

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.