

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