 1866, January 10, 2001; and 65 FR 78100, December 14, 2000.

effectively lowers the total emission reduction needed to attain at the highest site; and because of alleged flaws in the techniques for determining the magnitude of additional emission reductions. The commenter therefore asserts that approval of the attainment demonstration would be arbitrary, capricious and contrary to law for reasons set forth in comments submitted on March 5, 2003, as well as those previously submitted to EPA on February 14, 2000. Such comments also included EPA's treatment of over-prediction of ozone levels by the photochemical grid model, EPA's treatment of modeled exceedances over the standard and EPA's treatment of the photochemical grid modeling results prediction of exceedances even over the levels allowed after a downward adjustment under EPA's alternative test. Finally, the commenter asserts that EPA failed to adequately explain certain adjustments made to the photochemical grid modeling for the Washington area.

*Response 1:*

*WOE is consistent with the CAA and EPA regulations.*

With respect to the allegation that the WOE analysis used by EPA is not authorized by the Act or EPA rules, EPA consistently has interpreted the CAA to allow for a weight-of-evidence analysis as an interpretive adjunct to the photochemical grid modeling used to show that the Washington area will attain the ozone standard in 2005. *See, e.g.*, 66 FR 634, January 3, 2001; 66 FR 666, January 3, 2001; 66 FR 54143, October 26, 2001; 66 FR 54577, October 29, 2001; 66 FR 54597, October 29, 2001; 66 FR 54666, October 30, 2001; 66 FR 56903, November 13, 2001; 66 FR 56931, November 13, 2001; 66 FR 56944, November 13, 2001; 66 FR 57159, November 14, 2001; 66 FR 63921, December 11, 2001; 67 FR 5151, February 4, 2002; 67 FR 5170, February 4, 2002; 67 FR 30574, May 7, 2002; 67 FR 61786, October 2, 2002; 67 FR 72576, December 6, 2002; and 67 FR 72574, December 6, 2002. Because WOE is an adjunct to photochemical grid modeling, not a separate analysis, the commenter's assertion that the modeling for the Washington area is not consistent with the CAA is a mis-statement.

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 databases and application in order to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment

demonstration "be based on photochemical grid modeling," because the modeling results constitute the principal component of EPA's analysis with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

This interpretation of the Act has been upheld by the Court of Appeals for the Fourth Circuit, which stated "EPA has long recognized that there are uncertainties inherent in available models and in estimating future emissions \* \* \*. EPA thus allows the use of supplemental analysis, including a "weight of evidence" analysis, to demonstrate attainment in cases where the modeling shows ozone levels exceeding the NAAQS." *1000 Friends of Maryland v. Browner*, 265 F.3d 216, 234 (4th Cir. 2001)(internal quotation omitted).

The flexibility granted to EPA under section 182(c)(2)(A) is also 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). The regulations further provide, "Where an air quality model specified in appendix W \* \* \* is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment \* \* \*." Appendix W, in turn, provides that, "The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas," but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR part 51, appendix W, section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991; however, EPA envisioned that 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 the use of the photochemical grid model, as well, or in conjunction, with additional analytical methods approved by EPA.

EPA's interpretation of the CAA is consistent with the statute's requirement that the attainment demonstration be "based on photochemical grid modeling." Giving the phrase "based on" its ordinary meaning, the statute requires only that an attainment demonstration "arise from" photochemical grid modeling, using the modeling as a "starting point" or "foundation." *See McDaniel v. Chevron Corp.*, 203 F.3d 1099, 1111 (9th Cir. 2000) (reviewing cases interpreting the phrase "based on"); *United States v. United Technologies Corp.*, 985 F.2d 1148, 1158 (2d Cir. 1993) ("based upon" does not mean "solely"). EPA's weight-of-evidence analysis is consistent with the plain meaning of the statute because photochemical grid modeling is the starting point of the analysis; indeed, the very purpose of the WOE analysis is to determine whether the modeling, in light of all the evidence, demonstrates attainment.

Even if the statutory language is ambiguous, EPA's interpretation is reasonable under *Chevron U.S.A. Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 842-45 (1984). The comments apparently are based on the premise that the statute should be read to say an attainment demonstration must be based solely on photochemical grid modeling without reliance on any analytical adjuncts. Even if this were a plausible reading of the statute, EPA's interpretation is equally permissible. *See United Technologies*, 985 F.2d at 1158. Our interpretation adheres to the normal meaning of the statutory language and is supported by the broad discretion that Congress granted to EPA in section 182(c)(2)(A).

Because EPA reasonably determined that WOE analysis is based on photochemical grid modeling, there is no merit to the alternative statutory argument found in the comments. The comments contend that WOE qualifies as an "other analytical method" under section 182(c)(2)(A), requiring the EPA Administrator to determine that weight-of-evidence is "at least as effective" as photochemical grid modeling. As noted, however, weight-of-evidence analysis is "based on photochemical grid modeling"; therefore, EPA did not employ an "other analytical method"

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

that would have required an effectiveness determination by the Administrator.<sup>4</sup>

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

Based upon our experience with application of the models, which we did not have in 1991, EPA issued the 1996 Guidance to update the 1991 guidance referenced in 40 CFR part 50, appendix W, to make the modeled attainment test more closely reflect the form of the NAAQS (*i.e.*, the statistical test described above), and the meteorological conditions accompanying observed exceedances. The 1996 Guidance also allows for consideration of additional evidence to address uncertainties in the modeling databases and application. Therefore, when 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.

EPA's 1996 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 or WOE determination. Under a WOE determination, the state can rely on, and EPA will consider factors such as other modeled output (*e.g.*, changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances); actual observed air quality trends (*i.e.*, analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls in addition to the results of the modeled attainment test.

In 1999, EPA issued additional guidance (hereafter, the 1999 Guidance)<sup>5</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 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 (which is 124 ppb). 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 ozone 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 the 1999 Guidance uses the highest measured design value from all sites in the nonattainment area for each of three years. The three year "design value" represents the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The "design value" calculation accounts for the fact that the NAAQS allows limited exceedances of the ozone standard without a resulting violation.

<sup>5</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.

The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology.<sup>6</sup> 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.

The use of this analytical adjunct, however, does not mean that a state's attainment demonstration is "based on" something other than photochemical grid modeling, or that WOE is "less effective" than photochemical grid modeling. To the contrary, WOE analysis is used to assess the photochemical grid modeling results; it supplements, but does not replace, the modeling. See 1996 Guidance at S-1 ("In a weight of evidence determination, model results are weighed heavily"). It follows that the WOE approach is consistent with the CAA requirement that the attainment demonstration "be based on photochemical grid modeling," because WOE is merely an adjunct for assessing the photochemical grid modeling. In the case of the Washington area demonstration, photochemical grid modeling is the primary basis for the attainment demonstration. See 1996 Guidance at S-1.

*The 1999 Guidance is reasonable and is not a proportional rollback.*

As stated previously, episodic photochemical grid modeling is the primary basis for the attainment demonstration, as it was used to define the majority of the control strategy. However, the modeling and corroborative analyses, which form the basis of the weight of evidence analysis, provide a preponderance of evidence to

<sup>6</sup> The commenter criticized the 1999 Guidance because it allegedly allows the averaging across the three highest air quality sites across a region, whereas EPA's earlier (1991 and 1996) modeling guidance requires that attainment be demonstrated at each site and, thus, effectively lowers the total emission reductions needed to attain at the highest site. The commenter's concern is misplaced. The 1999 Guidance uses averaging of the worst modeled air quality value across episode days or worst design value across a three year period. Also, the WOE determination, in turn, is intended to be 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.

<sup>4</sup> For the same reasons, EPA was not required to address whether its 1996 or 1999 Modeling Guidance is a "substitute" for modeling or is an adequate model by itself.

support EPA's determination that attainment of the 1-hour ozone NAAQS will be achieved in 2005. One of these WOE analyses involved the use of a relative reduction factor (derived from the local model results) to determine if any additional NO<sub>x</sub> and VOC emissions reductions are needed to attain. We used the photochemical grid model in a relative sense to determine if the response of ozone concentrations to controls was adequate to predict a future design value below the level of the NAAQS. Inherent in the base design value is the level and form of the NAAQS which allows exceedances in the future.

In contrast to the claims in the adverse comments, EPA did not rely on "proportional" rollback as defined in section 14.0 of 40 CFR part 51, appendix W which 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." The prohibition regarding proportional modeling in section 6.2.1.e of appendix W (*i.e.*, "Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies") 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. A true proportional rollback model does not rely on any photochemical grid modeling, and it assumes, for example, that a 20 percent decrease in NO<sub>x</sub> emissions results in a proportional (*i.e.*, 20 percent) decrease in ozone concentrations. In this case, EPA used a locally derived relative reduction factor as determined by the photochemical grid model to estimate a future design value.

*Other comments on the 1999 Guidance are not germane to the Washington area.*

The comments alleged flaws in the two techniques for determining the magnitude of additional emission reductions. With respect to comments on these two techniques for determining the magnitude of additional emission reductions contained in the 1999 Guidance, EPA believes these comments do not apply in the case of EPA's analysis of the attainment demonstration for the Washington area.

The first allegation is that these techniques allow averaging the three highest design values across a nonattainment area whereas EPA's modeling guidance requires that

attainment be demonstrated at each site. The alleged effect of this averaging technique is that lower air quality concentrations are averaged against higher concentrations thus reducing the total emission reduction needed to attain at the highest site.

The second allegation concerns the assumption that the contribution of VOC versus NO<sub>x</sub> emissions to ozone concentrations are the same from site to site in contrast the UAM model which considers the contribution of VOC versus NO<sub>x</sub> emissions varies from site to site.

The 1999 Guidance provided a two-step method for evaluating the air quality modeling results. The first step is an assessment of whether attainment is demonstrated by a showing that a future year design value will be 0.124 ppm or less. In the event that the predicted attainment year design value is above the standard, the second step of the 1999 Guidance provides two techniques for identifying additional emission reductions, that were not modeled, and which at a minimum provide an estimated attainment year design value at the level of the standard. The first technique is the use of a "relative reduction factor (RRF)" analysis to estimate a future design value.<sup>7</sup> We used this analytical method to demonstrate that the Washington area will attain the standard. Attainment can be demonstrated by showing that the future year design value will be 0.124 ppm or less. Modeling predicts the peak ozone values in the attainment year, but it cannot predict the future design value for that year due to the limited number of days that can reasonably be modeled. The RRF analysis, however, provides an estimate of future design value based on the principle that a control strategy that reduces ozone peaks will similarly reduce design values. The RRF analysis has two steps. First, the state derives the RRF from the modeled reduction in ozone peaks between the base year and the attainment year. Second, the state applies the RRF to the design value for the base year to estimate the future design value in the attainment year. EPA has concluded that for the Washington area the RRF analysis demonstrates a future year design value of 119.6 ppb which is less than 124 ppb. Using the 1999 Guidance, EPA never needed to go beyond the RRF technique to determine that the Washington area will attain the ozone standard. Therefore, the other comments regarding the techniques for determining the magnitude of such additional reductions are not germane to

<sup>7</sup> 1999 Guidance at 3-4.

this rulemaking and are not addressed in this document.

*EPA's treatment of over-prediction of ozone levels, of modeled exceedances and downward adjustment of results.*

As another element of EPA's WOE analysis, we evaluated the photochemical grid modeling for the Washington area. We analyzed the severity of the episodes modeled for the Washington area and have concluded that these would be adequate for determining the emission reductions needed for attainment in the Washington area. When the emission inventory with the control strategy is modeled, peak ozone concentration is reduced by approximately 22 ppb from the modeled peak concentrations in the 1991 base cases. When the average modeled peak ozone reduction from the base year modeling to the attainment year modeling (22 ppb) is subtracted from the peak measured concentration for July 16 (137 ppb) and July 19 (132 ppb), the resulting concentrations are 115 ppb and 110 ppb respectively. However, when the modeled ozone reduction is applied to the peak monitored level on July 20 (178 ppb), the resulting concentration is 156 ppb. When the day-specific reduction of peak modeled ozone concentration from the base year modeling to the attainment year modeling is subtracted from the peak measured concentrations on July 16th, July 19th, and July 20th, the result is 120 ppb, 103 ppb, and 158 ppb respectively. Both methods (average, day-specific) resulted in two of the three days showing values below the ozone standard indicating attainment for these days. However, both methods resulted in values above the standard for July 20th.<sup>8</sup>

EPA has evaluated the ozone formation potential of the July 20, 1991, episode day and determined that it is 13th most severe day out of approximately the last 50 years with an average reoccurrence of once every 4-5 years; this type of day is not likely to occur often enough to be a major causative factor for nonattainment because the standard allows up to three monitored exceedances in any three year period. Because modeling for the Washington area showed some peak concentrations above 124 ppb, EPA conducted the RRF analysis which is

<sup>8</sup> The details of this analysis and the method and calculation details by which EPA determined how much the model over-predicts monitored ozone concentrations is explained in "First Amendment to Technical Support Document for Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Post-1996 Rate-of-Progress Plan for the Metropolitan Washington, DC Nonattainment Area" dated April 10, 2003.

discussed in prior paragraphs of this section to determine what additional emission reductions may be needed to support ozone attainment in the Washington area using EPA's 1999 Guidance. As stated in previous paragraphs of this section, EPA has concluded that the Washington area does not need any additional emission reductions beyond those contained in the attainment demonstration for the Washington area to ensure attainment of the ozone NAAQS.

