

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886-6084.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 5, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97-15415 Filed 6-12-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA-076-5022b; FRL-5841-7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia: Determination of Attainment of Ozone Standard and Determination Regarding Applicability of Certain Requirements in the Richmond Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to determine that the Richmond ozone nonattainment area has attained the National Ambient Air Quality Standard (NAAQS) for ozone and that certain reasonable further progress and attainment demonstration requirements, along with certain related requirements, of Part D of Title I of the Clean Air Act are not applicable for so long as this area continues to attain the ozone standard. In the Final Rules section of this **Federal Register**, EPA is making these determinations without prior proposal. A detailed rationale for the action is set forth in the direct final rule and accompanying technical support document. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and address the comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

DATES: Comments must be received in writing by July 14, 1997.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief,

Ozone/Carbon Monoxide, and Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Persons interested in examining these documents should schedule an appointment with the contact person (listed below) at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215)566-2179. Questions may also be addressed via e-mail, at the following address: Cripps.Christopher@epamail.epa.gov.
SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401-7671q.

Dated: June 5, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 97-15568 Filed 6-12-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA062-5021 and VA080-5021; FRL-5841-6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia: Redesignation Request, Maintenance Plan and Mobile Emissions Budget for the Richmond Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. On July 26, 1996, the Commonwealth of Virginia's Department of Environmental Quality, submitted a maintenance plan as a revision to the SIP and a request to redesignate the Richmond moderate

ozone nonattainment area from nonattainment to attainment. EPA's proposed action is based upon the Commonwealth's submittal satisfying all five criteria for redesignation in the Clean Air Act (the Act), including the fact that the Richmond area has at least three years of complete, quality-assured ambient air monitoring data which demonstrate that the National Ambient Air Quality Standard (NAAQS) for ozone has been attained. On July 30, 1996, the Commonwealth submitted another revision to the SIP modifying the mobile emission budgets in the Richmond area maintenance plan in support of the area's transportation plans for the period after the year 2015. EPA is proposing to redesignate the Richmond ozone nonattainment area from nonattainment to attainment and to approve the maintenance plan and mobile emissions budget as revisions to the Virginia SIP. The SIP revisions establish a maintenance plan for Richmond including contingency measures which provide for continued attainment of the ozone NAAQS until the year 2007 and adjust the motor vehicle emissions budget established in the maintenance plan for Richmond to support the area's long-range transportation plans in the horizon years 2015 and beyond. EPA is proposing to approve Virginia's redesignation request and maintenance plan for the Richmond area because the relevant requirements set forth in the the Act, as amended in 1990, have been met. This action is being taken under section 110 of the Act.

DATES: Comments must be received on or before July 14, 1997.

ADDRESSES: Comments may be mailed to David Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), USEPA—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215) 566-2092. Questions may also be addressed via e-mail, at the following address:

Gaffney.Kristeen@epamail.epa.gov
[Please note that only written comments can be accepted for inclusion in the docket.]

SUPPLEMENTARY INFORMATION:

I. Background

The Richmond nonattainment area was designated under section 107 of the 1977 Clean Air Act (1977 Act) as nonattainment with respect to the ozone NAAQS on March 3, 1978. The 1977 Act required nonattainment areas to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. EPA approved the ozone SIP submitted by the Commonwealth on January 12, 1979, as meeting the requirements of section 110 and part D of the 1977 Act. In its SIP, Virginia projected that the Richmond area would attain the standard by December 31, 1982, but the area failed to attain the standard by that date. On November 15, 1990, the Clean Air Act Amendments of 1990 (Act) were enacted. The nonattainment designation of the Richmond area continued by operation of law according to section 107(d)(1)(C)(i) of the Act. Furthermore, it was classified by operation of law as moderate nonattainment for ozone pursuant to section 181(a)(1) of the Act. The Richmond nonattainment area consists of the following counties: Richmond, Henrico, Chesterfield, Colonial Heights, Hopewell, Hanover and portions of Charles City County.

Under section 107 (d)(3)(E) of the Act, nonattainment areas may be redesignated to attainment if sufficient air quality data are available to warrant the redesignation and the area meets the Act's other redesignation requirements for nonattainment areas.

