

B. Severe Area SIP Revision Submittal Schedule

Comments Supporting a Shorter Schedule and on Application of Section (i)

One commenter submitted extensive comments in opposition to the proposed schedule for submittal of the severe area SIP.

This commenter claims EPA's use of section 182(i) is arbitrary and capricious and contrary to law. The commenter notes that the CAA set deadlines for SIP submittals for serious and severe areas in CAA sections 182(c)(2) and (d). The commenter claims those deadlines are not subject to adjustment and have long passed.

This commenter noted the following deadlines as examples:

(1) November 15, 1992: "VMT offset" SIP due under CAA section 182(d)(1).

(2) November 15, 1992: NSR program mandated by CAA sections 172(c)(5) and 173 including the lower stationary source major source thresholds for severe areas.

(3) November 15, 1994: for the attainment demonstration due under CAA sections 182(c)(2) and (d).

(4) December 31, 2000: SIP provision due under CAA section 182(d)(3) to fulfill the requirements of section 185.

The commenter claims that section 182(i) requires areas to meet the deadlines of sections 182(b)–(d) and allows EPA to adjust those deadlines only to the extent necessary or appropriate to assure consistency among the required submissions. The commenter claims that EPA has not provided a rationale why the proposed schedule is necessary and appropriate and therefore EPA must make immediate "findings of incompleteness" under section 110(k)(1)(B).

The commenter further claims the proposed schedule has other problems in that the schedule runs afoul of the statutory attainment and ROP deadlines:

(1) The 2002 ROP plan will be due 16 months after the 2002 milestone date,

(2) The first potential sanction could only be imposed by August–September 2005 around 34 months after the 2002 ROP milestone date and around two months before the attainment date.

(3) The second potential sanction and the mandate for any needed Federal Implementation Plan would not come due until after the attainment deadline of November 15, 2005. Thus the commenter concludes the proposed schedule also is contrary to the CAA in that the plans would not be submitted and implemented prior to ROP and attainment deadlines.

With regard to the 2002 milestone, the commenter further claims that the Courts have already said that the Washington area SIP ROP plan is deficient and must be disapproved because the plan fails to provide an annual average of three percent ROP after November 15, 1999. The commenter's theory is that section 182(c)(2)(B) mandates post-1999 ROP even for serious areas and that the submittal deadline for this SIP is November 15, 1994. Under this theory the commenter concludes the EPA has no authority to extend the deadline for submittal of the ROP plans since the statutory due date of November 15, 1994 is past.

The same commenter further asserts that even if EPA could lawfully extend the submittal date (although the commenter disputes this very point) the standard for submission should be "as soon as possible." The commenter submitted a schedule recently developed by the Metropolitan Washington Air Quality Committee (MWAQC)² that the commenter interprets as a demonstration that the air quality planning agencies could develop the entire severe area SIP by July 2003. The commenter maintains that EPA must set the submittal date to no later than the date the air quality planning agencies maintain is necessary to finish the task.

One other commenter urged EPA to be proactive in enforcing the severe area requirements and urged EPA to enable an expeditious switch from the MOBILE5 to MOBILE 6.

Response to Comments Supporting a Shorter Schedule and on Application of Section 182(i)

Response to Comment on Section 182(i): EPA's exercise of discretion under section 182(i) to adjust the submission deadlines for the severe area requirements that become applicable to the D.C. area for the first time upon the effective date of the area's reclassification 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 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 submission dates 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 proposed reclassification rulemaking 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 state to meet long-expired deadlines, EPA must set new deadlines that will ensure consistency of submissions for requirements that the state is only 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 events necessary to trigger that obligation (reclassification) has occurred. Until EPA acts to reclassify an area, the states are 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

² The commenter identified this agency as the Metropolitan Washington Council of Governments (MWCOC).