While the modeling results suggest that exceedances may still occur, EPA's 1996 Guidance allows for consideration in the weight-of-evidence analysis of whether the model over-predicts or under-predicts in the base case and consideration of other evidence.

The base case model performance for both of the July 1991 episodes show good alignment of the modeled ozone plume in comparison to monitored ozone values (e.g., the model predicted peak concentrations and monitored peak concentrations are generally paired in space). Therefore, the degree to which the peak predicted values exceed the measured values in the same general vicinity, indicates that the model is systematically over-predicting ozone concentration, while adequately representing the spacial distribution of ozone.

With respect to the assertion that EPA did not explain how adjusting model results to account for model over prediction is consistent with EPA's modeling rule, 40 CFR part 51, appendix W, the modeling rule encourages the assessment of model uncertainty as one of the factors affecting the model results. In EPA's view, model over prediction is only a rough approximation of the extent of modeling uncertainty. Consideration of model performance (specifically, a bias to under- or over-predict ozone levels) is one way to assess modeling uncertainty. For the Washington area, EPA explained how performance was more closely reviewed and used as part of the WOE determination.

As a further part of the WOE analysis to corroborate the likelihood that the Washington area will attain the 1-hour ozone standard by the attainment date of 2005, EPA developed relative reduction factors based on regional scale modeling performed for the NO<sub>x</sub> SIP call supplemental notice of proposed rulemaking (NO<sub>x</sub> SIP Call SNPR) (see 63 FR 25902, May 11, 1998; and see 63 FR 57356, October 27, 1998). These relative reduction factors were used to adjust the 1994–1996 area design values for the Washington area. This analysis shows all future predicted design values below

the level needed for attainment (124 ppb). To provide additional information, the EPA's relative reduction factors were applied to the 1995–1997 and 1996–1998 Washington area design values, again resulting in all area design values below 124 ppb. This analysis was updated (see the response to comment 2. elsewhere in this section) to include more recent air quality data including data through the 2002 ozone season. The result of this updated analysis still showed all future predicted design values below 124 ppb.<sup>9</sup> A future design value analysis was performed using relative reduction factors from the local photochemical grid modeling results. The outcome of this analysis shows a future predicted area-wide design value of 119.6 ppb.<sup>10</sup>

Based on the results of the local scale modeling along with the additional WOE arguments provided in the attainment demonstration plan, EPA believes that attainment of the 1-hour ozone standard has been successfully demonstrated for the Washington area by the November 2005 attainment date.

*Comment 2:* In the March 5, 2003, letter the commenter asserted that 2002 ozone levels recorded in the Washington area show that the WOE analysis is flawed. The comments summarize the 2002 data in terms of nine days that the 1-hour standard was exceeded with as many as 8 different monitors recording exceedances on some of those days and claim this number of exceedance days was higher than in any of the preceding 10 years. The comments assert that this data, including a peak ozone value of 0.158 ppm, refutes EPA's WOE analysis. The same commenter cited to pertinent comments previously submitted to EPA

<sup>9</sup>Table IV C–2 to "First Amendment to Technical Support Document for Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Post-1996 Rate-of-Progress Plan for the Metropolitan Washington, DC Nonattainment Area", dated April 10 2003.

<sup>10</sup>Under the 1999 Guidance, the base design value is an average of three years of monitored design values that represent the modeled base case emissions. In the case of the Washington area, the model episodes are for 1991, and, thus, the three design values used are those that reflect the 1991 monitoring data, i.e., the design values for 1991, 1992 and 1993. In the case of the Washington area these three design values were 136, 136 and 137 ppb for 1991, 1992 and 1993, respectively. The relative reduction factor (RRF) was 0.88. Whether the RRF is applied to the average design value or the highest design value has no practical effect (0.88 times 137 ppb equals 120.6 ppb). See Attachment 5 "Improving Weight of Evidence Through Identification of Additional Emission Reductions Not Modeled" to "Technical Support Document for the One-Hour Ozone Attainment Demonstrations submitted by the State of Maryland, Commonwealth of Virginia and the District of Columbia for the Metropolitan Washington, D.C. Ozone Nonattainment Area" dated January 24, 2003.

on February 14, 2000. In the February 14, 2000 comment letter, we received comments asserting that EPA looks only at those "weights" that favor a finding of attainment and specifically cited 1999 air quality data. The comments assert that the data through 1999 show current violations at 4 different monitoring sites. The comments highlight peak concentrations at various monitors and claim even assuming a 7 ppb reduction in ambient levels from the NO<sub>x</sub> SIP call the peak value of 0.141 ppm recorded in 1999 would still be in violation.

*Response 2:*

*Weight of Evidence and Air Quality Generally.*

The District, Maryland and Virginia provided WOE arguments in the attainment demonstration to further corroborate that it is likely their attainment demonstrations contained sufficient local measures for the Washington area to attain the 1-hour ozone standard by the statutory date of 1999 but for transport.

In the original plan, the States and the District used EPA-developed relative reduction factors based on regional scale modeling performed for the NO<sub>x</sub> SIP Call SNPR. These relative reduction factors were used to adjust the 1996 area design values which considered air quality data for the years 1994, 1995 and 1996. The analysis showed all area future predicted design values below the level consistent with attainment (124 ppb). To supplement the state submittals, we originally applied the same relative reduction factors to the 1997 and 1998 area design values which include air quality data through 1998. Again the results were that all future predicted area design values were below 124 ppb.

Using the more recent air quality data, including that available for 2002, EPA has performed these same evaluations. Once again, the results were that all future predicted design values were below 124 ppb. The detail data and computations have been placed in the docket for this action.

*Number of Exceedence Days.*

Compliance with the one-hour ozone standard is determined by comparing the monitored annual average number of expected exceedances of the 0.12 parts per million (ppm) with the one-hour standard. The one-hour standard is exceeded in practice when the highest one-hour value for any calendar day is greater than 124 ppm. The standard is set at 0.12 ppm but due to rounding, a value of 0.124 ppm or less rounds down to 0.12 ppm and values of 0.125 ppm or more round up to 0.13 ppm which

exceeds the 0.12 ppm standard.<sup>11</sup> To account for missing days (monitors may not be operating on some days due to malfunctions, maintenance and calibration, or power outages, etc.) when the monitor is not functioning the procedure in appendix H of 40 CFR part 50 is used to convert the number of actual number measured exceedances for the year to an actual number of expected exceedances.

The form of the ozone NAAQS requires the use of a 3-year period to determine the average number of exceedances per year. In its simplest form, the ozone standard requires that the average number of exceedances over a 3-year period, cannot be greater than 1.0. An area with four exceedances during a 3-year period, therefore, does not meet the ozone standard because four exceedances in 3 years averages out to more than once per year. Because of the form of the ozone NAAQS, data are combined over multiple years but they are not combined from different sites.

The number of expected exceedances for a year is always equal to or greater than the actual number of measured exceedances. The one-hour ozone standard is violated when the annual average number of expected exceedances exceeds 1.0. The standard and the method for converting measured exceedances to expected exceedances is found in 40 CFR 50.9 and appendix H to 40 CFR part 50.

The proper use of the 1999 and 2002 and intervening years of ozone data would be to perform the expected exceedances determination using that data. That the area had "nine exceedance days in 2002" says only that there were nine days in 2002 during which at least one monitor recorded an exceedance. The proper context for the 2002 ozone data would be to compute the average annual number of expected exceedances over the three year period 2000 to 2002.

Therefore, EPA believes that the number of exceedance days is irrelevant when evaluating an attainment demonstration because the number of exceedance days has no bearing on the form of the 1-hour ozone standard. Compliance with the standard is performed on a monitor-by-monitor basis. The peak ozone value for 2002 (or 1999 for that matter) is irrelevant unless placed in context with the remaining data for 2002 as well as the data for 2000 and 2001. A monitor is in full compliance with the standard which

allows up to 3.1 expected exceedances under 40 CFR 50.9 and appendix H to 40 CFR part 50. Under appendix H to 40 CFR part 50, a monitor has to record at least a value equal to or greater than 0.125 ppm in order for the number of expected exceedances to be 1.0 or greater for determining exceedances of the one-hour ozone standard. Whether that monitored value is 0.125 ppm or 0.158 ppm does not matter.

#### *Seven Parts Per Billion (ppb) Adjustment to Peak Values.*

The commenter stated that even if one assumes that the NO<sub>x</sub> SIP call will deliver a 7 ppb ozone reduction in the peak ozone values the peak ozone concentration will still be violating the standard.<sup>12</sup> As stated in the preceding paragraphs, compliance with the standard is not determined using the peak value, but whether the standard is exceeded more than an average of 1.0 times per year when averaged over three years. EPA disagrees that the peak monitored data would be the proper determinant of nonattainment using such a method. EPA believes that to use such a method properly the commenter's assumed adjustment of 7 ppb (0.007 ppm) would have to be subtracted from all the monitored data readings to see if a monitor would record more than three exceedances in any three year period.

One threshold issue with such a method is whether one should assume the same number of daily measurements in future years as in the past in order to compute expected number of exceedances. For example, for the new monitor at the Equestrian Center in Prince George's County, Maryland has provided only 123 days of data for 2002. Because the reported data covers the 123 days for the months of July through October, one could reasonably assume the monitor will be operated over the entire ozone season in the future. But such an assumption does not provide any insight into just how much data capture one should assign to the monitor in the future to compute expected number of exceedances using appendix H to 40 CR part 50. Likewise, assumptions have to be made concerning the number of days assumed less than the standard when computing the number of expected exceedances.

Examination of the ozone data for any time period will show a variation in the number of monitored exceedances at

any one monitoring site. For the 1997 to 2002 time period, the only monitors that have recorded exceedances in every year since 1997 are the two in Prince George's County Maryland and both monitors have shown continual improvement since 1997. All other monitors have had years where no exceedances have been recorded and years where one or more have been recorded.

EPA has determined that applying an assumed 7 ppb adjustment to all of the 1997 to 2002 data would yield no monitor, for which complete data is available for the 1997 to 2002 time period, with more than 3 exceedances for the three year period ending in 2002. For those monitors which have data for only one ozone season for the period ending in 2002, EPA notes that the 7 ppb adjustment would result in greater than 1.0 exceedances at the following two monitors: one monitor in Fairfax County, Virginia (monitor ID 510591005-1) and one in Prince George's County, Maryland (monitor ID 240338003-1). However, these monitors have only one year of data. And the monitor in Prince George's County recorded only one exceedance in 2002, but the number of expected exceedances for 2002 is 1.7 after applying the procedures of 40 CFR part 50, appendix H that account for missing days of data.

EPA has determined that applying a 5 ppb adjustment to all of the 1997 to 2002 data would yield only one additional monitor (that in Arlington, Virginia) with more than 3 exceedances for the three year period ending in 2002.

These results are presented in detail in the technical support for this final action.<sup>13</sup> As noted above, EPA believes that monitoring data for one year is not necessarily a good indicator of future year data. For this reason, EPA believes this one scintilla of contrary evidence (which arises from a method that EPA neither proposed nor endorses) does not outweigh the preponderance of evidence supporting EPA's determination that attainment of the 1-hour ozone NAAQS will be achieved in 2005.

#### *Monitor Trends.*

With regard to the 1999 data, EPA has determined that the one-hour ozone NAAQS was violated at six monitors with three full years of data for 1997 to

<sup>11</sup> While the rounding may seem to increase the standard by four percent (.005 divided by 0.12), the standard was set to include an ample margin of safety as required by section 109(b) of the CAA.

<sup>12</sup> The commenter submitted the 7 ppb adjustment to claim that "[e]ven if one were to assume a 7 ppb reduction in ambient levels from the NO<sub>x</sub> SIP call which is near the middle of the 5-10 ppb reduction attributed to the SIP call in the TSD, the Greenbelt monitor would still be in violation."

<sup>13</sup> See section IV. "Regarding Comment on Number of Exceedance Days and an Air Quality Adjustment of 7 ppb and Air Quality Trends" to "First Amendment to Technical Support Document for Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Post-1996 Rate-of-Progress Plan for the Metropolitan Washington, DC Nonattainment Area", dated April 10, 2003.

