

achieve a minimum of 18 percent emission reduction from base line emissions by November 15, 2005. Therefore, this delay does not reduce the overall ROP obligation.

With respect to the claim that EPA incorrectly asserted that contingency plans would need to account for any adjustment in the 2002 ROP milestone date, EPA disagrees. As discussed in the preceding paragraphs, EPA reasonably concluded that after 2002 the 2002 ROP milestone date should be adjusted to be "as expeditiously as practicable," and thus contingency measures would properly be keyed to this new date.

The requirements for contingency measures for failure to attain the 1-hour ozone NAAQS by November 15, 2005 or a 2005 ROP milestone failure are not affected by this action.

D. Triggering Implementation of Contingency Measures

Summary of Public Comments Received and EPA's Response

Comment: One commenter urged EPA to specify in the final rulemaking that any adjustment of the 2002 ROP milestone would not trigger or require the implementation of contingency measures in the area.

Response: EPA believes that allowing the first required post-1999 nine percent ROP, due by November 15, 2002, to be demonstrated as expeditiously as practicable after that date does not trigger the need to implement contingency measures prior to that date.

EPA is allowing the District, Maryland and Virginia to demonstrate that the first required post-1999 nine percent ROP, due under the statute by November 15, 2002, as expeditiously as practicable after that date in the event that control measures currently in the SIPs of the District, Maryland and Virginia or already promulgated by EPA, have not already achieved the required nine percent reduction by November 15, 2002. This first post-1999 ROP reduction has to be from base line emissions and account for growth in emissions through November 15, 2002. We have noted that for the Washington area there are emission reductions not relied on or credited in the ROP plan accruing between November 15, 1999, and November 15, 2002, from the January 1, 2000, implementation of phase 2 of the reformulated gasoline program, NO_x reductions beyond RACT, and other on-road measures, such as the national low emission vehicle (NLEV) program, and a variety of off-road national emissions reduction programs. See 66 FR at 615, January 3, 2001. These measures have and will continue to

provide additional reductions beyond those credited in the area's post-1996 ROP for the November 15, 1999, ROP milestone. These measures meet the ROP creditability requirements of CAA sections 182(b) and (c) because these measures are already in the approved SIPs or are rules promulgated by the EPA. However, EPA had insufficient information at the time of the November 13, 2002, notice of proposed rulemaking (and currently still has insufficient information) to determine whether or not these measures achieve the required nine percent reduction in base line emissions for the first post-1999 period. One major factor in demonstrating ROP for any milestone year is the release of a revised mobile source emissions factor model, MOBILE6. As discussed elsewhere in this document, as well as in the November 13, 2002, notice of proposed rulemaking (67 FR at 68811) the revised MOBILE6 model must be used for the severe area SIP and the MOBILE6 model must be used to redetermine 1990 base line emissions and prior target levels, as well as the new 2002 and 2005 year target levels and control strategy projections.

In the event that the Washington area can demonstrate that the required nine percent reduction occurred by November 15, 2002, (with the current SIP plus Federal measures), then the contingency requirement will not be triggered. In the event the area cannot demonstrate the required nine percent reduction did occur by November 15, 2002, (with the current SIP plus Federal measures) then EPA has determined that the District, Maryland and Virginia ROP SIP would be able to adjust the milestone date for the first required post-1999 nine percent ROP to a date that is as expeditiously as practicable after November 15, 2002. As explained in prior paragraphs, this is because the statutory 2002 ROP date lapsed before the area was first classified as severe ozone nonattainment. Only a finding that the area failed to achieve the required reductions by that new milestone could trigger the need to implement contingency measures.

E. Impacts on Mobile Source Emissions Budgets and Transportation Planning

Summary of Public Comments Received and EPA's Response

Comment #1: One commenter stated agreement with our assessment that a portion of the Washington area air quality problem is due to transport and agreement that there has been improvement in ozone air quality in the area. For these reasons the commenter asserted that the area should not be

subjected to punitive measures such as sanctions, nor subject to lapses or "freezes" of the transportation planning processes.

Response #1: This action does not create a "conformity freeze" or impose sanctions.³ Under section 179(a), sanctions can result from an EPA finding that a State failed to submit a required SIP revision (or has submitted one that does not meet the completeness requirements of the CAA and EPA regulations) or other required submission required under the CAA, result from a disapproval of a required submission, or result from a finding that a State is not implementing all or part of its approved SIP.⁴ Likewise, under the conformity rule, 40 CFR part 93, a conformity freeze only results when EPA disapproves a ROP or attainment demonstration SIP revision without making a protective finding. See 40 CFR 93.120(a)(2). This final rule does none of these things.

Comment #2: One commenter asserted that transportation planning should not be subject to a conformity freeze due to action on the plans subject to the July 2, 2002, Court ruling on EPA's January 3, 2001, final rule on the Washington area SIP.

Response #2: This comment is not germane to this action. EPA did not propose action on any SIP revision in the November 13, 2002, notice of proposed rulemaking. The action EPA takes on the SIP revisions formerly covered by the now vacated January 3, 2001, final rule will be the subject of separate rulemaking action(s). EPA intends to establish in a forthcoming notice of proposed rulemaking in the **Federal Register** a separate public comment period on these SIP revisions.

Comment #3: One commenter stated that the District, Maryland and Virginia had provided MOBILE5 budgets for the Washington area that were found to be adequate. This commenter claimed these budgets were consistent with the attainment plan and were the most recent budgets at the time these budgets were developed. The commenter urged that no conformity freeze should ensue because these budgets are adequate. This commenter urged EPA to allow the area to continue to use any adequate MOBILE5 derived budgets until

³ In a conformity freeze the only transportation projects that could be found to conform would be those included in the first three years of the currently conforming transportation plan and transportation improvement program (TIP). No new plans, TIPs, or plan/TIP amendments could be found to conform after the effective date of the disapproval.

⁴ EPA's completeness criteria that are promulgated pursuant to section 110(k)(1) of the CAA are found in appendix V to 40 CFR part 51.