

new source review (NSR) offset requirement of at least 1.3 to 1; (4) a post-1999 rate-of-progress plan containing emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999, until the attainment date; and (5) additional transportation control measures (TCMs) needed to offset growth in emissions due to growth in vehicle miles traveled (VMT); and (6) a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x) should the area fail to attain by 2005. Additionally, section 211 "Reformulated Gasoline and Oxygenated Gasoline" of CAA requires any area reclassified from "serious" to "severe" to implement reformulated gasoline. We have issued a "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" that sets forth our preliminary views on these section 182 requirements and how we will act on SIPs submitted under Title I. See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). Further, Georgia is required to submit a revision to the SIP containing contingency measures under sections 172(c)(9) and 182(c)(9) for its severe area SIP to meet ROP requirements and for failure to attain.

The GAEPD's severe SIP for the Atlanta area must also contain adopted regulations, and/or enforceable commitments to adopt and implement control measures in regulatory form by specified dates, sufficient to make the required rate-of-progress and to attain the 1-hour ozone NAAQS as expeditiously as practicable but no later than November 15, 2005. These adopted regulations must include, at a minimum, the regulations to meet the specific requirements listed above and any other emission reductions necessary to achieve attainment.

XII. Rate-of-Progress (ROP) Schedule

The section 182(c)(2)(B) reasonable further progress requirement requires volatile organic compounds (VOC) or nitrogen oxides (NO_x) reductions of 3 percent per year, averaged over a 3-year period, until the attainment date, for serious and above ozone nonattainment areas designated and classified under the 1-hour ozone NAAQS. The EPA refers to these reductions as the ROP requirement.

The first required post-1999 ROP 9 percent reduction originally was required by November 15, 2002 under the CAA. However, that date has elapsed prior to the time Atlanta was redesignated and first became subject to the requirement. Therefore, in this action EPA is allowing the Atlanta area

to demonstrate that the first required post-1999 9 percent ROP is achieved as expeditiously as practicable after November 15, 2002, but in any case no later than November 15, 2005. EPA is also allowing the Atlanta area to link contingency measures for the 2002 ROP milestone to this new date.

In light of the fact that the statutory deadline has passed, it is impossible for the State to demonstrate any progress by a date that passed before the time the area became classified as a severe area and thus first became subject to the requirement to demonstrate post-1999 ROP. EPA agrees that the Atlanta area must now demonstrate such progress, but reasonably concludes that the State must have some time in which to actually develop and implement the measures to achieve such ROP. EPA has addressed similar issues on several occasions in the past when areas for various reasons have not timely submitted progress SIPs, and when the date for achieving progress had passed prior to EPA action on a progress SIP. EPA has routinely concluded in these circumstances that the area should demonstrate the required ROP as expeditiously as practicable once the statutory date for achieving such ROP had passed. See, e.g., 65 FR 31485 (May 18, 2000), 63 FR 28898 (May 27, 1998), 62 FR 31343 (June 9, 1997). Even though there is no provision in the statute expressly addressing the situation where an area has failed to timely submit a progress SIP, EPA must fill the statutory gap where such SIPs are submitted after the date for achieving progress, and EPA has reasonably done so in this case by following its past practice of requiring such SIPs to demonstrate ROP as expeditiously as practicable. Although no court has directly addressed the issue of the propriety of this "as expeditious as practicable" standard, courts have addressed other issues concerning ROP plans submitted after the statutory date for achieving ROP, which have demonstrated ROP as expeditiously as practicable, without expressing any concern with that standard. See, e.g., *Sierra Club v. EPA*, 252 F.3d 943 (8th Cir. 2001) (Court upheld calculation methods used in 15 percent ROP plan submitted three years after statutory date demonstrating achievement of ROP seven years after statutory date).

For the reasons set forth in this final rulemaking notice and pursuant to section 182(i) of the CAA, EPA is allowing the Atlanta area to demonstrate the first required post-1999 9 percent ROP, due under the CAA by November 15, 2002, as expeditiously as practicable after that date (but in any case no later

than November 15, 2005) in the event that control measures currently in the Atlanta area SIP or already promulgated by EPA did not achieve the required 9 percent reduction by November 15, 2002.

The severe area SIP will have to provide for a total of a 3 percent per year reduction from base line emissions between November 15, 1999, and the attainment year. Because the 2002 ROP deadline is now past, the ROP reduction requirement for the period 1999 to 2002 will have to be achieved as expeditiously as practicable after November 15, 2002. EPA understands that the GAEPD would likely submit one ROP plan which includes all the ROP required until the attainment date, and will demonstrate that the 1999–2002 increment is achieved as expeditiously as practicable. The State must submit by July 1, 2004, an ROP plan to achieve a three percent reduction in the precursor emissions per year until the as expeditiously as practicable attainment year. Additionally, the area must submit adequate on-road mobile source emission budgets consistent with that plan.

Because EPA is allowing the GAEPD to demonstrate the first required post-1999 9 percent ROP, due under the CAA by November 15, 2002, as expeditiously as practicable after that date (but in any case no later than November 15, 2005), EPA is also allowing the GAEPD to adopt contingency measures keyed to this new date. Thus, the GAEPD must submit contingency measures to take effect if the area fails to achieve the first post 1999 9 percent ROP by the as expeditiously as practicable date.

XIII. Use of MOBILE6 in SIP Submittals

The January 18, 2002, memorandum from John S. Seitz and Margo Tsirigotis Oge "Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity" indicates, among other things, that newly developed SIPs, including the motor vehicle emissions budgets in the post-1999 rate-of-progress plans, will have to be developed using MOBILE6. Using MOBILE6 may require a revision to the 1990 base year inventory and ROP targets.

XIV. Impacts on the Title V Program

Upon reclassification to severe, the major stationary source threshold will be lowered. Consequently, the State's Title V operating permits program regulations need to cover existing sources that will become subject to the appropriate lower major stationary source threshold. Any new major