1999 (inclusive) and at one additional monitor with two-years of data for 1998 and 1999, not the four monitors identified in the comments. For the 2002 ozone season, violations were recorded at seven monitors. One of these seven has only one full ozone season (which was 2002) and recorded two exceedances in 2002 (with the design value being the second highest reading which was 137 ppb). Another one of these seven has data for the last 123 days of the ozone season (July 1, 2003, through October 31, 2003 inclusive). This monitor recorded only one exceedance, but due to the adjustment procedure found in 40 CFR part 50, the number of expected exceedances is increased to 1.7.

The worst monitor for 1999 had an annual average of 4.2 expected exceedances and a design value of 0.132 ppm. By the end of the 2002 ozone season this monitor had an annual average of 1.4 expected exceedances and a design value of 0.128 ppm.

In terms of average number of expected exceedances, one monitor had an annual average of 2.7 expected exceedances based upon the 2002 ozone data. For 2002, this monitor had a design value of 0.126 ppm. At the end of the 1999 this monitor had an annual average of 1.3 expected exceedances and a design value of 0.128 ppm.

Since 1999, for the monitors with more than one season of data, the average number of expected exceedances at the worst monitor has dropped from 4.2 to 2.7 and the design value has dropped from 132 ppb to 128 ppb.

*Comment 3:* The commenter alleges that EPA's refusal to accept UAM results for the attainment demonstration conflicts with longstanding Agency policy, namely, EPA's policy that which requires the use of the UAM to demonstrate eligibility for granting waivers from the NO<sub>x</sub> requirements under section 182(f). The commenter quotes a portion section 2.6.1 of the NO<sub>x</sub> Supplement to the General Preamble.<sup>14</sup> Section 2.6.1 says that "EPA has determined that, as a technical matter, photochemical grid modeling is the only reliable tool to justify an area-wide exemption from the NO<sub>x</sub> requirements (or relaxation of otherwise required NO<sub>x</sub> reductions)." See 57 FR at 55623 (November 30, 1992). The commenter notes that EPA extended a statutory SIP submittal deadline to enable states to complete

crucial UAM modeling. The commenter concludes with an assertion that EPA is being inconsistent by allowing attainment demonstrations to discount UAM results while requiring adherence to UAM before NO<sub>x</sub> waivers can be granted to limited groups of sources.

*Response 3:* EPA disagrees with the comment for several reasons. The comments ignore the overall context in which EPA made this one statement in section 2.6.1, and, specifically, EPA does not agree that the use of the phrase "photochemical grid modeling is the only reliable tool" has the meaning ascribed to it by the commenter when placed in the context of the original guidance and subsequent guidance. The comments also ignore subsequent guidance issued regarding waivers from the NO<sub>x</sub> requirements of section 182(f) (NO<sub>x</sub> waivers).

In section 2.6.1, of the NO<sub>x</sub> Supplement to the General Preamble, EPA stated that EPA has determined that, as a technical matter, photochemical grid modeling is the only reliable tool to justify an area-wide exemption from the NO<sub>x</sub> requirements (or relaxation of otherwise required NO<sub>x</sub> reductions). We concluded that states must include in such demonstrations photochemical grid modeling analyses that consider various control strategies with and without NO<sub>x</sub> reductions. We stated that for a variety of ozone nonattainment areas photochemical grid modeling either has not been utilized previously or, if utilized, has not adequately considered the effects of NO<sub>x</sub> emission reductions. We recognized that at that time, while efforts to conduct photochemical grid modeling were underway in many states, the time needed to establish and implement a modeling protocol and to interpret the model results will, in a variety of cases, extend beyond the November 15, 1992 deadline for submission of NO<sub>x</sub> rules.

On December 16, 1993, EPA issued "Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f)." In that guidance EPA expounded upon the guidance provided in the NO<sub>x</sub> Supplement to the General Preamble. For instance, EPA stated it would allow grid models other than UAM to be used for regional scale modeling needed for the net ozone benefits test in transport regions.<sup>15</sup>

Under the "net air quality test", EPA stated that the primary test should be

the effect the exemption would have on attainment of the primary NAAQS for the criteria pollutants and that secondary tests, as needed, can extend to the (qualitative or quantitative) consideration of other air quality impacts that are explicitly recognized in the CAA. Under this test, an area would have to make a showing that the area under consideration clearly does not need NO<sub>x</sub> reductions to provide for attainment to attain any NAAQS.<sup>16</sup> This should be based on a comparison of the geographic area exposed to concentrations above the ozone NAAQS with and without NO<sub>x</sub> reductions from the sources concerned or where UAM results are available, population exposure to concentrations above or near the NAAQS may be used instead of the geographic area exposure factor.

Under the "contribute to attainment test", EPA stated that the demonstration must show that additional NO<sub>x</sub> reductions would not contribute to ozone attainment in the area. The guidance was to model: (1) Substantial VOC reductions; (2) substantial NO<sub>x</sub> reductions; and (3) both the VOC and NO<sub>x</sub> reductions. If the attainment demonstration has not been completed, such substantial VOC reductions need not be a level showing attainment if such reductions are substantial.<sup>17</sup> If the area-wide predicted maximum 1-hour ozone concentration for each day modeled under scenario (1) is less than or equal to that from scenarios (2) and (3) for the same day, then the area would be eligible for an exemption from the section 182(f) requirements.<sup>18</sup>

Under the "net ozone air quality benefit test", EPA required a comparison of exposures to ozone concentrations resulting from: (1) Substantial VOC reductions; (2) substantial NO<sub>x</sub> reductions; and (3) both the VOC and NO<sub>x</sub> reductions. If the attainment demonstration has not been completed, such substantial VOC reductions need not be a level showing attainment if such reductions are substantial.<sup>19</sup> The geographic scope was all portions of the ozone transport region in which impacts from NO<sub>x</sub> emissions from the area seeking the exemption can be determined by the photochemical grid model. Under the guidance, if the exposure to ozone concentrations from scenario (1) is less than or equal to the exposure to ozone concentrations from scenarios (2) and (3), then the section 182(f) net ozone

<sup>14</sup> "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 55620, November 30, 1992.

<sup>15</sup> See Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f), December 16, 1993, section 7.3.

<sup>16</sup> *Id.*, Chapter 3.

<sup>17</sup> *Id.*, Chapter 8.

<sup>18</sup> *Id.*, Chapter 4.

<sup>19</sup> *Id.*, Chapter 8.

benefits demonstration could be approved.<sup>20</sup>

The “contribute to attainment” and “net ozone benefit” tests described in preceding paragraphs both require an area-wide or regional analysis. In such area-wide/regional analyses, NO<sub>x</sub> emission reductions at a large number of sources are considered. These analyses are appropriate to determine in a directional manner whether or not NO<sub>x</sub> reductions are expected to be beneficial with respect to the air quality in the area/region. These analyses may be less precise than an attainment demonstration required under section 182(c).<sup>21</sup>

Regarding the excess emissions reductions test, EPA believes that the excess reductions provision requires a more precise analysis; specifically an analysis which is based on the attainment demonstration. That is, the excess reductions provision must be more than a directional finding on an area-wide basis.<sup>22</sup> As discussed elsewhere in this document in responses to comment, EPA believes that the WOE is not an alternative method or a roll-back analysis, or that the section 182(c) requirements for the attainment demonstrations does not exclude WOE and thus the attainment demonstration needed to support an excess emissions waiver could include the very same WOE analyses used in the Washington area.

When EPA stated that photochemical grid modeling was the only reliable tool we did not mean to confine modeling exclusively to just UAM. Rather, our guidance meant to exclude trajectory based models which lack the necessary treatment of the physical orientation of the NO<sub>x</sub> sources, dispersion of their plumes and cannot assess whether NO<sub>x</sub> control contributes to attainment in all parts of a nonattainment area because they address a limited number of trajectories.<sup>23</sup>

The General Preamble specified that NO<sub>x</sub> waivers would need to be supported by photochemical modeling analyses. The scope of these analyses was refined in subsequent guidance. This subsequent guidance specified the test required under for each of the different categories of NO<sub>x</sub> waivers set by statute. Some of the tests needed for NO<sub>x</sub> waivers are only directional in that one need to make comparisons in the changes in air pollutant concentrations due to large VOC-only, NO<sub>x</sub>-only, and VOC plus NO<sub>x</sub> reductions. Some of

these comparisons relate to geographic or population exposures to ozone levels. The excess emissions reduction test is tied to the attainment demonstration. With the exception of the excess emissions test, the photochemical analysis for the other tests only has to show that changes in ozone concentrations or net air quality benefits are greater in the absence of specified or substantial NO<sub>x</sub> reductions than with such reductions.<sup>24</sup> In all the tests, except those tied to an area's attainment demonstration, results from photochemical modeling one reduction scenario are compared with modeling results from different reduction scenarios. The tests only compare modeling results. For the tests tied to the attainment demonstration, EPA would consider the same WOE analyses as an attainment demonstration not related to an exemption from the section 182(f) requirements.

*e. Use of MOBILE6.*

*Comment:* The commenter alleges that it is inappropriate for EPA to conditionally approve the SIPs based on modeling conducted with EPA's MOBILE5 motor vehicle emissions model now that the MOBILE6 model is available for use.

*Response:* The MOBILE6 model was not available for use at the time these SIPs were developed. The model is now available, and EPA guidance issued with release of the model does indicate that any new SIP modeling should be conducted with the new model. The Washington area jurisdictions had already completed significant SIP modeling efforts prior to release of MOBILE6. EPA's guidance provides that EPA may continue to approve SIPs based on MOBILE5 under these circumstances. See the January 18, 2002 Memorandum titled, “Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity.” As noted in this January 18, 2002 Memorandum, the CAA requires that SIP inventories and control measures be based on the most current information available and applicable when a SIP is developed. See section 172(c)(3) of the CAA and 40 CFR 51.112(a)(1). However, as noted in the answer to the first question in this January 18, 2002 Memorandum, “EPA believes that the CAA would not require

states that have already submitted SIPs or will submit SIPs shortly after MOBILE6's release to revise these SIPs because a new motor vehicle emissions model is now available.” This concept was reiterated in the notice of availability, which was published in the **Federal Register** on January 29, 2002 (67 FR 4254), that announced the approval and availability of MOBILE6 for use in SIPs and conformity determinations. Use of the MOBILE6 model for SIP development was not allowed before the January 29, 2002, notice of availability. Since the Washington area attainment demonstration was submitted in February 2002, and the mobile source modeling was performed prior to that date, MOBILE5 had to be used.

It should also be noted that at the time of the development of the Washington area attainment demonstration changes were being made to the various draft versions of the MOBILE6 model as problems were detected in testing the drafts. Since the MOBILE6 model was not available when the SIPs for the Washington area was developed EPA concludes that it was appropriate to develop the SIP with the MOBILE5 model.

Furthermore, the States have committed not only to conduct further modeling reanalyses with the MOBILE6 model, but also to revise the attainment demonstration as necessary to demonstrate timely attainment with the new model, including any necessary additional control measures. EPA believes that in this case it is appropriate to conditionally approve the SIPs.

With respect to the commenter's criticism of MOBILE5 modeling, we believe that this modeling is not nearly so inaccurate or outdated as the commenter suggests. MOBILE5 modeling provides the best estimate of mobile source emissions that was available at the time the SIPs were developed. Soon the States will be reanalyzing mobile emissions with the improved MOBILE6 model and offsetting any additional emissions projected with the new model as necessary to provide for attainment.

The commenter further argues that because the States had previously committed to update the mobile modeling with MOBILE6 by this past January, it is arbitrary for EPA now to accept commitments from the States to complete this effort by April 2004. However, the SIPs in which the States had committed to complete these reanalyses were vacated by the Court of Appeals in response to litigation initiated by the commenter, and the

<sup>24</sup> In cases where an area outside the ozone transport region actually attained the ozone NAAQS as shown through air quality monitoring data without the NO<sub>x</sub> reductions on major stationary sources required by section 182(f) such areas could also obtain a NO<sub>x</sub> waiver. For example, refer to section 4.4 of Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f), December 16, 1993.

<sup>20</sup> *Id.*, Chapter 5.

<sup>21</sup> *Id.*, Chapter 6.

<sup>22</sup> *Id.*, Chapter 6.

<sup>23</sup> *Id.*, section 7.1.

States reasonably interrupted their work updating the modeling to consider the court's opinion and determine the appropriate route to developing an approvable SIP. Now the States have committed not only to update the mobile modeling as they had previously planned to do by this year, but also to revise the attainment demonstration as a whole, including adoption of any necessary additional control measures to assure timely attainment. As indicated in their commitment letters, the States believe that this much more significant effort will take until April 2004. The commenter correctly points out that the States have already done preliminary new model runs with the MOBILE6 model, and thus that they might not need until April 2004 to complete the new mobile modeling. However, the completed mobile modeling is only preliminary and only includes the mobile model runs with MOBILE6. The States have not even completed preliminary work on revising the attainment demonstration as a whole, nor the adoption of any additional control measures they might ultimately conclude appropriate to provide for timely attainment. All of this additional work is necessary to honor the recent commitments, and the States believe it will take them until April to complete that work.

f. *Contingency Measures.*

*Comment:* The commenter asserts that the SIPs do not provide contingency measures to make up for any emission reduction shortfall, either in achievement of ROP milestones or for failure to attain, as required by sections 172(c)(9) and 182(c)(9) of the Clean Air Act.

*Response:* EPA acknowledges that the SIPs do not yet contain all of the required contingency measures, however, EPA is not fully approving the attainment demonstration and ROP plan for the Washington area. Rather, as discussed previously in this document, EPA is conditionally approving these SIP revisions pursuant to section 110(k)(4) of the CAA which specifically authorizes this action. One of the conditions for approval is submittal of appropriate contingency measures. Section 110(k)(4) specifically allows the approval of commitments under certain circumstances. For the reasons set forth elsewhere in this document including those in response to other comments (including those responses to comments that claim the severe area SIP elements are past due and claim conditional approval is not permissible), EPA believes that a conditional approval including conditions requiring

submittal of contingency measures is permissible in this case.

3. Comments Relating to Rate-of-Progress

a. *Post-1999 Progress.*

*Comment:* The commenter incorporates by reference previous comments regarding ROP submitted to EPA on December 13, 2002, asserting that section 182(c)(2)(B) of the Act mandates post-1999 ROP even for serious areas and that the submittal deadline for this SIP was November 15, 1994. The commenter then concludes that the EPA has no authority to extend the deadline for the submittal of the post-1999 portion of the ROP plan for an area that is later reclassified to severe because the statutory due date of November 15, 1994 is past. New comments by this same commenter assert that we cannot approve the 1996–1999 plan because the plan lacks the requisite 3 percent reduction per year (averaged over consecutive three-year periods) ROP demonstration for years between 1999 to the attainment date of 2005. Furthermore, the commenter argues that the CAA required serious and above areas to submit a single ROP plan by November 15, 1994 demonstrating a 3 percent reduction per year (averaged over consecutive three-year periods) after November 15, 1996 until the attainment date. The commenter asserts that the Court of Appeals has ruled in *Sierra Club, supra*, that EPA had no authority to approve the SIPs for the Washington area in the absence of the ROP plan covering the period November 15, 1999 through November 15, 2005.

*Response:* EPA does not agree that the post-1999 portion of the ROP plan is past-due in a serious area once such serious area is reclassified to severe nonattainment. EPA's exercise of discretion under section 182(i) to adjust the submission deadline for the post-1999 portion of the ROP plan requirements, which only became applicable to the Washington area for the first time upon the effective date of the area's reclassification on March 25, 2003, is not arbitrary or capricious, and is in keeping with the terms and purpose of the statute.

Section 182(i) states that the Administrator may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions of new requirements applicable to an area which has been reclassified. Where a submission date has passed and is therefore impossible to meet, EPA has concluded that the

Administrator may establish a later date. EPA has applied this interpretation in its prior reclassification rulemaking actions. *See* Santa Barbara, California, (62 FR 65025, December 10, 1997); Phoenix, Arizona (62 FR 60001, November 6, 1997); and Dallas-Fort Worth, Texas (63 FR 8128, February 18, 1998).

The structure of the Clean Air Act itself reinforces this interpretation. Under the Act, the original dates for submissions for areas initially classified as serious, severe, and extreme areas was, as the commenter points out, 1994. The attainment date for serious areas is 1999. Thus, the Act does not require EPA to make a determination of whether or not a serious area met its 1999 attainment deadline until more than five years after the original submission date for areas originally classified as severe. Since the original 1992, 1994 and 2000 statutory deadlines have elapsed, it is impossible for EPA to establish any of these as the submission deadline for a newly reclassified area.

EPA has determined that in light of the fact that the original submission dates for severe areas have elapsed prior to the time that we issued the reclassification for the Washington area, it is a reasonable exercise of EPA's discretion to adjust the applicable submission deadlines in order to ensure consistency among the new requirements. Because it is impossible for the States to meet long-expired deadlines, EPA must set new deadlines that will ensure consistency of submissions for requirements that the state is only recently being notified that it must meet. This is entirely in keeping with the discretion that Congress accorded EPA in section 182(i), and with EPA's prior reclassification rulemakings making appropriate adjustments to submission deadlines. Because the States must now meet newly imposed requirements such as post-1999 ROP and additional severe area control requirements, EPA must set prospective submission dates, and has authority under section 182(i) to make these dates consistent.

To interpret the Clean Air Act as the commenter suggests would give the reclassification retroactive effect by holding the States in default of their submission obligations before the event necessary to trigger that obligation (reclassification) has occurred. Until EPA reclassified the Washington area effective March 25, 2003, the States were under no obligation to make the required submissions. To subject them to a lapsed deadline after reclassification would be patently unfair and contrary to the statute's intent.

Giving the submission deadlines retroactive effect would also be inconsistent with the Administrative Procedure Act, 5 U.S.C. 553(d), which requires that before a rule takes effect, persons affected will have advance notice of its requirements. A failure to meet an obligation, especially one accompanied by sanctions, cannot occur in advance of the imposition of that obligation. The obligation to submit requirements to meet the severe area classification did not exist for the Washington area prior to the final action that reclassifies the area. Giving retroactive effect to the old SIP submission deadlines would also preclude EPA from exercising the discretion with respect to setting the deadlines for these submissions that is specifically afforded by section 182(i).

In *Sierra Club v. Whitman*, 130 F. Supp.2d 78 (D.D.C. 2001), *aff'd*, 285 F.3d 63 (D.C. Cir. 2002), a case involving the reclassification of the St. Louis nonattainment area, the District Court refused to interpret the reclassification provisions as authorizing relief that would treat submission deadlines as having lapsed prior to EPA having issued a reclassification rulemaking. The court stated that such an interpretation “could ‘create \* \* \* an injustice at the hands of the court itself.’” 130 F. Supp.2d at 94. Such relief “could throw the [area] into extreme noncompliance.” *Id.* The court refused to impose such relief when it “could effectively penalize the state and local entities that are required to comply with EPA findings.” *Id.* In the St. Louis case, the Sierra Club demanded not only retroactive reclassification, but also demanded that the district court declare that “the State of Missouri has failed to file a SIP revision that comports with the requirements of section 7511a(c) by the statutory deadline of May 15, 1998,” *id.* at 87, a date that had long since passed. The district court refused to do so, recognizing that this would unfairly penalize the States, which are entitled to rely on EPA’s actions in anticipating the burdens that will be imposed pursuant to the CAA. Imposition of sanctions would also have unfair adverse consequences for emissions sources.

The Court of Appeals upheld the District Court’s ruling. “In any event, what Sierra Club sought—to have the effective date of EPA’s court-ordered determination converted to the date the statute envisioned, rather than the actual date of EPA’s action—was a form of relief the district court quite properly rejected.” *Sierra Club v. Whitman*, 285 F.3d 63, 68 (D.C. Cir. 2002). The Court

of Appeals continued: “Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club’s proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.” *Id.* See also *NRDC v. EPA*, 22 F.3d 1125 (D.C. Cir. 1994).

EPA acknowledges that it cannot fully approve an attainment demonstration that has an outside attainment date of November 15, 2005, for the Washington area in the absence of a demonstration of ROP after 1999. See *Sierra Club v. Whitman*, 294 F.3d 155, 163 (D.C. Cir. 2002) (“[W]ith an attainment date in 2005, ‘the rate-of-progress plan for the Washington area had to demonstrate a 9% reduction in emissions from 1996 to 1999, another 9% from 1999 to 2002, and another 9% from 2002 to 2005’”). However, EPA believes that in the current circumstances where the States for an area that has been recently reclassified to severe have submitted the 1996–1999 ROP plan through the 1999 milestone year and an attainment demonstration for 2005 in advance of the date set forth in the final reclassification rule, EPA can issue a conditional approval of the attainment demonstration if EPA has a commitment from the States to submit the 1999–2005 ROP plan by April 2004. EPA believes this does not contravene the Circuit Court’s rulings and does not produce the absurd result of retroactive application of requirements and inconsistencies with the Administrative Procedure Act, 5 U.S.C. 553(d) discussed in the preceding paragraphs. On April 7 and 8, 2003, EPA received commitments from the States to submit by April 17, 2004, all of the elements, including the post-1999 ROP plan, required for a severe area SIP and EPA is conditionally approving the SIP revisions listed in Tables 1 and 2 in section I of this document based upon the conditions that the States submit all the severe area SIP elements. These are the same elements needed to fulfill the new severe area requirements that became applicable to the area when the area was reclassified on March 25, 2003, (68 FR 3210, January 24, 2003).

#### *b. ROP and MOBILE6.*

*Comment:* The commenter asserted that because the 1996–1999 ROP plan does not account for MOBILE6 modeling EPA cannot approve the 1996–1999 ROP plan even with respect to the 1999 milestone year. The commenter claimed that initial

MOBILE6 results are significantly higher than that in the plan and that EPA must first evaluate the impact of the MOBILE6 results on the required level of reductions to determine if the plan achieves that level of reduction.<sup>25</sup>

*Response:* EPA acknowledges that emissions factors, as well as inventory calculation methodologies, are continually being improved. In general, EPA has not required changes to submitted SIPs that result from changes in factors and methodologies that occur after the SIP is submitted. With respect to the 15 percent plan due in November 1993, in section 2.4 of “Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for 15 Percent Rate-of-Progress Plans” (EPA–452/R–92–005) EPA stated: “If other significant changes occur in emissions factors or methodologies before which time it is impossible for states to make adjustments to their 15 percent calculations and associated control strategies, then EPA may require states to make corrections to the base year emissions inventory, as well as to the adjusted base year inventory and the 1996 target level of emissions.” This guidance discussed the then pending transition from the MOBILE4.1 model to the MOBILE5 model but only prospectively, by requiring that emissions values calculated using MOBILE4.1 would have to be recalculated using MOBILE5 before submittal of the final rate-of-progress plan in November 1993.

Likewise with respect to the 1996–1999 plan, EPA has advised the states when changes in emissions factors or in methodologies for developing emissions inventories would force revisions to the inventories or plans. Changes would be necessary if they occurred before the plan was submitted. “However, if such changes occur after November 15, 1991, but prior to November 15, 1994, a serious or above area may be required to make corrections to the base year inventory and attainment year projection inventory for purposes of developing the 3 percent rate-of-progress demonstration. If such changes occur after November 15, 1994, EPA will advise on when it would be appropriate for the states to make corrections in future supplements to this General Preamble.” 57 FR at 13517 (April 16, 1992).

EPA established a policy to require that certain attainment demonstrations

<sup>25</sup> The comments referenced a Meeting Notice for the February 27, 2003 Meeting Notice of the Metropolitan Washington Air Quality Committee and provided the comments solely by reference to its URL (<http://www.mwcog.org/uploads/event-documents/WV2003022711708.pdf>).

and maintenance plans be revised using the then-forthcoming MOBILE6 model.<sup>26</sup> EPA required states that relied upon benefits from the Tier 2/Sulfur final rule for attainment or maintenance to commit to revise the applicable budgets using MOBILE6 in order for EPA to approve the SIP. However, the 1996–1999 ROP plan for the 1999 milestone year for the Washington area does not take credit for benefits from the Tier 2 motor vehicle standards and thus this guidance is not applicable.

EPA has established policy and guidance for when SIPs must be prepared using MOBILE6.<sup>27</sup> EPA believes that the Clean Air Act would not require states that have already submitted SIPs or will submit SIPs shortly after MOBILE6's release to revise these SIPs simply because a new motor vehicle emissions model is now available. EPA believes that this is supported by existing EPA policies and case law. *See, e.g., Delaney v. EPA*, 898 F.2d 687 (9th Cir. 1990). Of course, states can choose to use MOBILE6 in these SIPs, for example, if it is determined that future conformity determinations would be ensured through such a SIP revision.

EPA does not believe that the State's use of MOBILE5 should be an obstacle to EPA approval for reasonable further progress, attainment, or maintenance SIPs that do not include Tier 2 sulfur rule reductions that have been or will soon be submitted based on MOBILE5, assuming that such SIPs are otherwise approvable and significant SIP work has already occurred (*e.g.*, attainment modeling for an attainment SIP has already been completed with MOBILE5). It would be unreasonable to require the States to revise these SIPs with MOBILE6 since significant work has already occurred, and EPA intends to act on these SIPs in a timely manner. The ROP plan for 1999 was prepared and submitted well before MOBILE6 was released. The 1996–1999 ROP plan for the 1999 milestone year was prepared using the most current model, MOBILE5b, available at the time the SIP was prepared.

