

## II. Background

### A. What Is the Washington Nonattainment Area?

The Washington area is comprised of the entire District of Columbia (the District), a portion of Maryland (namely, Calvert, Charles, Frederick, Montgomery, and Prince George's Counties), and a portion of Virginia (namely, Alexandria, Arlington County, Fairfax, Fairfax County, Falls Church, Manassas, Manassas Park, Prince William County, and Stafford County).

### B. What Previous Action Has Been Taken on These SIP Revisions?

On January 3, 2001 (66 FR 586), the EPA approved the 1996–1999 ROP plans, an attainment date extension and the attainment demonstrations for the Washington, DC area. A petition for review of that final rule was filed. On July 2, 2002, the United States Courts of Appeals for the District of Columbia Circuit (the Circuit Court) ruled on the petition and vacated our January 3, 2001, approval of the attainment demonstration, 1996–1999 ROP plan and extension of the attainment date. See *Sierra Club v. Whitman*, 294 F.3d 155, 163 (D.C. Cir. 2002). With respect to the attainment date extension, the Court found that the plain language of Clean Air Act “sets a deadline without an exception for setbacks owing to ozone transport.” *Id.* at 161. The Circuit Court said that the EPA was without authority to extend the Washington, DC area’s attainment deadline unless it also ordered the area to be reclassified as a “severe” area. The Circuit Court also found that the attainment demonstration and ROP plan were deficient because neither SIP revision contained approved contingency measures as required by sections 172(c)(9) and 182(c)(9) of the Clean Air Act (CAA). *Id.* at 164. Furthermore, the Circuit Court determined that in addition to a nine percent reduction in baseline emissions from 1996 to 1999, an area with an attainment date in 2005 must submit a ROP plan that demonstrates additional ROP to 2005. *Id.* at 163. The Washington area’s 1996–1999 ROP plan demonstrated ROP only through 1999. Lastly, although the Circuit Court upheld the EPA’s definition of RACM “[b]ecause the statutory provision is ambiguous and the EPA’s construction of the term ‘RACM’ is reasonable”, the Court remanded this matter to the EPA to determine which measures, if any, are RACM to be implemented by the States in this case because the final rule did not present any determination on whether certain measures tendered as possible RACM in the notice of

proposed rulemaking (64 FR 70460) met EPA’s RACM definition. *Id.* at 162–63.

In response to the Circuit Court’s ruling, on January 24, 2003 the EPA published a final action (68 FR 3410) determining that the Washington area failed to attain the serious ozone nonattainment deadline of November 15, 1999, and reclassifying the Washington area to severe ozone nonattainment.

### C. What Is the Time Frame for Taking Action on These Washington Area SIP Revisions?

Under the CAA, the EPA is required to approve or disapprove a State’s submission no later than 12 months after the submission is determined or deemed complete. On November 13, 2002, the Sierra Club filed a complaint in the United States District Court for the District of Columbia (District Court) against the EPA (*Sierra Club v. Whitman*, No. 1:02CV02235(JR)) claiming, among other things, that the EPA had not issued a final action on several SIP revisions (those listed in Tables 1 and 2 of this document) submitted by the District, Maryland and Virginia for the Washington area. On December 18, 2002, the District Court issued an order directing the EPA to publish, by February 3, 2003, a notice of proposed rulemaking on these SIP revisions and to publish by April 17, 2003, a final rule on these SIP revisions. This notice of proposed rulemaking complies with the Court’s Order to publish a proposed notice by February 3, 2003.

### D. What Is the Impact of the Reclassification of the Washington Area to Severe Ozone Nonattainment?

The reclassification to severe nonattainment imposes additional requirements on the Washington area including, among other things, CAA-mandated control measures, a fee program for major sources and ROP plans (an additional 9 percent reduction in base line emissions between 1999 and 2005). These new requirements, as well as all of the requirements for a severe ozone nonattainment SIP, must be submitted to the EPA by the date established in the reclassification final rule. (68 FR 3410).

Section 172(c)(9) of the CAA requires that specific measures must be undertaken if an area fails to make reasonable further progress, or to attain the NAAQS by the attainment date. Furthermore, such measures must be included in the SIP as contingency measures to take effect without further action by the State or the Administrator. As noted previously, the Circuit Court

ruled that sections 172(c)(9) and 182(c)(9) of the CAA require that contingency measures must be included as an integral element in the attainment demonstration and ROP SIPs for the Washington area. The Court further determined that EPA lacked the authority to approve attainment demonstration and ROP SIPs without contingency measures. Therefore, the jurisdictions in the Washington area have committed to submit to the EPA those measures that qualify as contingency measures due to the failure of the Washington area to attain the ozone standard for serious areas by November 15, 1999. They have also committed to submit contingency measures for failure to meet the 1999 ROP milestone if we find that the area has not achieved the required reductions. The contingency measures for the 1999 ROP milestone and the contingency measures for failure to attain by 1999 could be the same measures. These measures need to provide for at least a 3 percent reduction in base line emissions and be fully adopted rules or measures that can be implemented without further action by the States or EPA after November 15, 1999. Such contingency measures must also meet all of the EPA’s guidance and policy relating to contingency measures.

### E. What Is the Purpose of the Action EPA Is Taking Today?

This proposed conditional approval is directed at issuing a final action on the previously submitted attainment demonstration and 1996–1999 ROP plan SIPs and associated RACM and contingency measures that now apply to the Washington area as elements required by classification as a severe ozone nonattainment area. In this case, the EPA could not approve a SIP that is not consistent with the principle in the CAA that attainment must be achieved as expeditiously as practicable but no later than November 15, 2005, the new attainment date provided under the statute. Furthermore, the EPA cannot fully approve the previously submitted serious area attainment demonstration because it lacks contingency measures, RACM and motor vehicle emission budgets that are consistent with a severe attainment deadline. Similarly, the EPA cannot fully approve the previously submitted 1996–1999 ROP plan because it lacks contingency measures.

Under section 110(k)(4) of the CAA, the EPA “may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval