

and maintenance plans be revised using the then-forthcoming MOBILE6 model.²⁶ 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 MOBILE6.²⁷ 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 policy²⁸ 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.

²⁶ 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.

²⁷ 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.

²⁸ 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.