



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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MEMORANDUM

OFFICE OF
AIR AND RADIATION

SUBJECT: Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations

FROM: Merrylin Zaw-Mon, Acting Director
Regional and State Programs Division

TO: Air Director, Regions I-VI

In a memorandum dated March 2, 1995, Mary Nichols provided a phased schedule for submission of attainment demonstrations for serious and severe ozone nonattainment areas that participated in the planning efforts of the Ozone Transport Assessment Group ("the areas"). While we have always believed that motor vehicle emissions budgets are a necessary component of an approvable attainment demonstration, in light of the phased submission schedule and more recent developments, we believe that we should clarify our requirements for adequate budgets. As a result, we are issuing this guidance.

Background

Our current policy allows the areas to submit an attainment demonstration in three phases. Phase I, due no later than the end of 1995 (unless administrative or legislative scheduling considerations required an extension into 1996), primarily included the control measures necessary to meet the 9% emission reduction requirement through 1999. Phase II, which included a modeled attainment demonstration, identification of a control strategy to reach attainment and a commitment to adopt measures necessary for attainment, was due in April 1998. Phase III, which must include adopted control measures, is due for serious areas by November 1999 and for severe areas by December 2000.¹

The Clean Air Act required attainment demonstrations for serious and severe areas to be submitted in November 1994. Several environmental groups have challenged our earlier policies that extended this deadline, and they have filed a notice of intent to sue. They claim that we have a past due duty to promulgate federal implementation plans ("FIPs") for these areas, because we previously made findings of failure to submit or incompleteness and the areas do not yet have approved attainment demonstration state implementation plans (SIPs).

¹ Several of the dates in the March 2, 1995 Nichols policy were subsequently extended by a December 1997 memorandum from Richard D. Wilson, Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS.

a past due duty to promulgate federal implementation plans ("FIPs") for these areas, because we previously made findings of failure to submit or incompleteness and the areas do not yet have approved attainment demonstration state implementation plans (SIPs).

In order to resolve these cases, we are considering entering into a settlement agreement that would allow States to continue to follow the submission dates for control measures as outlined in our earlier policies. However, we have also agreed to work with States to ensure that motor vehicle emissions budgets associated with the attainment demonstrations are identified expeditiously and that attainment demonstration SIPs or FIPs are in place.

Summary

Under the new policy, States should identify motor vehicle emission budgets no later than December 31, 1999. In order to establish budgets, States must identify a set of control measures that will bring the area into attainment of the standard and commit to adopt the measures. (See further discussion below for areas that need additional emission reductions.) Final adoption and submission of control measures could continue to occur on the schedules in our current guidance (i.e., adopted control measures for severe areas by December 2000).

While we recognize that this schedule will require some additional work upfront for some areas, it will also allow States to work in accordance with their current schedules for rule adoption without the immediate potential for a FIP. Our policy with respect to motor vehicle emissions budgets associated with the attainment demonstrations for the areas is set forth below.

When must a budget be identified?

We will work with States to determine whether the budgets in their current submissions are adequate for conformity purposes. Attainment demonstrations must contain motor vehicle emissions budgets that are adequate for transportation conformity purposes. EPA's processes for determining adequacy are discussed below. If we are unable to determine that the budget in the current submission is adequate, we will propose by November 30, 1999, to disapprove that submission.² We urge States to submit new budgets as a formal SIP revision by December 31, 1999 to allow EPA to act expeditiously in determining the adequacy and approvability of these budgets.

If a State submits a SIP that identifies conformity budgets by December 31, 1999, we will reopen the comment period on the rule proposed in November 1999 to allow for additional public

²In addition to proposing disapproval, we could propose a full or conditional approval in the alternative, based on the premise that prior to final action the State may submit a conformity budget that EPA determines is adequate and that any other identified deficiencies are also corrected.

comment on the new submission and the adequacy of its budgets. By May 31, 2000, we expect to either determine that the State has submitted adequate conformity budgets or to disapprove the attainment demonstration in full or in part.

If the motor vehicle emissions budgets are adequate for transportation conformity purposes, we will make a formal determination as described below ("What process will EPA use for determining the adequacy of the submitted SIP budgets?"). If we disapprove the submission, the conformity of the transportation plan and TIP would freeze on the effective date of the final disapproval.³ Thus, by May 31, 2000, all areas should either have a budget that we have determined to be adequate or have a disapproved plan that triggers a freeze and starts a sanctions clock.

What is an "adequate" motor vehicle emissions budget?

As we have worked through the issue of when a conformity budget needs to be identified and as we have reviewed the Phase II submissions, questions have arisen regarding what is an adequate conformity budget for these submissions. First, we will identify the general requirements for an adequate budget; then we will provide guidance on how these criteria relate to the attainment demonstrations for the areas.

EPA's regulations identify the minimum criteria that we use to judge the adequacy of submitted motor vehicle emissions budgets (40 CFR 93.118(e)(4)). Our regulations include the full list of adequacy criteria, but some examples include:

- The SIP must have been submitted by the Governor (or designee) and been subject to a public hearing;
- The motor vehicle emissions budgets must be clearly identified and precisely quantified;
- The motor vehicle emissions budgets, when considered together with all other emissions sources, must be consistent with attainment; and
- The budgets must be consistent with and clearly related to the emissions inventory and the control measures in the submitted SIP.