The Commonwealth submitted a redesignation request and maintenance plan on November 12, 1992 to redesignate the Richmond area from nonattainment to attainment, based on ambient monitoring from 1989 to 1991 that indicated that the area was attaining the ozone standard. EPA proposed approval of the redesignation request and maintenance plan on August 17, 1993 (58 FR 43609) but subsequently proposed and finally disapproved the submittal on January 31, 1994 and May 3, 1994, respectively, based on violations of the ozone standard that occurred during the 1993 ozone season (59 FR 4263 and 59 FR 22757).

The Richmond ozone nonattainment area has more recently attained the ozone NAAQS, based on air quality data from 1993 to 1996. In an effort to comply with the Act and to ensure

continued attainment of the NAAQS, Virginia submitted a 10 year ozone maintenance plan on July 26, 1996 for the Richmond area as a SIP revision.

II. Review of State Submittal

According to section 107(d)(3)(E) of the Act, five specific requirements must be met in order for EPA to redesignate an area from nonattainment to attainment:

1. The area must have attained the applicable NAAQS;
2. The area must have met all relevant requirements under section 110 and part D of the Act;
3. The area must have a fully approved SIP under section 110(k) of the Act;
4. The air quality improvement must be permanent and enforceable; and
5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

The Commonwealth's redesignation request for the Richmond area included information and documentation sufficient for EPA to determine that all five requirements of section 107, noted above, have been met. Following is a brief description of how each of these requirements has been fulfilled. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request. A Technical Support Document (TSD) has been prepared by EPA for this rulemaking action. The TSD is available for public inspection at the EPA Regional Office listed in the ADDRESSES section of this document.

1. Attainment of the Ozone NAAQS

Virginia's request is based on an analysis of quality assured ambient air quality monitoring data which is relevant to the maintenance plan and to the redesignation request. The method for determining attainment of the ozone NAAQS is contained in 40 CFR part 50.9 and appendix H to that section. The simplest method by which expected exceedances are calculated is by averaging actual exceedances of the 0.12 parts per million ozone NAAQS at each monitoring site over a three year period. An area is considered in attainment of the standard if the average annual number of expected exceedances is less than or equal to 1.0. Ambient air quality data recorded in the Richmond area, between the years 1993-1995 shows an expected exceedance rate of 1.0 per year and attainment of the ozone NAAQS. The data for these years meets EPA's completeness criteria of 75% or greater data capture. Furthermore, the area

remained free of violations during the 1996 ozone season. The Commonwealth has committed to continue monitoring in this area in accordance with 40 CFR part 58.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D

As previously stated, EPA fully approved the Commonwealth's SIP for the Richmond area as meeting the requirements of section 110(a)(2) and part D of the 1977 Act. The amended Act, however, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, EPA has reviewed the SIP to ensure that it contains all measures that were due under the Act as of July 26, 1996, the date the Commonwealth submitted its redesignation request.

2.A. Section 110 Requirements

Although section 110 of the 1977 Act was amended in 1990, the Virginia SIP for the Richmond area meets the requirements of section 110(a)(2) of the amended Act. A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, see 57 FR 27936 and 23939 (June 23, 1993), many are duplicative of other requirements of the Act.

EPA has analyzed the SIP and determined that it is consistent with the requirements of section 110(a)(2) of the Act. It contains enforceable emissions limitations, it requires monitoring, compiling, and analyzing ambient air quality data, it requires preconstruction review of new major stationary sources and major modifications to existing ones, it provides for adequate funding, staff and associated resources necessary to implement its requirements, and requires stationary source emissions monitoring and reporting.

2.B. Part D Requirements

Before an area may be redesignated to attainment, it also must have fulfilled applicable requirements of part D due as of the date of the Commonwealth's redesignation request. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, regardless of classification. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). Specific

requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501, April 16, 1992). Since the Richmond area is classified moderate, the Commonwealth must meet the applicable requirements of subpart 1, specifically sections 172(c) and 176, and the applicable requirements of subpart 2 of part D for moderate areas.

2.B.1. Subpart 1 of Part D—Section 172(c) Provisions

Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but must be met no later than 3 years after an area has been designated as nonattainment under the amended Act. Furthermore, as noted above, some of these section 172(c) requirements are superseded by more specific requirements in subpart 2 of part D. For moderate ozone nonattainment areas, the section 172(c)(1) reasonably available control measures requirement was superseded by section 182(a)(2) reasonably available control technology (RACT) requirements. Section 182(a)(2) requires moderate ozone nonattainment areas that were previously designated nonattainment to submit RACT corrections. Because section 182(a)(2) supersedes the RACT requirements in subpart 1 of part D, the RACT correction requirement is discussed with other RACT requirements below in section 2.B.3.

Since the Richmond area has attained the ozone NAAQS, the reasonable further progress (RFP) requirement, attainment demonstration and 179(c)(9) contingency measure SIPs are no longer relevant. A May 10, 1995 memorandum from John Seitz to Regional Division Directors entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the National Ambient Air Quality Standard" indicates that the RFP, attainment demonstration and 179(c)(9) contingency measure SIPs would not be required for approval of a redesignation request for those areas which the EPA determines have attained the ozone NAAQS. Based on this policy, on February 25, 1997, EPA published a determination that the Richmond area has attained the NAAQS [62 FR 8389]. In a separate rulemaking action in today's **Federal Register**, EPA is taking final approval action to waive the RFP and attainment demonstration requirements for the Richmond area.

The section 172(c)(3) emission inventory requirement has been met by the Commonwealth's submission and EPA's approval on September 16, 1996 [61 FR 48629], of the 1990 base year

emission inventory required by section 182(a)(1).

As for the section 172(c)(5) NSR requirement, the EPA has determined that areas being redesignated need not comply with the NSR requirement prior to redesignation provided that the area demonstrates maintenance of the NAAQS without part D NSR in effect. A memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment", fully describes the rationale for this view, and is based on the Agency's authority to establish de minimis exceptions to statutory requirements. See *Alabama Power Co. v. Costle*, 636 F. 2d 323, 360-61 (D.C. Cir. 1979). As discussed below, the Commonwealth has demonstrated that the Richmond area will be able to maintain the NAAQS without part D NSR in effect and, therefore, the Commonwealth need not have a fully-approved part D NSR program prior to approval of the redesignation request for Richmond. Once the area is redesignated to attainment, part C, the prevention of significant deterioration (PSD) program, which has been delegated to Virginia, will become effective immediately. The PSD program was delegated to Virginia on June 3, 1981, and amended on September 20, 1991.

Finally, for purposes of redesignation, the Virginia SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements, were satisfied. As noted above, the EPA believes the SIP satisfies all of those requirements.

2.B.2. Subpart 1 of Part D—Section 176(c) Conformity Provisions

Under section 176(c) of the Act, states were required to submit revisions to their SIPs that include criteria and procedures to ensure that Federal actions conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as all other Federal actions ("general conformity"). Congress provided for the State revisions to be submitted one year after the date of promulgation of final EPA conformity regulations. EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and final general conformity regulations on November 30, 1993 (58 FR 63214). These conformity

rules require that the states adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under section 175A of the Act. Pursuant to 40 CFR 51.396 of the transportation conformity rule and 40 CFR 51.851 of the general conformity rule, the Commonwealth of Virginia was required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, Virginia was required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Virginia submitted both the transportation conformity and general conformity SIP revisions to EPA in January of 1997. EPA is reviewing these SIP revisions and will take rulemaking action on them at a future date.

Although this redesignation request was submitted to EPA after the due dates for the SIP revisions for transportation conformity [58 FR 62188] and general conformity [58 FR 63214] rules, EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment. Therefore, the Commonwealth remains obligated to implement transportation and general conformity rules even after redesignation and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with most requirements of section 110 and part D, since those requirements are linked to the nonattainment status of an area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of EPA approval of state-adopted rules. Therefore, a delay in approving the Commonwealth's rules into the SIP does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet adopted or approved into the SIP, EPA believes it is

reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request.

For the reasons just discussed, the EPA believes that the ozone redesignation request for the Richmond area may be approved notwithstanding the lack of fully approved Commonwealth transportation and general conformity rules.

2.B.3. Subpart 2 of Part D—Section 182 Provisions for Ozone Nonattainment Areas

Richmond is a moderate ozone nonattainment area and is subject to section 182(a), 182(b) and 182(f) requirements. Under subpart 2, Richmond is required to have met the requirements of section 182(a) (1), (2) and (3), section 182(b) (1), (2), (3) and (4), and section 182(f). The following discussion describes each of these requirements.

