

controlling date for submission of the RACM analysis, the contingency measures and the 2005 revised mobile vehicle emissions budgets, any conditional approval issued pursuant to this proposed rulemaking shall convert to a disapproval only if the State fails to make the required submissions by April 17, 2004. If EPA disapproves a required SIP, such as an attainment demonstration SIP, section 179(a) provides for the imposition of two sanctions. In the event of a disapproval the two sanctions would be imposed in accordance with the EPA's sanctions regulation, 40 CFR 52.31, and in the same order as described in the preceding paragraph.

B. Disapproval in the Alternative

The EPA believes that the proposed conditional approval is consistent with sections 110(k)(3) and (4) of the Act and with rulings by the Circuit Court and the District Court cited previously in this document. We also believe that the proposed conditional approval is the most reasonable of the legally supported alternatives for allowing the Washington area to deal with the situation created by the two court rulings adverse to EPA. However, EPA is well aware that its past actions with respect to this area have been controversial and have resulted in separate actions in two different Federal courts. EPA is also well aware that it is under a District Court-ordered deadline to publish its final action on the Washington area attainment demonstration and ROP SIPs by no later than April 17, 2003. Because EPA anticipates that the proposed conditional approvals may receive adverse comment, we are also proposing in the alternative to disapprove either or both the attainment demonstration and ROP SIPs. EPA believes that the proposed disapproval in the alternative is a prudent step to take to preserve the court-ordered schedule in the event that we cannot issue a timely final conditional approval for both the attainment demonstration and ROP SIP revisions.

In the event that we cannot issue a final conditional approval with respect to the attainment demonstration SIP revision, we propose to disapprove those submissions due to the following deficiencies: (1) Lack of contingency measures; (2) lack of an analysis showing that all RACM have been adopted for implementation in the Washington area; and, (3) lack of revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP

continues to demonstrate attainment by November 15, 2005. With respect to the 1996–1999 ROP plan, in the event that we cannot issue a final conditional approval, we propose to disapprove the submissions because they lack contingency measures. As explained in the following paragraphs at VI.C. the EPA is proposing that disapproval of either the attainment demonstration or the 1996–1999 ROP plan will be made with a protective finding regarding their respective motor vehicle emissions budgets.

C. Proposed Protective Findings

Under the conformity rule if EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and transportation improvement plan (TIP) shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act.⁵ No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined. *See* 40 CFR 93.120(a).

When the EPA disapproves a control strategy SIP the EPA has to determine whether to issue a protective finding. If the EPA does not issue a protective finding then the conformity freeze established by section 93.120(a)(2) of the conformity rule will occur on the effective date of the disapproval. *See* 40 CFR 93.120(a)(2).

Alternatively, when disapproving a control strategy implementation plan revision, the EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment. *See* 40 CFR 93.120(a)(3).

In the preamble to the conformity rule, EPA explained the implications of

⁵ Under the conformity rule the term “control strategy implementation plan revisions” includes ROP and attainment demonstrations, or, more generally, those implementation plans which contain specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

a disapproval of a ROP plan or attainment demonstration and how a protective finding works. When disapproving a control strategy SIP revision the EPA may give the SIP a protective finding. If the EPA disapproves a SIP but gives a protective finding, the motor vehicle emissions budget in the disapproved SIP could still be used to demonstrate conformity. There would be no adverse conformity consequences unless highway sanctions were imposed, as is the case with respect to all other SIP planning failures. Highway sanctions would be imposed two years following the EPA's disapproval if the SIP deficiency had not been remedied. The conformity of the plan and TIP would lapse once highway sanctions were imposed. The EPA will make a protective finding only if a submitted SIP contains adopted control measures or commitments to adopt measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the SIP was submitted, such as ROP. That is, the EPA will give such a submitted SIP a protective finding if it contains enough emissions reduction measures to achieve its purpose of either demonstrating ROP or attainment. The EPA will not make a protective finding with respect to a SIP that does not contain emission reduction measures or commitments adequate to achieve the required ROP or attainment. *See* 62 FR at 43796, August 15, 1997.

The EPA is proposing that based on the analysis discussed in section IV of this document that the 1996–1999 ROP plan meets the ROP requirement by providing enough reductions with the adopted measures to have achieved the 9 percent reduction requirement. The EPA believes that the ROP plan meets the requirement for a protective finding, however, the EPA will take final action with respect to this protective finding only if it finalizes the disapproval in the alternative option proposed in this document.

Likewise, the EPA is proposing that, based on the analysis discussed previously in this document, the attainment demonstration has demonstrated that the Washington area will attain the ozone NAAQS no later than November 15, 2005, by providing enough reductions with the adopted measures to demonstrate attainment. The EPA believes that the attainment demonstration meets the requirement for a protective finding, however, the EPA will take final action with respect to this protective finding only if it finalizes the disapproval in the alternative option proposed in this document.