To act as the commenter suggests would be to purposelessly contradict EPA's long established policies and

guidance provided to the states with respect to us of new models.

As explained in a previous response, EPA does not agree that the 1996–1999 ROP plan for the Washington area had to include any post-1999 reductions until after the area was reclassified to severe nonattainment. As explained in the notice of proposed rulemaking for that action, EPA stated that the post-1999 portion of the ROP requirement will be developed using MOBILE6 in accordance with our existing policy<sup>28</sup> for newly developed SIPs. *See* 67 FR at 68611, November 13, 2002. We did not modify this requirement in the final action.

Furthermore, the MOBILE6 model was not available for use at the time these 1996–1999 ROP SIPs were developed. Also, for the same reasons, relating to the availability of the MOBILE6 model in relation to the date the 1996–1999 ROP was submitted, that were presented in section III.A.2e, EPA disagrees with these comments relating to MOBILE6 and the 1996–1999 ROP plan.

#### 4. Severe Area SIP Requirements

*Comment:* The commenter claims that EPA cannot approve these SIP revisions because these revisions do not cover all of the required severe area SIP components and that EPA must therefore disapprove these SIP revisions.

*Response:* EPA agrees that we cannot fully approve these SIP revisions. However, EPA believes that to disapprove these SIP revisions because the States did not submit all the severe area SIP elements that became applicable after these SIP revisions were submitted would lead to the same absurd results and problems with retroactivity and to the same conflicts with the Administrative Procedure Act and CAA that were discussed previously with respect to the post-1999 rate-of-progress requirements.

EPA is not fully approving the attainment demonstration and ROP plan for the Washington area. Rather, as discussed previously in this document, EPA is conditionally approving these SIP revisions pursuant to section 110(k)(4) of the CAA which specifically authorizes this action. Section 110(k)(4) specifically allows the approval of commitments under certain circumstances. For the reasons set forth elsewhere in this document including those in response to other comments,

EPA believes that a conditional approval is permissible because EPA received commitments on April 7 and 8, 2003 from the Washington area jurisdictions to submit by April 17, 2004 revisions to the SIP that:

(A) Revise the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(B) Revise the severe area ROP to provide emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(C) Revise the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(D) Revise the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(E) Update the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(F) Revise the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(G) Revise the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(H) Revise the major stationary source threshold to 25 tons per year.

(I) Revise Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

<sup>26</sup> Memorandum, "1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking" from Lydia Wegman, Office of Air Quality Planning and Standards and Merrylin Zaw-Mon, Office of Mobile Sources to the Air Division Directors, Regions I–VI, issued November 8, 1999.

<sup>27</sup> Memorandum from John S. Seitz and Margo Tsigotis Oge entitled "Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity," issued January 18, 2002.

<sup>28</sup> Memorandum from John S. Seitz and Margo Tsigotis Oge entitled "Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity," issued January 18, 2002.

(J) Revise new source review offset requirements to require an offset ratio of at least 1.3 to 1.

(K) Submit as part of the SIP a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) should the area fail to attain by November 15, 2005.

(L) Include as part of the SIP a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the ROP requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

These required submittals are the same elements needed to fulfill the new severe area requirements that became applicable to the area when the area was reclassified on March 25, 2003, (68 FR 3210, January 24, 2003).

#### 5. Alternative Proposal and Protective Finding

*Comment:* The commenter supports EPA's proposal in the alternative to disapprove attainment demonstration SIPs for the Washington area, but questions the proposal to issue a protective finding under EPA's transportation conformity regulations should EPA proceed with a final disapproval of the SIPs.

*Response:* EPA has concluded that a conditional approval is appropriate in this case and therefore will not be issuing a final disapproval nor a protective finding on the attainment demonstrations for the Washington area. Therefore, any comments relating to the proposed protective finding are not germane to this final action and EPA will not be responding to any such comments in this final action.

#### B. Comments Made on the Proposed Reclassification

On March 5, 2003, we received a comment letter submitted by the Sierra Club incorporating by reference their comments submitted on December 13, 2002, relating to the proposed reclassification of the Washington area to severe nonattainment (67 FR 68805, November 13, 2002). To the extent that these comments are germane to the current action we incorporate by reference our responses to the comments on these issues found in our final rule published January 24, 2003

(see 68 FR at 3412–3421) as supplemented by the response to comment found in this final rule.

#### C. Comments Made Regarding Adequacy of Motor Vehicle Emissions Budgets

On March 5, 2003, we received a comment letter submitted by the Sierra Club incorporating by reference their comments submitted on September 9, 2002, and on February 14, 2000, that related to the adequacy of the motor vehicle emissions budgets in the 1996–1999 ROP plan and the attainment demonstration.

*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. We also received comments asserting that EPA should not find the budgets adequate because EPA is plainly obligated to disapprove the attainment SIP because: (1) The budgets are based on a 2005 attainment date, rather than the area's then current attainment date of 1999; (2) the budgets do not necessarily reflect all RACM; (3) there are no budgets corresponding to the post-1999 rate-of-progress requirement; (4) the SIP lacks contingency measures; (5) the budgets do not reflect the potential that the budgets will be further tightened as a result of severe area SIP requirements; (6) the attainment demonstration is flawed due to the use of the weight of evidence approach; and (7) the budgets were developed using the MOBILE5 model.

*Response:* In the notice of proposed rulemaking EPA proposed to conditionally approve the attainment demonstration and ROP SIP revisions and did not propose to find the budgets adequate. EPA is conditionally approving the motor vehicle emissions budgets rather than making an adequacy determination. Therefore, comments relating to adequacy of budgets are not germane to this rulemaking. To the extent comments are germane to conditional approval of the SIPs, EPA addresses them elsewhere in this notice in response to comments on various aspects of the plans.

#### D. Comments Relating to Supplemental Information To Support Proposed Approvals of One-Hour Ozone Attainment Demonstrations for Serious Ozone Nonattainment Areas

On March 5, 2003, we received a comment letter submitted by the Sierra Club incorporating by reference their comments submitted on November 15, 2000, relating to EPA's proposed

“Supplemental Information to Support Proposed Approvals of One-Hour Ozone Attainment Demonstrations for Serious Ozone Nonattainment Areas” (65 FR 61134, October 16, 2000) relating to RACM requirements.

These comments are not germane to this action because EPA is not relying upon the supplemental information to show that the RACM requirement has been fulfilled.

#### E. Prior Comments on the Approvability of the Attainment and Rate-of-Progress Plans

On March 5, 2003, we received a comment letter submitted by the Sierra Club incorporating by reference their comments submitted on February 14, 2000, October 30, 2000, and November 20, 2000 relating to the approval of the attainment demonstration and ROP plans.

#### 1. Comments Relating to Extension of the Attainment Date to November 15, 2005

We received comments objecting to EPA's attainment date extension policy (a memorandum “Extension of Attainment Dates for Downwind Transport Areas” issued July 16, 1998), and to application of the extension policy to the Washington area. These comments are not germane to this action because EPA is not applying the extension policy to the area but rather has extended the attainment date to November 15, 2005, by reclassifying the area to severe nonattainment (see 68 FR 3410, January 24, 2003).

#### 2. Motor Vehicle Emissions Inventory

*Comment:* We received comments stating that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix.<sup>29</sup> The comments stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. In the February 14, 2000 comment letter, we received comments asserting that EPA looks only at those “weights” that favor a finding of attainment and specifically identified the changing fleet mix. We also received comments asserting that the Maryland and Virginia attainment and 1996–1999 ROP plans are flawed because they assume a fleet mix that does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks. The comments cite data from the Maryland Department of the

<sup>29</sup> These comments were contained in the February 14, 2000, October 30, 2000, and November 20, 2000, letters.

Environment for 1996 and 1999. The comments further assert that EPA and the States have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. The comments also assert that EPA cannot rationally approve SIPs that are based on such materially inaccurate assumptions; that continued use of out-dated assumptions is inconsistent with the duty imposed by Clean Air Act section 182(a)(3) to triennially update the emission inventory; and that if the motor vehicle inventory has not been updated to prepare the current SIP submission, it should be disapproved.

*Response:* All of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was prepared. The SIPs use the same vehicle fleet characteristics that were used in the most recent periodic inventory update at the time the SIP was prepared. The Metropolitan Washington, DC Ozone Nonattainment Area SIP is based on vehicle registration data from 1996, which was the most recently available data at the time the SIP was prepared and submitted. Clearly the 1999 data could not have been used in motor vehicle emissions projections prepared in the fall of 1998 as documented in Appendix D of the SIP. 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. Further, EPA does not require states to go back and re-analyze SIP submissions if new data becomes available shortly before EPA takes final action on the SIP. Nevertheless, we do expect that revisions to these SIPs that will be 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. EPA is requiring the Washington area States to revise the attainment budgets using MOBILE6 pursuant to the commitments for conditional approval submitted by the States. The revised budgets must include the most recently available fleet information at the time the budgets are revised.

In addition, we incorporate by reference our responses to comments on these issues found in section II.H (see 66 FR at 614) and in response 20 of section

X. (see 66 FR at 630) of our final rule published January 3, 2001.

### 3. Credit for National Measures

*Comment 1:* We received comments stating that states should not be given credit for measures that are not fully implemented. For example, the States are being given full credit for Federal coating, refinishing and consumer product rules that have allegedly been delayed or weakened.

*Response 1:* On September 11, 1998, EPA promulgated three major regulations to reduce VOC emissions from covering three major categories of consumer and commercial products. The first rule covers 61 categories of architectural and industrial maintenance (AIM) coatings. The second rule covers 24 consumer product categories such as air fresheners, automotive windshield washer fluid, "household" adhesives, cleaners and polishes, hair care products, cleanser, underarm aerosol antiperspirants, insecticides and charcoal lighting fluids. The third rule covers seven categories of automobile refinishing (autobody refinishing) coatings and coating components; automobile refinishing is the process of coating automobiles or parts thereof, including partial body collision repairs, that is subsequent to the original coating applied at an automobile original equipment manufacturing plant.

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

On March 22, 1995 EPA issued a memorandum<sup>30</sup> that provided that states could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, states relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR part 59, subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in a 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855, September 11, 1998). 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 correctly assumed a 20 percent reduction from AIM coatings source categories in its attainment and ROP plans. The basis for the 20 percent reductions achieved by the final rule is documented in the rulemaking docket for the AIM coatings final rule in a memorandum "VOC Emissions Reductions from the Final National Architectural Coatings Rule" from Chris Sarsony, ERG, to Linda Herring, U.S. EPA, dated July 27, 1998 (docket A-92-18, item number IV-B-2).

In accordance with EPA's final regulation, the States have assumed a 20 percent reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to "use up existing label stock" and "adjust inventories" to conform to the rule (63 FR 48848, September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the Fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the States to take credit for a 20 percent emission reduction in their SIPs.

#### Autobody Refinish Coatings Rule

Consistent with a November 27, 1994 EPA policy,<sup>31</sup> many states claimed a 37 percent reduction from this source category based on a proposed rule. However, EPA's final rule, "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings," published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide. The 37 percent emission reduction from EPA's

<sup>30</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>31</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 29, 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 is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36 percent for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately 1 percent difference between the 37 percent estimate of reductions assumed by states, following EPA guidance based on the proposal, and the 36 percent reduction actually achieved by the final rule for previously unregulated areas.

Both the District and Virginia claimed 35.7 percent credit in their attainment and ROP plans while Maryland claimed 45 percent. EPA's final estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled "Emissions Calculations for the Automobile Refinish Coatings Final Rule" from Mark Morris to Docket No. A-95-18. Since the District and Virginia did not claim more than the reduction provided in the final rule, there is no shortfall in the reductions claimed for this category.

Regarding the basis for approving Maryland's 45 percent reductions from the autobody refinishing rule, we incorporate by reference our responses to the comments on this issue found in response 18 of section II.X of our final rule published January 3, 2001 (see 66 FR at 629).

#### Consumer Products Rule

Consistent with a June 22, 1995 EPA guidance,<sup>32</sup> the states claimed a 20 percent reduction from this source category based on EPA's proposed rule. The final rule, "National Volatile Organic Compound Emission Standards for Consumer Products," (63 FR 48819, September 11, 1998), has resulted in a 20 percent reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the Fall of 1999. In the consumer products rule, EPA determined, and the

consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to state regulations and in anticipation of the final rule (63 FR 48819). That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the Fall of 1999. It was appropriate for the states to take credit for a 20 percent emission reduction for the consumer products rule in their SIPs.

We also incorporate by reference our responses to the comments on these issues found in section II.J. See 66 FR at 614, and responses 10 to 15 of section II.X of our final rule published January 3, 2001, see 66 FR at 626-628 as supplemented by the response to comment found in this final rule.

*Comment 2:* We received comments asserting that because the final national rules for autobody refinishing, surface coatings and consumer products allow for exemptions or variances, EPA cannot grant any emission reduction credit at all because the Clean Air Act does not allow EPA to credit state or national measures with emission reductions when emission limits are subject to waiver at any time. The comments further assert that because the tonnage exceptions and exceedance fee provisions or variance provisions in the rules are not limited to a specific tonnage figure at all the rules place no cap on the use of these provisions and thus assert in the absence of such caps, EPA cannot rationally or lawfully grant emission reduction credit for these rules.

*Response 2:* We incorporate by reference our responses to the comments on these issues found in section II.J. See 66 FR at 614 and response 10 of section II.X of our final rule published January 3, 2001, see 66 FR at 626, as supplemented by the response to comment found in this final rule.

*Comment 3:* We received comments asserting that the proposed rulemakings used estimates from the proposed rather than the final rulemakings for autobody refinishing, consumer products, and architectural and industrial maintenance coatings as a basis for approving the States' reduction claims. The comments allege that the final rules for autobody refinishing, consumer products, and architectural and industrial maintenance coatings are weaker in a number of respects than the proposed rules for autobody refinishing, consumer products, and architectural and industrial maintenance coatings.

*Response 3:* As stated in response to a prior comment, while it is true that the states in many cases estimated the benefits based upon the proposed rules in some of their SIP revisions, these estimates are fully in line with the benefits that have accrued from the final rules.

We incorporate by reference our responses to the comments on these issues found in section II.J. See 66 FR at 614 and response 11 of section II.X of our final rule published January 3, 2001, see 66 FR at 626, as supplemented by the response to comment found in this final rule.

*Comment 4:* We received comments asserting that for the architectural and industrial maintenance (AIM) coatings rule, the limits on a number of coatings were changed between the proposal and final rule either directly, or by establishing new subcategories with higher VOC limits. The comments assert that the effects of these changes and other changes is not documented precisely how those changes justify the claimed emission reduction credit. The comments further state that EPA does not show how the effects of these were reflected in the final percentage reduction estimate EPA is allowing states to claim from the rule.

*Response 4:* We incorporate by reference our responses to the comments on these issues found in response 12 of section II.X of our final rule published January 3, 2001. See 66 FR at 627, supplemented as follows:

The basis for the 20 percent reductions achieved by the final rule is documented in the rulemaking docket for the AIM coatings final rule in a memorandum "VOC Emissions Reductions from the Final National Architectural Coatings Rule" from Chris Sarsony, ERG, to Linda Herring, U.S. EPA, dated July 27, 1998 (docket A-92-18, item number IV-B-2).

*Comment 5:* We received comments asserting that the estimate of emission reductions from the autobody refinishing rule does not account for establishment of a separate category for multi-colored topcoats in the final rule—a category that has weaker limits than would have applied to the same topcoats under the proposed rule. The comments further assert that EPA has no data on the usage of multi-colored topcoats—data that is required in order to rationally estimate the expected emission reductions from the rule.

*Response 5:* We incorporate by reference our responses to the comments on these issues found in section II.J. See 66 FR at 614 and response 13 of section II.X of our final rule published January 3, 2001, see 66

<sup>32</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.

FR at 627 as supplemented by the response to comment found in this final rule.

Regarding the basis for approving Maryland's 45 percent reductions from the autobody refinishing rule, we incorporate by reference our responses to the comments on this issue found in response 18 of section II.X of our final rule published January 3, 2001. See 66 FR at 629.

*Comment 6:* We received comments that assert there is insufficient basis for granting full credit for the AIM rule as of November 15, 1999 because EPA has failed to offer any facts or analyses showing that only compliant products were in use as of November 15, 1999, and the late implementation deadline of September 12, 1999 virtually assures that this was not the case.

*Response 6:* We incorporate by reference our responses to the comments on this issue found in section II.J. See 66 FR at 614, and response 14 of section II.X of our final rule published January 3, 2001, see 66 FR at 627, as supplemented by the response to comment found in this final rule.

For the reasons explained in our prior response to comment (66 FR at 614, 627), EPA still believes that with these reductions the area has achieved the 9 percent ROP as expeditiously as practicable and that there is no other reasonable emissions control strategy that would allow the area to achieve the 9 percent ROP for the 1999 milestone any sooner.

#### 4. Enforcement of Control Programs

*Comment:* The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit. We also received comments that assert that the 1996–1999 ROP plan and the attainment plan fail to include a program to provide for the enforcement of the adopted control measures, as required by section 110(a)(2)(C) of the CAA. The comments also assert that these plans must contain a legally enforceable SIP commitment to enforce the various control strategies relied upon for emission reduction credit. The comments assert that EPA review of state enforcement programs in connection with federal grantmaking does not satisfy EPA's duty to ensure that the SIP itself contains the legally required enforcement and funding commitments.

*Response:* We incorporate by reference our responses to the comments on these issues found in section II.K. See 66 FR at 615 and response 21 of section II.X of our final

rule published January 3, 2001, see 66 FR at 630.

#### 5. Reliance on Commitments and State Rules Not Yet Adopted

*Comment:* We received comments that disagreed with the EPA's proposal to approve attainment demonstrations and rate-of-progress plans for the Washington ozone nonattainment area because not all of the emissions reductions credited in the demonstrations or plans are supported by legally enforceable limitations adopted and approved by the States and approved by the EPA as part of the SIP. Commenters also objected to accepting enforceable state commitments to adopt emission reduction control measures in the future in lieu of current adopted measures.

*Response:* When viewed in the context that this comment was made, this comment is not germane to the proposed action. This comment was made in response to a December 16, 1999, notice of proposed rulemaking (64 FR 70460) for the SIP revisions listed in Tables 1 and 2 of this document. That December 16, 1999, proposed rule contained a proposal to approve attainment demonstrations that contained an enforceable commitment to adopt additional measures to support the WOE that the area will attain.<sup>33</sup> EPA identified the areas where we had concluded that the WOE needed such supporting reductions but the Washington area was not such an area. See 64 FR at 70466, December 16, 1999. EPA has concluded that the WOE for the Washington area needs no additional reductions to support the WOE demonstration and is not approving such an enforceable commitment for the Washington area.

Further, EPA is not fully approving the attainment demonstration and ROP plan for the Washington area. Rather, as discussed previously in this document, EPA is conditionally approving these SIP revisions pursuant to section 110(k)(4) of the CAA which specifically authorizes this action. Section 110(k)(4) specifically allows the approval of commitments under certain circumstances. For the reasons set forth elsewhere in this document including those in response to other comments, EPA believes that a conditional approval is permissible. Therefore, EPA

<sup>33</sup> See "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.

believes this comment is not germane to this action.

#### 6. Rate-of-Progress—NO<sub>x</sub> Substitution

*Comment:* We received comments that assert the 9 percent ROP demonstration assumes that a 1 percent reduction in NO<sub>x</sub> emissions is equivalent in ozone reducing benefit to a 1 percent reduction in VOC emissions. The commenter asserts that EPA's NO<sub>x</sub> Substitution Guidance (December 1993) is flawed under section 182(c)(2)(C) of the Clean Air Act because it allows NO<sub>x</sub> substitution without a demonstration that such substitution will in fact provide ozone reductions at least equivalent to that which would result from a 3 percent annual cut in VOC emissions. The commenter claims that such a demonstration requires photochemical grid modeling showing equivalency and that EPA's own guidance (*Guidance on the Post-1996 Rate-of-Progress Plan and Attainment Demonstration* (corrected version as of 2/18/94)) requires such modeling. The States cannot use a 1 percent NO<sub>x</sub> for 1 percent VOC substitution without proving that a 1 percent NO<sub>x</sub> cut will in fact provide ozone reductions at least equivalent to that resulting from a 1 percent VOC cut.

The commenter further asserts that more recent EPA guidance dated January 10, 2000 for NO<sub>x</sub> substitution in out-year conformity budgets requires 1.6 tons in NO<sub>x</sub> reductions to offset 1 ton of VOC reductions. The commenter does not disavow other comments that the States must prove the validity of their NO<sub>x</sub> substitution ratios as discussed in the summary of the comments in the preceding paragraph but rather claim the 9 percent demonstration fails to use the ratio of 1.6 to 1 required by the more recent EPA guidance.

Additionally, the commenter asserts that substitutions should not be allowed because the plan does not demonstrate timely attainment.

*Response:* We incorporate by reference our responses to the comments on these issues found in section II.M. of our final rule published January 3, 2001, see 66 FR at 616–619, as supplemented by the response to comment found in this final rule:

EPA still disagrees with the assertion that the attainment plan does not demonstrate attainment. The TSD and other documents in the docket support the conclusion that the area will attain, as do our responses to other comments elsewhere in this notice.

In our January 3, 2001, final rule (66 FR 586), EPA placed a document titled "RACM Analysis for Four Serious Areas Designated Nonattainment for 1-hr

Ozone NAAQS” in the docket to support our conclusion that all RACM have been adopted for the Washington area as well as the model sensitivity analyses found in the attainment demonstration which shows that the Washington area portion of the Baltimore-Washington modeling domain benefits more from NO<sub>x</sub> reductions than VOC reductions. For this final rule, EPA has placed Attachment 4 (“Model Sensitivity Study for Metropolitan Washington Area”) of “RACM Analysis for Four Serious Areas Designated Nonattainment for 1-hr Ozone NAAQS” in the docket solely for the technical analysis of the model sensitivity analyses found in the attainment demonstration which shows that the Washington area portion of the Baltimore-Washington modeling domain benefits more from NO<sub>x</sub> reductions than VOC reductions. A copy of “RACM Analysis for Four Serious Areas Designated Nonattainment for 1-hr Ozone NAAQS” U.S. Environmental Protection Agency; Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, cited in the response to comments portion of the January 3, 2001 final rule can be obtained by contacting the regional office listed under the **ADDRESSES** section of this document.

#### 7. NO<sub>x</sub> and VOC Reduction Credits

*Comment 1:* We received comments that both the attainment and ROP demonstrations are flawed because they rely on emission reductions from control measures that have not been fully approved by EPA as part of the SIP. Specifically, the comments identified NO<sub>x</sub> RACT rules for all three Washington area States, NO<sub>x</sub> reductions claimed for the beyond RACT NO<sub>x</sub> control rules and Virginia’s generic non-CTG VOC RACT rule.

*Response 1:* We incorporate by reference our responses to the comments on these issues found in sections II.N and R, *see* 66 FR at 619 and 66 FR at 620, and responses 3, 4, 8 of section II.X, *see* 66 FR at 623–625, of our final rule published January 3, 2001 as supplemented in this document:

The technical support documents for this action lists the current approval status of control measures in the Washington area.<sup>34</sup> With the exception of the transportation control measures found in the ROP plan, for which we

proposed approval on February 3, 2003, all the other measures credited towards the 1999 ROP requirement are in the approved SIP or are rules promulgated by the EPA. These measures were specified under the column labeled “Credited in 1996–1999 ROP plan” in Table 3 “Control Measures in the 1-hour Ozone 1996–1999 ROP Plan and Attainment Plans for the Metropolitan Washington Nonattainment Area” of the notice of proposed rulemaking for this action. *See* 68 FR at 5252, February 3, 2003.

Likewise, with the exception of any remaining RACM, if any, and of the transportation control measures specified in the attainment demonstration plan, all the other measures credited towards the attainment plan requirement are in the approved SIP or are rules promulgated by the EPA. These measures were specified under the column labeled “Credited in attainment plan” in Table 3 of the notice of proposed rulemaking for this action. The States have committed to timely submit any additional RACM, and we are taking final action to approve the TCMs in this notice.

The District’s NO<sub>x</sub> RACT rule was approved on December 26, 2000 (65 FR 81369), Maryland’s on February 8, 2001 (66 FR 9522), and Virginia’s on January 2, 2001 (66 FR 8).

The District’s rule for beyond RACT control on large stationary sources of NO<sub>x</sub> was approved on December 22, 2000 (65 FR 80783) and an additional rule on November 1, 2001 (66 FR 55099), Maryland’s rules were approved on December 15, 2000 (65 FR 78416) and January 10, 2001 (66 FR 1866), and Virginia’s on December 14, 2000 (65 FR 78100).

The technical support documents for this action lists the basis for the reduction credits from Virginia’s non-CTG RACT rule.<sup>35</sup>

*Comment 2:* We received comments asserting that EPA’s reliance on SIP call reductions is particularly unjustified in the D.C. Area, given that Virginia is challenging EPA’s authority to require those very reductions and that EPA cannot grant credit for SIP call reductions when the SIP call has been judicially stayed.