EPA approved Virginia's emission inventory requirement under section 182(a)(1) on September 16, 1996 [61 FR 48629]. The section 182(2)(B) motor vehicle inspection and maintenance (I/M) requirement is superseded by the section 182(b)(4) requirement discussed below. The Commonwealth need not comply with the requirements of section 182(a) concerning revisions to the part D NSR program in order for the Richmond area to be redesignated for the reasons explained above under the section 172(c)(5) requirement. Section 182(a)(3)(A) requires submission of periodic inventories every three years from 1990 until the area is redesignated attainment. The maintenance plan for Richmond contains a full emissions inventory for the attainment year 1993. Because the attainment year is the same as the year the first periodic inventory came due, the maintenance plan satisfies this requirement. The emission statement SIP required by section 182(a)(3)(B) was approved on May 2, 1995 (60 FR 21451). The RFP and attainment demonstration requirements of section 182(b)(1) will no longer be applicable, as discussed previously, since the area has attained the ozone NAAQS.

Section 182(a)(2) requires moderate ozone nonattainment areas that were previously designated nonattainment to submit RACT corrections based on requirements in effect prior to enactment of the 1990 amendments to the Act. Furthermore, sections 182(b)(2)(A), (B) and (C) require moderate and above areas to adopt standards for all sources covered by any Control Technique Guideline (CTG) document issued by the Administrator after 1990

and before the area is required to attain the standard; all sources covered by any CTG before the date of enactment of the 1990 amendments; and all sources not subject to a CTG. In addition, areas newly designated under the 1990 amendments as ozone nonattainment areas are required to adopt RACT rules consistent with those previously designated nonattainment. These RACT requirements make nonattainment areas that previously were exempt from RACT requirements "catch up" to those nonattainment areas that became subject to those requirements during an earlier period, and therefore, is known as the RACT catch-up requirement. Virginia submitted RACT corrections as SIP revisions on May 14, 1991 and June 20, 1991. Among the regulations submitted in this SIP revision was a provision (Rule 4-4) that formed the legal basis for imposing RACT on all individual major VOC sources subject to RACT in the Richmond nonattainment area not covered by an existing state adopted VOC control regulation. The RACT correction SIP was approved by EPA on March 31, 1994 [59 FR 15117]. To implement Rule 4-4, the Commonwealth must submit to EPA a SIP revision for the RACT determination and enforceable documents for all major VOC sources not otherwise controlled under existing VOC regulations.

Because Rule 4-4 imposed RACT on all major VOC sources in the Richmond area on an individual basis, this rule partially satisfied the RACT catch-up requirement. On May 6, 1992, Virginia submitted a SIP revision expanding the geographic boundaries of the VOC emissions control area to coincide with the revised boundaries of the Richmond ozone nonattainment area resulting from the 1990 Clean Air Act Amendments. This SIP was approved by EPA on October 19, 1994 (59 FR 52701). To complete the RACT correction and catch up requirements under sections 182(a)(2) and 182(b)(2)(A), (B) and (C), EPA must approve into the SIP any source specific RACT determinations for any non-CTG major source of VOCs identified under Rule 4-4 prior to final approval of the redesignation request. Virginia has identified 10 sources required to submit source specific RACT SIP revisions under rule 4-4. EPA has received SIP revisions for each of these facilities and is currently preparing rulemaking actions for them.

Section 182(b)(3) requires states to submit gasoline vapor recovery rules (known as Stage II). EPA approved Virginia's Stage II program on June 23, 1994 (59 FR 32353).

Sections 182(a)(2)(b)(i) and 182 (b)(4) of the Act require moderate

nonattainment areas to submit a SIP revision that includes any provisions necessary to provide for a vehicle inspection and maintenance (I/M) program of no less stringency than either the program that was in the SIP at the time of passage of the 1990 amendments to the Act or the minimum basic program requirements, whichever is more stringent. Virginia has not implemented an I/M program in the Richmond area. On January 5, 1995 EPA published a rule [60 FR 1735] allowing areas subject to the Act's basic I/M requirements and that otherwise would qualify for and ultimately obtain approval of redesignation requests to defer adoption and implementation of I/M, provided they submit a SIP that contains the following four elements:

(1) legal authority for a basic I/M program meeting all of the requirements of Subpart S of 40 CFR part 51, such that implementing regulations can be adopted without further legislation;

(2) a request to place the I/M plan in the contingency measures portion of the maintenance plan upon redesignation as described in the fourth element below;

(3) a contingency measure to go into effect as soon as a triggering event occurs, consisting of a commitment by the Governor or the Governor's designee to adopt regulations to implement the I/M program in response to the specified triggering event; and

(4) a commitment that includes an enforceable schedule for adopting and implementing the I/M program, including appropriate milestones in the event the contingency measure is triggered (milestones will be defined by states in terms of months since the triggering event).

