

B. What Is the Framework for Proposing Action on the Attainment Demonstration SIPs?

In addition to the modeling analysis, the EPA has identified the following key elements which must be present in order for the EPA to approve or conditionally approve the 1-hour attainment demonstration SIPs. These elements are first listed in this section and then described in detail.

CAA Measures and Measures Relied on in the Modeled Attainment Demonstration—This includes adopted and submitted rules for all previously required CAA mandated measures for the specific area classification, including contingency measures should the area fail to attain by the required date, and RACM. This also includes measures that may not be required for the area classification but that the State relied on in the SIP submission for attainment and ROP plans on which the EPA is proposing to take action on today.

NO_x reductions consistent with the modeling demonstration: Motor vehicle emissions budgets—Motor vehicle emissions budgets that EPA can determine to be consistent with the underlying purpose of the applicable CAA requirements.

Tier 2/Sulfur program benefits where needed to demonstrate attainment—Inclusion of reductions expected from the EPA's Tier 2 tailpipe and low sulfur-in-fuel standards in the attainment demonstration and the motor vehicle emissions budgets.

Mid-course review—An enforceable commitment to conduct a mid-course review and evaluation based on air quality and emission trends. The mid-course review would show whether the adopted control measures are sufficient to reach attainment by the area's attainment date, or that additional control measures are necessary.

1. CAA Measures and Measures Relied on in the Modeled Attainment Demonstration

The Washington area needs to achieve substantial reductions from its 1990 emissions levels in order to attain. The EPA believes the Washington area needs all of the measures required under the CAA for its former serious nonattainment classification to attain the 1-hour ozone NAAQS. The District, Maryland and Virginia have adopted the control measures required under the CAA for the former serious area classification as well as additional control measures within the local modeling domain that were relied on for purposes of the modeled attainment demonstration.

The Washington area attainment demonstration does not contain a RACM analysis which the Circuit Court held was required under section 172(c)(1) of the CAA. In its January 3, 2001, approval of the Washington area nonattainment demonstration and 1996–1999 ROP plan (66 FR 607), the EPA posited that a state must “consider all potentially available measures to determine whether they were reasonably available for implementation in the area, and whether they would advance the attainment date”. Furthermore, the EPA determined that states may “reject measures as not being RACM because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or would be economically or technologically infeasible.” Although the Circuit Court vacated the EPA's January 3, 2001, approval of the Washington area's attainment demonstration and 1996–1999 ROP plan, the Circuit Court upheld the EPA's definition of RACM. See *Sierra Club v. Whitman*, 294 F.3d at 162–63. However, the Circuit Court found that the EPA had not determined whether any measures for the Washington area fell within the EPA's definition and remanded the matter to the EPA to determine which measures, if any, are to be implemented as RACM. *Id.* at 163.

With respect to contingency measures, the Washington area attainment demonstration does not contain a contingency plan that identifies those measures that will be implemented should the area not attain the standard by November 15, 2005. 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 Circuit Court further determined that EPA lacked the authority to approve the Washington area attainment demonstration and ROP SIPs without contingency measures. Therefore, the jurisdictions in the Washington area have committed to submit to the EPA adopted contingency measures to be implemented if the Washington area does not attain the 1-

hour ozone standard by November 15, 2005. 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, 2005. The contingency measures must also meet all of the EPA's guidance and policy relating to contingency measures.

2. NO_x Reductions Consistent With the Modeling Demonstration

The EPA completed final rulemaking on the NO_x SIP Call on October 27, 1998, which required States to address transport of NO_x and ozone to other States. To address transport, the NO_x SIP Call established NO_x emissions budgets for 23 jurisdictions that are intended to reduce emissions in upwind States that significantly contribute to nonattainment problems. Emission reductions that will be achieved through the EPA's NO_x SIP Call will reduce the levels of ozone and ozone precursors entering nonattainment areas at their boundaries. For purposes of developing attainment demonstrations, States define local modeling domains that include both the nonattainment area and nearby surrounding areas. The ozone levels at the boundary of the local modeling domain are reflected in modeled attainment demonstrations and are referred to as boundary conditions. The 1-hour attainment demonstration for the Washington area relies, in part, on the NO_x SIP Call reductions for purposes of determining the boundary conditions of the modeling domain. Emission reductions assumed in the attainment demonstrations are modeled to occur both within the State and in upwind States; thus, intrastate reductions as well as reductions in other States impact the boundary conditions. If States assume control levels and emission reductions other than those of the NO_x SIP Call within their State but outside of the modeling domain, States must also adopt control measures to achieve those reductions in order to have an approvable plan.

Accordingly, States in which the nonattainment areas are located will not be required to adopt measures outside the modeling domain to achieve the NO_x SIP Call budgets prior to the time that all States are required to comply with the NO_x SIP Call. If the reductions from the NO_x SIP Call do not occur as planned, States will need to revise their SIPs to add additional local measures or obtain interstate reductions, or both, in order to provide sufficient reductions needed for attainment.