*Response 2:* We incorporate by reference our responses to the comments on these issues found in

response 8 of section II.A.2 of our final rule published January 3, 2001, *see* 66 FR at 602, supplemented as follows: The stay of the SIP call has been vacated and the SIP call has been upheld. The court lifted its stay and States are now required to submit SIPs fully addressing the SIP call and if they fail, EPA must promulgate a Federal plan. EPA is fully justified in its reliance on SIP call reductions and in granting credit for them in the areas’ attainment demonstrations. *See* 67 FR 21867 (May 1, 2000).

#### 8. Attainment Demonstration and Rate-of-Progress Control Measures Not In SIP

*Comment 1:* We received comments asserting that both the attainment demonstration and rate-of-progress plan for the Washington area rely on emission reductions from control measures that have not been fully approved by EPA as part of the SIP.

*Response 1:* We incorporate by reference our responses to the comments on this issue found in response 1 of section II.O of our final rule published January 3, 2001, *see* 66 FR at 619, supplemented by our response elsewhere in this document to other comments under the heading of “NO<sub>x</sub> and VOC Reduction Credits.”

*Comment 2:* We received comments stating that there are significant disparities between the projections of 1999 regional emissions found in the most recent 9 percent ROP plan for the Washington area and the EPA’s Technical Support Document for the attainment demonstrations. The commenter claims that lower emissions in the TSD for the December 16, 1999 NPR, should not be used unless EPA provides an adequate technical basis.

*Response 2:* We incorporate by reference our responses to the comments on this issue found in response 2 of section II.O of our final rule published January 3, 2001, *see* 66 FR at 619.

#### 9. Modeling Assumptions

*Comment 1:* We received comments asserting that the transportation model does not incorporate adequate assumptions about the effects of land development and new road projections on the growth of vehicle travel and citing to an EPA letter from Judith Katz, Director, Air Protection Division, EPA Region III to James Cheatham, Divisional Administrator, Federal Highway Administration, dated August 27, 1998, in which the commenters assert that EPA stated that the plans did not include any information on the rate of land development in the Washington Region and the effect this development

<sup>34</sup> *See* pages 22 through 35 of “Technical Support Document for the One-Hour Ozone Attainment Demonstrations submitted by the State of Maryland, Commonwealth of Virginia and the District of Columbia for the Metropolitan Washington, D.C. Ozone Nonattainment Area (DC052–7005, MD143–3096, VA152–5062)”, dated January 24, 2003.

<sup>35</sup> *See* page 31 of “Technical Support Document for the One-Hour Ozone Attainment Demonstrations submitted by the State of Maryland, Commonwealth of Virginia and the District of Columbia for the Metropolitan Washington, D.C. Ozone Nonattainment Area (DC052–7005, MD143–3096, VA152–5062)”, dated January 24, 2003.

will have on the transportation system. The comments discuss the transportation model's land use assumptions, and imply that the Metropolitan Planning Organization (the Metropolitan Washington Council of Governments, MWCOG) (hereafter, "the MPO") has not included the effects of land use in the model and that EPA has known about this issue since 1998.

*Response 1:* We incorporate by reference our responses to the comments on this issue found in response 1 of section II.P of our final rule published January 3, 2001, see 66 FR at 619–620.

*Comment 2:* We have received comments saying that the temperature assumed in the mobile source modeling inputs was 93 degrees (Fahrenheit), yet the maximum recorded temperatures for those days during which peak ozone values in the 1999 ozone season were recorded were higher (96 to 98 degrees).

*Response 2:* For two reasons EPA disagrees with the comment that this is a reason to determine that the budgets are not approvable. First, the comments cite peak temperatures for a particular ozone season. This is at odds with EPA's guidance. EPA guidance on projecting all future mobile source emissions inventories requires the States to use the temperatures representative of a "typical ozone season day". See section 3.3.5.2 of *Procedures for Emission Inventory Preparation Volume IV: Mobile Sources*, EPA-450/4-81-026d (Revised), 1992, which also sets the procedure for determining the temperature for the base year and all subsequent projection inventories. EPA has updated this guidance for use with the MOBILE6 emissions factor model, but the updated guidance still requires the use of the typical ozone season day.<sup>36</sup> The typical ozone season day conditions are those used when determining the typical daily emissions for the base year emissions inventory. The same typical ozone season day is also used when setting target levels of emissions in ROP plans and all future year projection inventories in ROP plans and the budgets for attainment demonstrations.

EPA believes that the ambient temperature is key to estimating emission rates for highway vehicles with MOBILE6.<sup>37</sup> Temperature inputs were a key input to the MOBILE5 mobile source emission factor model as

well.<sup>38</sup> For this reason mobile source emission factors produced by EPA approved mobile source emission factor models are temperature dependant.

Second, if EPA were to require SIPs to be revised periodically on the basis of more recent temperatures, EPA would have to allow revisions and conformity determinations incorporating more recent data that reflect a lower temperature profile, and hence lower mobile source emissions, as well as requiring revisions to incorporate more recent data which includes higher temperatures.

EPA believes it is reasonable to use the same typical ozone season day temperatures used to develop the base year inventory rather than trying to predict actual future year temperatures when projecting future emissions because these projections are made in advance when actual temperatures cannot be known.

#### 10. NO<sub>x</sub> RACT Size Cutoff

*Comment:* We received a comment asserting that all of the States should extend NO<sub>x</sub> RACT to 25 ton per year sources. In addition, the SIP must require Virginia to extend VOC RACT to 25 ton per year sources, like Maryland.

*Response:* EPA agrees that full approval of the Washington area SIP to meet the severe area requirements is precluded in the absence of RACT regulations incorporating the severe area RACT thresholds mandated by the CAA in section 182(d). However, as explained in previous responses, EPA believes conditional approval based upon a commitment to submit these regulations by April 17, 2004 is permissible.

#### 11. List of Control Measures

*Comment 1:* We received comments claiming that the States have failed to submit lists of potential control measures by December 31, 1999 as required by EPA's December 16, 1999 notice of proposed rulemaking. The comments assert that the States submitted commitments to adopt additional control measures if needed, but did not provide lists from which those measures would be chosen and further state that because the States have failed to meet a condition that EPA itself set as a prerequisite for plan approval EPA must disapprove the Washington area SIP.

*Response 1:* The list of control measures to which these comments refer has to be viewed in context of the entire

December 16, 1999 notice of proposed rulemaking (64 FR 70460). The proposed rulemaking was published at a time when the attainment plan contained no motor vehicle emissions budget for 2005. The list of potential measures was to have been those potential measures needed to allow an adequacy finding under the transportation conformity rule on the requisite 2005 budgets in the event the attainment plan was not supported by fully adopted measures. EPA is now conditionally approving the motor vehicle emissions budgets rather than making an adequacy determination. EPA does not believe a list of potential control measures is necessary here because EPA is conditionally approving the SIPs based upon the States committing to complete all necessary modeling and RACM analyses and to adopt and submit by April 2004 any additional measures necessary to demonstrate attainment.

We also incorporate by reference our responses to the comments on these issues found in response 1 of section II.S of our final rule published January 3, 2001, see 66 FR at 620–621, as supplemented by the response to comment found in this final rule.

#### 12. Phase II NO<sub>x</sub> Limits Are RACM

*Comment:* We received a comment asserting that the Phase II NO<sub>x</sub> limits agreed to by OTC are also clearly RACM.

*Response:* As a factual matter, with respect to the OTC MOU Phase II NO<sub>x</sub> limits in the Washington nonattainment area, Maryland and the District have adopted programs to implement the Phase II NO<sub>x</sub> reduction in the OTC memorandum of understanding. EPA has approved these programs into Maryland's and the District's SIPs. Virginia was not a signatory to the OTC MOU. However, in permits approved into the Virginia SIP, Virginia has imposed beyond RACT requirements on two large point sources of NO<sub>x</sub> in the Virginia portion of the Washington area, see 65 FR 78100 (December 14, 2000). These permits impose limits of 0.15 pounds of NO<sub>x</sub> per million BTU heat input on these two sources. Such limits go beyond the OTC Phase II limits. EPA acknowledges the States must identify which RACM have already been adopted and adopt any which, if any, still remains as the States have committed to do so by April 2004. RACM is discussed in response to other comments.

<sup>36</sup> See "Technical Guidance on the Use of MOBILE6 for Emission Inventory Preparation," U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Transportation and Air Quality, January 2002.

<sup>37</sup> *Id.*

<sup>38</sup> See Chapter 2, User's Guide to MOBILE5 (Mobile Source Emission Factor Model) EPA-AA-TEB-94-01, September 1996.

### 13. Additional Comments on the Rate-of-Progress Plan

*Comment 1:* We received comments asserting that EPA cannot act on the District's, Maryland's and Virginia's 1996–1999 ROP plan in isolation because the 1996–1999 ROP plan for the Washington area was developed using a regional approach. EPA cannot know whether these requirements are met unless it acts on all three plans simultaneously.

*Response 1:* The comment is moot because EPA is concurrently approving the District's, Maryland's and Virginia's submittals of the 1996–1999 ROP plan for the Washington area in one final action published in the **Federal Register**.

*Comment 2:* We received comments asserting that modeling does not show that a 1 percent reduction in NO<sub>x</sub> emissions provides the same ozone reduction benefit as a 1 percent reduction in VOC emissions, and that these results address post-1999 conditions—not 1996–99 conditions, and that one cannot reliably extrapolate back from the modeled results to the reductions at issue in the 9 percent plan. The comments also assert there must be photochemical grid modeling of the actual substitution being proposed to determine the extent to which NO<sub>x</sub> can be substituted for VOC. These comments also note these model results themselves show that NO<sub>x</sub> reductions sometimes actually lead to an increase in the number of cells exceeding the ozone standard.

*Response 2:* We incorporate by reference our responses to the comments on this issue found in response 2 of section II.X of our final rule published January 3, 2001 (*see* 66 FR at 622–623).

*Comment 3:* We received comments asserting that although the ROP plan cites various rules and programs that have been adopted to reduce emissions, it does not demonstrate that actual compliance with the rules and implementation of necessary programs will be achieved by the deadline or that claimed emission reductions will be fully realized by that date. We received comments asserting that EPA can only credit the ROP plan with reductions actually achieved by November 15, 1999. We also received general comments that the ROP plan cannot be approved because programs on which the area relies for ROP credit were not approved by EPA until after November 15, 1999, thus the programs were not federally enforceable during the 1996–99 ROP period. Finally, the commenters suggest that certain programs may not

have achieved the level of reductions for which credit was taken in the ROP plan.

*Response 3:* We incorporate by reference our responses to the comments on these issues found in response 3 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 623.

*Comment 4:* We received comments asserting that the reductions from the National Low Emission Vehicle (NLEV) program are not creditable because the District did not submit a SIP revision for the NLEV program and because the NLEV SIPs for Maryland and Virginia were not approved until after the November 15, 1999 milestone date. The comments also assert that emission reductions are creditable toward the ROP requirement only to the extent that they have actually occurred by the November 15, 1999 milestone date. The comments state that if the ROP plan does not get sufficient creditable reductions then the plan cannot be approved.

*Response 4:* We incorporate by reference our responses to the comments on these issues found in response 4 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 623–624.

*Comment 5:* We received comments asserting that EPA should not credit reductions from the District's NO<sub>x</sub> RACT rule because: (1) EPA has not yet approved the District's NO<sub>x</sub> RACT rule and, therefore, it will not become federally enforceable until long after 11/15/99; and (2) the District has not shown actual implementation of NO<sub>x</sub> RACT before 11/15/99 by major NO<sub>x</sub> sources within the District.

*Response 5:* We incorporate by reference our responses to the comments on these issues found in response 5 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 624. Further, the District's NO<sub>x</sub> RACT rule was approved on December 26, 2000 (65 FR 81369).

*Comment 6:* We received comments asserting that the NO<sub>x</sub> RACT rules include inadequate emission control requirements for various source categories. With respect to Maryland and Virginia NO<sub>x</sub> RACT rules, the commenter referenced comments submitted in response to EPA's proposed rulemaking actions on those SIPs. With respect to the District's NO<sub>x</sub> RACT rule, the commenter says the District proposed to amend its rule to eliminate deficiencies precluding EPA approval.

*Response 6:* We incorporate by reference our responses to the comments on these issues found in response 6 of section II.X of our final

rule published January 3, 2001, *see* 66 FR at 624.

*Comment 7:* We received comments asserting that EPA cannot credit reductions because the District has not implemented its NO<sub>x</sub> RACT rules. Specifically, the comments state that the District's proposed Title V permit for the Blue Plains Wastewater Treatment Plant contains no NO<sub>x</sub> RACT requirements (either as federal or state-only requirements), even though the District has identified the plant as a major NO<sub>x</sub> source.

*Response 7:* We incorporate by reference our responses to the comments on this issue found in response 7 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 624–625.

*Comment 8:* We received comments asserting that EPA should not credit reductions from Maryland's or Virginia's NO<sub>x</sub> RACT rules for the following reasons: (1) EPA has not yet even approved these NO<sub>x</sub> RACT rules; (2) even if the rules are approved prior to final action on the ROP plan, the approvals will not become federally enforceable until long after 11/15/99; and (3) Maryland and Virginia have not shown actual implementation of all RACT requirements before 11/15/99.

*Response 8:* We incorporate by reference our responses to the comments on these issues found in response 8 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 625, supplemented as follows: EPA fully approved Maryland's and Virginia's NO<sub>x</sub> RACT rules on February 8, 2001 (66 FR 9522), and on January 2, 2001 (66 FR 8), respectively.

*Comment 9:* We received comments asserting that EPA can only credit those reductions that the District actually achieved as a result of enhanced vehicle inspection between April 1999 and November 15, 1999. The comments state that only a fraction of the fleet was tested between the April 1999 commencement of the enhanced I/M program and November 15, 1999.

Other comments likewise questioned whether full emission reductions credited from the Maryland and Virginia I/M programs actually occurred by 11/15/99. The latter comments assert that States must demonstrate full implementation including enhanced testing of the entire fleet. These comments also questioned whether the full emission reductions were credited to the enhanced I/M programs in Maryland and Virginia given that final SIP approval did not occur until late 1999.

All comments state if the ROP plan does not get sufficient creditable

reductions by November 15, 1999, then the plan cannot be approved.

*Response 9:* We incorporate by reference our responses to the comments on these issues found in response 9 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 625–626.

*Comment 10:* We received comments claiming that one EPA analysis indicates some reductions from the AIM rule could be deferred to as late as 2002. The comments cite a Memorandum dated May 30, 2000 from Paul T. Wentworth, EPA, to Administrative Record on the Adequacy findings for the Motor Vehicle Emissions Budgets in the Revised Phase II Ozone Attainment Plans for the Metropolitan Washington D.C. Ozone Nonattainment Area.

*Response 10:* We incorporate by reference our responses to the comments on this issue found in response 15 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 628, supplemented as follows: For the reasons discussed in responses to other comments, EPA believes the AIM reductions have already occurred. EPA believes that these reductions were achieved as expeditiously as practicable and that no other reasonable emissions control strategy would have allowed the States or EPA to achieve these reductions sooner.

*Comment 11:* We have received comments saying that the transportation model does not incorporate adequate assumptions about the effects of land development and new road projections on the growth of vehicle travel. In support, the comments cite an EPA letter from Judith Katz, Director, Air Protection Division, EPA Region III to James Cheatham, Divisional Administrator, Federal Highway Administration dated August 27, 1998, in which the commenters assert that EPA stated that the plans did not include any information on the rate of land development in the Washington Region and the effect of this development will have on the transportation system. The comments concern the land use assumptions in the transportation model and allege that the Metropolitan Planning Organization (the Metropolitan Washington Council of Governments, MWCOG) (hereafter, “the MPO”) has not included the effects of land use in the model and that EPA has known about this issue since 1998.

*Response 11:* We incorporate by reference our responses to the comments on this issue found in response 16 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 628.

*Comment 12:* We received comments asserting that EPA cannot credit the 1996–1999 ROP plan submitted by Virginia and Maryland with reductions from measures credited in the 15 percent plan and cannot count emission reductions to both the 15 percent and 9 percent reduction requirements. That is, according to the comments, reductions from some measures are allegedly being counted towards both the 15 percent and 9 percent reduction requirements.

*Response 12:* We incorporate by reference our responses to the comments on this issue found in response 17 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 628–629, supplemented as follows:

The same reasoning that allows reductions from measures in the 15 percent plan to count towards achieving the 1999 target level for the 1999 milestone applies to counting such reductions towards achievement of the 2002 target level of emissions.

The last sentence of section 182(c)(2)(B) specifically allows reductions that exceed those needed to achieve the 15 percent amount for the 15 percent plan to count towards the post-1996 ROP requirements.

*Comment 13:* We received comments asserting that EPA must document its reasons for accepting Maryland’s and Virginia’s emission reduction claims. The comments cite the example of the reductions from Maryland’s and Virginia’s open burning program and the 45 percent reduction claimed by Maryland for the Maryland rules applicable to autobody refinishing. The comments state that the States assume an 80 percent compliance with the open burning regulations without documenting the basis for this assertion. The comments claim that the 80 percent compliance assertion is void in the absence of plans or commitments needed for local enforcement.

*Response 13:* We incorporate by reference our responses to the comments on these issues found in response 18 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 629.

*Comment 14:* We received comments claiming that open burning emissions were not in the 1990 base year emissions inventory for Maryland and Virginia. The comments assert that EPA cannot credit reductions from emissions that were not included in the 1990 base year emissions inventory.

*Response 14:* We incorporate by reference our responses to the comments on these issues found in response 19 of section II.X of our final

rule published January 3, 2001, *see* 66 FR at 629.

#### **IV. Applicability of Revised Motor Vehicle Emissions Budgets**

This final action to conditionally approve the severe ozone nonattainment SIP for the Washington area includes conditional approval of SIP revisions submitted on February 9, 14 and 16, 2000 by Virginia, Maryland and the District, establishing the 2005 motor vehicle emissions budgets. These conditionally approved motor vehicle emissions budgets will apply for conformity purposes only until the revised motor vehicle emissions budgets required by this final action have been submitted and we have found the budgets to be adequate for conformity purposes.

Because the attainment demonstration includes the effects of the Tier 2/sulfur program, EPA is requiring the States to revise and resubmit their motor vehicle emissions budgets after EPA releases the MOBILE6 model. EPA is conditioning approval upon the States revising the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

As we proposed on February 4, 2003, the final conditional approval action we are taking today on the 2005 attainment 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 we are only conditionally approving the attainment demonstrations and their budgets because the States have committed to revise them. Therefore, once we have confirmed that the revised budgets are adequate, they will be more appropriate than the budgets we are approving for conformity purposes now.

#### **V. Final Action**

EPA is conditionally approving the SIP revisions and amendments identified in Tables 1 and 2 as the severe ozone nonattainment area SIP for

the Washington area contingent on the Washington area jurisdictions satisfying the following conditions. Should the Washington area jurisdictions fail to fulfill these conditions by May 19, 2003, this conditional approval will convert to a disapproval pursuant to CAA section 110(k).

(A) Revise the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(B) Revise the severe area ROP to provide emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(C) Revise the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(D) Revise the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(E) Update the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(F) Revise the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(G) Revise the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(H) Revise the major stationary source threshold to 25 tons per year.

(I) Revise Reasonably Available Control Technology (RACT) rules to

include the lower major source applicability threshold.

(J) Revise new source review offset requirements to require an offset ratio of at least 1.3 to 1.

(K) Submit as part of the SIP a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) should the area fail to attain by November 15, 2005.

(L) Submit as part of the SIP a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the ROP requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

## VI. Statutory and Executive Order Reviews

### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65

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

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 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**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

### C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of

this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 2003. 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 to conditionally approve the severe ozone nonattainment area SIP revisions for the Metropolitan Washington severe ozone nonattainment area 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: April 10, 2003.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, Region III.*

■ 40 CFR part 52 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 J—District of Columbia

■ 2. Section 52.473 is added to read as follows:

##### § 52.473 Conditional approval.

The District of Columbia's severe ozone nonattainment area SIP for the Metropolitan Washington area, which includes the 1996–1999 portion of the rate-of-progress plan submitted on November 3, 1997, and May 25, 1999 and the transportation control measures in Appendix H of the May 25, 1999 submittal, and the severe ozone attainment demonstration submitted on April 24, 1998, October 27, 1998, February 16, 2000 and section 9.1.1.2 of the March 22, 2000 submittal, is conditionally approved contingent on the District submitting a revised SIP by April 17, 2004 that satisfies certain conditions. This conditional approval also establishes motor vehicle emissions budgets for 2005 of 101.8 tons per day of volatile organic compounds (VOC) and 161.8 tons per day of nitrogen oxides (NO<sub>x</sub>) to be used in transportation conformity in the Metropolitan Washington, DC serious ozone nonattainment area until revised budgets based upon the MOBILE6 model are submitted and found adequate. The District must submit a

revised SIP by April 17, 2004 that satisfies the following conditions.

(1) Revises the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(2) Revises the 1999–2005 portion of the severe area rate-of-progress plan to provide MOBILE6-based mobile source emission budgets and adopted measures sufficient to achieve emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(3) Revises the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(4) Revises the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(5) Revises the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(6) Revises the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(7) Revises the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(8) Revises the major stationary source threshold to 25 tons per year.

(9) Revises Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

(10) Revises new source review offset requirement to require an offset ratio of at least 1.3 to 1.

(11) Includes a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) should the area fail to attain by November 15, 2005.

(12) Includes a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the rate-of-progress requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

#### Subpart V—Maryland

■ 2. Section 52.1072 is amended by adding paragraph (e) to read as follows:

##### § 52.1072 Conditional approval.

\* \* \* \* \*

(e) Maryland's severe ozone nonattainment area SIP for the Metropolitan Washington area, which includes the 1996–1999 portion of the rate-of-progress plan submitted on December 24, 1997 and May 20, 1999 and the transportation control measures in Appendix H of the May 25, 1999 submittal, and the severe ozone attainment demonstration submitted on April 29, 1998, August 17, 1998, February 14, 2000 and section 9.1.1.2 of the March 22, 2000 submittal and the transportation control measures in Appendix J of the February 9, 2000 submittal, is conditionally approved contingent on Maryland submitting a revised SIP by April 17, 2004 that satisfies certain conditions. This conditional approval also establishes motor vehicle emissions budgets for 2005 of 101.8 tons per day of volatile organic compounds (VOC) and 161.8 tons per day of nitrogen oxides (NO<sub>x</sub>) to be used in transportation conformity in the Metropolitan Washington, DC serious ozone nonattainment area until revised budgets based upon the MOBILE6 model are submitted and found adequate. Maryland must submit a revised SIP by April 17, 2004 that satisfies the following conditions.

(1) Revises the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be

implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(2) Revises the 1999–2005 portion of the severe area rate-of-progress plan to provide MOBILE6-based mobile source emission budgets and adopted measures sufficient to achieve emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(3) Revises the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(4) Revises the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(5) Revises the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(6) Revises the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(7) Revises the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(8) Revises the major stationary source threshold to 25 tons per year.

(9) Revises Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

(10) Revises new source review offset requirement to require an offset ratio of at least 1.3 to 1.

(11) Includes a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) should the area fail to attain by November 15, 2005.

(12) Includes a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the rate-of-progress requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

#### Subpart VV—Virginia

■ 2. Section 52.2450 is amended by adding paragraph (b) to read as follows:

#### § 52.2450 Conditional approval.

\* \* \* \* \*

(b) Virginia's severe ozone nonattainment area SIP for the Metropolitan Washington area, which includes the 1996–1999 portion of the rate-of-progress plan submitted on December 19, 1997 and May 25, 1999 and the transportation control measures in Appendix H of the May 25, 1999 submittal, and the severe ozone attainment demonstration submitted on April 29, 1998, August 18, 1998, February 9, 2000, and section 9.1.1.2 of the March 22, 2000 submittal and the transportation control measures in Appendix J of the February 9, 2000 submittal, is conditionally approved contingent on Virginia submitting a revised SIP by April 17, 2004 that satisfies certain conditions. This conditional approval also establishes motor vehicle emissions budgets for 2005 of 101.8 tons per day of volatile organic compounds (VOC) and 161.8 tons per day of nitrogen oxides (NO<sub>x</sub>) to be used in transportation conformity in the Metropolitan Washington, DC serious ozone nonattainment area until revised budgets based upon the MOBILE6 model are submitted and found adequate. Virginia must submit a revised SIP by April 17, 2004 that satisfies the following conditions.

(1) Revises the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(2) Revises the 1999–2005 portion of the severe area rate-of-progress plan to provide MOBILE6-based mobile source

emission budgets and adopted measures sufficient to achieve emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(3) Revises the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(4) Revises the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(5) Revises the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(6) Revises the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(7) Revises the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(8) Revises the major stationary source threshold to 25 tons per year.

(9) Revises Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

(10) Revises new source review offset requirement to require an offset ratio of at least 1.3 to 1.

(11) Includes a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) should the area fail to attain by November 15, 2005.

(12) Includes a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in

combination with other emission  
reduction requirements in the  
Washington area, to comply with the

rate-of-progress requirements for severe  
areas. Measures specified in section  
108(f) of the Clean Air Act will be

considered and implemented as  
necessary to demonstrate attainment.  
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