Virginia has satisfied the first requirement. On October 25, 1996, the Commonwealth submitted the legislative authority for adopting regulations for a basic I/M program in the Richmond nonattainment area. The maintenance plan contains provisions satisfying the other three requirements. The maintenance plan relies on I/M as a contingency measure, specifies triggering events and contains a schedule for adoption and implementation in the event a trigger occurs. Refer to section 5.D of this notice for further detail.

Section 182(f) requires states with areas classified as moderate and above to impose the same control requirements for major stationary sources of oxides of nitrogen (NO_x) as apply to major stationary sources of VOCs [i.e., NO_x RACT]. Section 182(f) further provides that these NO_x requirements do not apply to areas outside of the ozone transport region if

EPA determines that additional reductions of NO_x would not contribute to attainment in such areas, which could be satisfied through a demonstration of clean air quality data and/or a modeling demonstration. On December 18, 1995, the Commonwealth submitted a NO_x exemption petition to exempt the Richmond ozone nonattainment area from the NO_x RACT requirements based upon ambient air quality monitoring data for 1993, 1994 and 1995 which met the NAAQS for ozone without any additional reductions of NO_x. EPA proposed approval of the NO_x waiver for the Richmond area on March 12, 1996 [61 FR 11170]. Although EPA is proposing approval of the Richmond redesignation request in today's action, EPA must complete final rulemaking action on the NO_x waiver before the area can be finally redesignated. As long as Richmond remains a designated nonattainment area for ozone, this NO_x RACT exemption is contingent upon future monitoring that demonstrates continued attainment of the ozone NAAQS. Furthermore, this waiver in no way insulates or alleviates the Commonwealth of Virginia from any future obligations to secure additional NO_x reductions should technical evidence, including but not limited to that which may result from the Ozone Transport and Assessment Group (OTAG) process, indicate that such reductions are required because NO_x emissions generated in Virginia interfere with the ability of another state or legally responsible jurisdiction to attain and maintain the NAAQS for ozone.

3. Fully Approved SIP Under Section 110(k) of the Act

EPA has determined that the Commonwealth of Virginia has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and Part D as discussed above. Therefore, the redesignation requirement of section 107(d)(3)(E)(ii) has been met.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

The Commonwealth must be able to reasonably attribute air quality improvements in the area to emission reductions which are permanent and enforceable. Attainment resulting from temporary reductions in emission rates or unusually favorable meteorological conditions does not qualify for redesignation.

Several enforceable control measures have come into place since Richmond was designated nonattainment under the 1990 amendments. Significant reductions in ozone precursor emissions are attributed to federal mobile source emission control programs. Specifically, VOC reductions occurred due to the Federal Motor Vehicle Control Program (FMVCP) due to the mandatory lowering of fuel volatility and automobile fleet turnover. Effective in 1993, the Reid Vapor Pressure (RVP) of gasoline decreased from 9.9 pounds per square inch (psi) to 7.8 psi in the Richmond area reducing VOC emissions from gasoline. Beginning in 1995, federal reformulated gasoline (RFG) was implemented in Richmond as a replacement to low RVP gasoline, further reducing VOC emissions from gasoline.

As a starting point for the redesignation request, Virginia developed a design year emissions inventory representing the "worst case" emissions scenario that contributes to ozone violations. The design year chosen by Virginia for Richmond is 1988, a year that was particularly conducive to ozone violations in eastern U.S. nonattainment areas. The maintenance plan contains a comprehensive emissions inventory of ozone precursors, VOCs, NO_x and carbon monoxide (CO), for the year 1988 to establish the amount of emission reductions achieved to reach attainment with the ozone NAAQS in the 1993 attainment year.