Of course, we cannot fully determine whether the motor vehicle emissions budgets are consistent with attainment until we have completed our full, formal SIP review process and approved or disapproved the SIP. However, we will find the budgets inadequate for conformity purposes if we find evidence during our initial review that the SIP clearly does not satisfy the above criteria.

³During a conformity freeze, only projects in the first three years of the currently conforming plan and TIP may be approved. New transportation plans and TIPs (and amendments) may not be found to conform.

How do the adequacy criteria apply with respect to Phase II attainment demonstration submissions?

Following is an explanation of how we interpret the general adequacy criteria with respect to the Phase II attainment demonstration submissions. This is not a comprehensive list or a substitute for the adequacy criteria in 40 CFR 93.118(e). We developed this list keeping in mind that some of the submissions have local modeling that is the basis of the attainment demonstration, but that does not by itself demonstrate attainment. These submissions also may use the regional NOx SIP call modeling as weight of evidence that the area will attain.

- The SIP must explicitly identify and quantify motor vehicle emissions budgets for volatile organic compounds (VOC) and nitrogen oxides (NOx), even if the area has a NOx waiver (unless the area demonstrates through modeling that motor vehicle NOx emissions could grow without limit).
- The budgets must come from the local (nonattainment area) motor vehicle emissions inventory for the year that the SIP is demonstrating attainment. If the State is requesting an attainment date extension under EPA's Guidance on Extension of Attainment Dates for Downwind Transport Areas, dated July 17, 1998, the State must establish budgets for the extended date. (See below for more discussion about attainment date extension requests.)
- The motor vehicle emissions budgets must reflect appropriate and up-to-date projections of motor vehicle emissions for the attainment year. For example, assumptions about vehicle miles traveled (VMT), socioeconomic variables, and other planning assumptions must be appropriate and up-to-date. Also, MOBILE must be run properly, and the MOBILE inputs (including vehicle fleet characteristics) must be appropriate and up-to-date as required by EPA's guidance on SIP inventories and the MOBILE users' guide.
- The local (nonattainment area) motor vehicle emissions inventory that establishes the budgets must include the effects of all motor vehicle controls that will be in place by the attainment year, including federal measures (e.g., NLEV) and the mobile source control measures assumed in the NOx SIP call. (See below for more discussion about the proposed Tier 2 standards.)
- Control measures assumed in the modeled attainment demonstration must be specifically identified, and their emission reductions must be quantified. If the control measures are not already adopted, the SIP must include commitments to their adoption and schedules for their implementation.⁴ These commitments must be from agencies with the

⁴We generally believe that serious areas will have adopted the necessary control measures by the time they identify their motor vehicle emissions budgets.

appropriate authority. (See below for more information about areas that need additional reductions for attainment.)

Special situations with Phase II SIPs

How is adequacy determined when an attainment date extension request is involved? If an area is requesting an attainment date extension, its motor vehicle emissions budgets must be defined for the extended attainment date. Our review of the attainment demonstration and the adequacy of the motor vehicle emissions budgets will consider the appropriateness of the attainment date extension. Just as our adequacy review necessarily requires a preliminary assessment of whether the SIP demonstrates attainment, our adequacy review will include a preliminary assessment of the acceptability of the attainment date extension. If we believe (based on our preliminary review) that we could not approve the attainment date extension, we will have to find the motor vehicle emissions budgets inadequate. Otherwise, we could find the motor vehicle emissions budgets adequate.

We believe that it is appropriate to consider the attainment date extension as part of our review of the adequacy of the attainment demonstration SIP and its budgets. The attainment demonstration SIP is the forum in which an area defends and requests an attainment date extension, and we approve the attainment date extension request by approving the attainment SIP as a whole. Therefore, the attainment date extension is an integral part of the attainment demonstration and its budgets. Approval of the extension request must be done through notice and comment rulemaking on the attainment demonstration SIP. However, we believe that it is appropriate for us to find adequate a budget that assumes an attainment date extension provided that our adequacy review preliminarily considers the appropriateness of the attainment date extension. This is appropriate because we always complete adequacy determinations without SIP approval, based on a preliminary review of the SIP.

The fact that the attainment date extension is not yet approved does not preclude us from finding adequate a budget that assumes an extended attainment date. We find budgets adequate on the basis of a submitted attainment demonstration SIP, so it is reasonable to find budgets adequate on the basis of a submitted attainment date extension that is part of a submitted attainment demonstration SIP.

How is adequacy determined when reductions from the Tier 2 vehicle and fuel standards are necessary for attainment? In general, motor vehicle-related measures that will be in effect in the attainment year must be included in the motor vehicle emissions budget. Federal measures must be included if EPA has promulgated the program. In addition, motor vehicle-related measures that are included in the demonstration of attainment must be included in the motor vehicle emissions budgets.

Many areas must rely on reductions from the Tier 2 standards in order to demonstrate attainment, and therefore must include the effects of these standards in the motor vehicle emissions budgets. However, at the present time the Tier 2 standards are not yet final, and until recently, States have not been able to include Tier 2 benefits in their SIPs. Therefore, we intend to find motor vehicle emissions budgets to be adequate in areas that must rely on Tier 2 reductions for attainment, even if they do not include the effects of Tier 2, subject to the following condition: any subsequent conformity determinations can not include the effects of Tier 2 until they are also included in SIP budgets that we have found adequate. Since Tier 2 impacts will be missing from both sides of the conformity analysis equation (SIP budgets and the emissions projections for the transportation plan and program), these budgets will be adequate in the interim.

How is adequacy determined when additional emission reductions are necessary for attainment? We anticipate that some areas will need additional emissions reductions in order to demonstrate attainment, even after considering the specific control strategies the area has adopted or committed to in its submitted attainment demonstration, and even after considering the benefits of the Tier 2 standards. In these cases, we cannot find the motor vehicle emissions budgets adequate for conformity purposes unless the area commits to adopt measures that will achieve the necessary additional reductions, and the area identifies a menu of possible measures (e.g., busses, clean fuels, inspection and maintenance (I/M)) that could achieve the reductions without requiring additional limits on highway construction.⁵

When the area adopts measures to achieve the additional emission reductions, the SIP's motor vehicle emissions budgets must be revised to reflect any new motor vehicle-related measures. In the meantime, the motor vehicle emissions budgets will simply reflect the control measures that the SIP already specifically identifies and commits to. We believe that we can find such budgets adequate even though additional reductions are necessary, because the area will be demonstrating in its SIP that the budgets will not interfere with the area's ability to adopt additional measures to attain.

Specifically, the area will commit to achieve additional reductions with measures that do not limit highway construction beyond the limits in the submitted budget. The area will be submitting a list of available measures that do not involve additional limits on highway construction. Therefore, allowing new transportation investments consistent with the existing SIP budgets will not prevent the area from achieving the additional reductions it needs. The reductions may be achieved through controls on sources other than on-road motor vehicles, or through the types of mobile source controls that reduce motor vehicle emissions regardless of any

⁵An area can of course commit to measures that will affect highway construction. However, in order for us to find the SIP and its budgets adequate, those measures would have to specifically identified and quantified and reflected in the budgets.

incremental additions to highway capacity (e.g., busses, clean fuels, I/M). In the meantime, conformity caps motor vehicle emissions at the level currently identified in the SIP (the motor vehicle emissions budgets), thereby ensuring that the amount of additional reductions necessary to demonstrate attainment does not increase.

What process will EPA use for determining the adequacy of the submitted SIP budgets?

- **Notification of SIP submission:** We will notify the public that we have received the Phase II submission by posting a notice on EPA's Office of Mobile Sources website (www.epa.gov/oms/transp/adequacy.htm) and by notifying those who previously requested notification of the SIP's submission. We will use postcards, letters, email or phone calls to notify requesters. The website will include information on how to obtain copies of the SIP.
- **Public comment:** A 30-day public comment period commences immediately upon the website posting in 2 circumstances: (1) if the state has made the SIP electronically available to the public via a website, electronic bulletin board, etc.; or (2) if no one has requested copies of the SIP within 15 days after we post notification. If someone does request a copy of the SIP and we receive the request within the first 15 days, the 30-day public comment period won't start until the date that we mail the copy. We are not committing to make SIP submissions electronically available on the OMS website. Our website will provide information regarding when the public comment period begins and ends. If someone requests a copy of the SIP, the website will be updated to reflect any extension of the public comment period.
- **EPA's adequacy determination:** We will issue the adequacy determination including a response to comments by posting them on EPA's Office of Mobile Sources website (www.epa.gov/oms/transp/adequacy.htm) and by mailing them to requesters. We could also send the adequacy determination and response to comments by email, if both the EPA Regions and the requester(s) agree to it. We will also subsequently announce the determination in the Federal Register. The adequacy determination would take effect 15 days following publication in the Federal Register.
- **Rulemaking alternatives:** In some circumstances, we may use Federal Register rulemaking to accomplish either the notification of SIP submission and opening of the public comment period, or the finalization of the adequacy determination. For example, if we are moving forward to quickly propose action on a SIP, we could propose and take comment on adequacy as part of our proposed action on the SIP. In such cases, we could still make an adequacy determination by posting on the website with response to comment as

- described above. Alternatively, if we have notified the public and opened the comment period using the website, we could finalize the adequacy determination as part of a proposed or final rulemaking action on the SIP.

Severe Areas

We recognize that our previous policies allowed severe areas until December 2000 to submit a SIP with adopted control measures, and they may have been expecting to wait until the December 2000 submission date to identify the motor vehicle emissions budgets for severe areas. However, it is important to note that even though they need to commit to specific control measures now, severe areas can adopt different measures in the December 2000 submission. The December 2000 submission would then establish different motor vehicle emissions budgets. If we have not approved the previous submission, the budgets in the December 2000 submission would begin applying for conformity purposes (and thus replace the previous ones) as soon as we find them adequate.