The Commonwealth demonstrated that point source VOC emissions were not artificially low due to local economic downturn during the period in which Richmond air quality came into attainment. Reductions due to decreases in production levels or from other unenforceable scenarios such as voluntary reductions were not included in the determination of the emission reductions.

EPA finds that the combination of measures contained in the SIP and federal measures have resulted in permanent and enforceable reductions in ozone precursors that have allowed Richmond to attain the NAAQS, and therefore, that the redesignation criterion of section 107(d)(3)(E)(iii) has been met.

5. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the Act sets forth the elements of a maintenance plan for

areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the Commonwealth must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems. EPA is approving the Virginia maintenance plan for the Richmond area because EPA finds that Virginia's submittal meets the requirements of section 175A of the Act as discussed below.

5. A. Emissions Inventories

The Commonwealth developed an attainment emissions inventory to identify the level of emissions sufficient to achieve the ozone NAAQS. The maintenance plan contains comprehensive inventories for the years 1993, 1999 and 2007 prepared according to EPA guidance for ozone precursors, VOCs, NO_x, and CO emissions to demonstrate attainment and maintenance for Richmond. The inventories include area, stationary, non-road mobile and mobile sources. The year 1993 was used for the attainment year inventory because it was the first year of the three year period on which the redesignation request was based. The plan includes a demonstration that emissions will remain below the 1993 attainment year levels for a 10 year period (2007) and provides an interim year inventory, as required by EPA guidance, for the year 1999.

The Commonwealth has demonstrated that emissions for ozone precursors through the year 2007 will remain below the 1993 attainment year levels because of permanent and enforceable measures, while allowing for growth in population and vehicle miles traveled (VMT).

The following table summarizes the average peak ozone season weekday VOC, NO_x, and CO emissions for the major anthropogenic (non-biogenic) source categories for the 1993 attainment year inventory and projected 1999 and 2007 inventories.

RICHMOND AREA EMISSIONS SUMMARY

Emissions (tons per year)	1993	1999	2007
VOCs:			
Point sources	49.64	53.25	60.05
Area sources	70.34	64.48	67.97
Mobile sources ¹	40.41	35.94	31.86
Subtotal	160.39	153.67	159.88
NO_x:			
Point sources	152.21	156.83	145.99
Area sources	29.49	31.36	33.54
Mobile sources	59.56	52.85	61.07
Subtotal	241.26	241.04	240.60
CO:			
Point sources	27.37	28.17	29.47
Area sources	177.22	188.60	202.01
Mobile sources	309.13	220.82	246.64
Subtotal	513.72	437.59	478.12
Totals	915.37	832.30	878.60

¹ The mobile source VOC and NO_x estimates include emissions safety margins. A safety margin exists when the total emissions (stationary, mobile, area) projected for the attainment year (or years of a maintenance plan) are less than the emissions level necessary to demonstrate attainment or maintenance. That difference in emissions constitutes a safety margin. In this case, Virginia allocated such safety margins to the on-road portion and inflated the mobile emissions budget to satisfy conformity requirements.

5.B. Demonstration of Maintenance

Virginia attributes the projected reductions of VOC emissions to the following national control measures: FMVCP (Tier 1); RFG (on-road and non-road), Stage II gasoline dispensing systems and pending EPA rules regulating emissions from Consumer/Commercial Solvents reformulations; Architectural/Industrial Maintenance Coatings reformulation; and Automobile Refinishing. The Commonwealth predicts future NO_x emission reductions from FMVCP Tier 1, RFG (Phase 2) and source specific seasonal NO_x emission limits (emission caps) on two point sources of NO_x in the nonattainment area. EPA believes these measures will contribute significant future emissions reductions that will help keep the Richmond area below the level of the 1993 attainment year inventory and in attainment of the ozone NAAQS. The TSD prepared for this rulemaking contains further detail on these emission control strategies.

5.C. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in Richmond depends, in part, on the Commonwealth of Virginia's efforts toward tracking indicators of continued attainment during the maintenance period. The Commonwealth of Virginia will track the status and effectiveness of the maintenance plan by updating the emissions inventory annually and through periodic evaluations. Virginia has committed to develop and submit to

EPA comprehensive tracking inventories every three years during the maintenance period. The Commonwealth of Virginia will acquire source emissions data through the annual emission statements program; continue to monitor ambient ozone levels in accordance with 40 CFR part 58 and continue to follow appropriate quality assurance and quality control procedures and enter the data into AIRS.

5.D. Contingency Plan

The level of VOC and NO_x emissions in Richmond will largely determine its ability to stay in compliance with the ozone NAAQS. Despite the Commonwealth of Virginia's best efforts to demonstrate continued compliance with the NAAQS, Richmond may exceed or violate the NAAQS. Therefore, Virginia has provided the following triggering events and contingency measures with a schedule for implementation in the event of future ozone air quality problems:

1. In the event that VOC or NO_x emissions exceed the regional emissions budgets, with no more than one recorded ozone exceedance: Virginia will prepare a complete VOC and NO_x emission inventory and implement voluntary control measures, such as an ozone health advisory notification program.

2. In the event of two or more monitored exceedances of the ozone NAAQS at any one monitor, voluntary controls will continue to be implemented.

3. In the event of a monitored violation of the ozone standard, Virginia commits to implement a basic I/M program.

4. In the event that a violation of the ozone NAAQS at any one monitor occurs after the I/M contingency measure has been implemented: The Commonwealth commits to implement NO_x RACT on sources emitting greater than 100 tons/year.

5. In the event of more than two violations of the ozone NAAQS at any individual monitor following implementation of the I/M and NO_x RACT contingency measures: More restrictive requirements on open burning will be implemented; and if appropriate, transportation control measures will be developed and implemented.

The Basic I/M contingency measure will be implemented on the following schedule:

1. Notification received from EPA that a contingency measure must be implemented, or three months after a recorded violation;

2. Applicable regulation to be adopted 12 months after date established in "1" above;

3. Regulation implemented within 8 months of adoption;

4. Program will complete one full cycle two years after implementation.

The other contingency measures 1, 2, 4 and 5 will be implemented on the following schedule:

1. Notification received from EPA that a contingency measure must be implemented, or three months after a recorded violation;

2. Applicable regulation to be adopted 12 months after date established in "1" above;

3. Regulation implemented within 6 months of adoption;

4. Compliance achieved within 12 months of adoption.

EPA finds that the contingency measures in the Commonwealth's submittal meet the requirements of section 175(A)(d) of the Act and EPA's policy concerning the use of I/M as a contingency measure as outlined in the January 5, 1995 rulemaking [60 FR 1735].

5.E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, the Commonwealth of Virginia has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

EPA has determined that the maintenance plan adopted by the Commonwealth of Virginia for the Richmond nonattainment area and submitted to EPA on July 26, 1996 meets the requirements of section 175A of the Act. Therefore, EPA is proposing approval of the maintenance plan.

III. Interim Implementation Policy (IIP) Impact

On December 13, 1996, EPA published proposed revisions to the ozone and particulate matter NAAQS. Also on December 13, 1996, EPA published its proposed policy regarding the interim implementation requirements for ozone and particulate matter during the time period following any promulgation of a revised ozone or particulate matter NAAQS (61 FR 65751). This IIP includes a proposed policy regarding ozone redesignation actions submitted to and approved by EPA prior to promulgation of a new ozone standard, as well as those submitted prior to and approved by EPA after the promulgation date of a new or revised ozone standard.

According to the proposed IIP policy, complete redesignation requests, submitted and approved by EPA prior to the promulgation date of the new or revised ozone standard, will be allowed to redesignate to attainment based on the maintenance plan's ability to demonstrate attainment of the current 1-hour standard and compliance with existing redesignation criteria.

As discussed previously, the Richmond redesignation request demonstrates attainment under the current 1-hour ozone standard. Since the EPA is proposing to approve this

request prior to the promulgation date of the new or revised ozone standard, the Richmond redesignation request is compatible with the proposed IIP.

IV. Motor Vehicle Emissions Budget

To achieve expeditious attainment of the NAAQS, the Clean Air Act provisions at section 176 require that any project, program or plan in any way approved, accepted or funded by the federal government conform to the applicable SIP. As discussed earlier in this rulemaking in 2.B.2. Conformity Provisions, conformity determinations are required in both maintenance and nonattainment areas. Transportation projects, Transportation Improvement Programs (TIPs) and Long Range Transportation Plans must demonstrate conformity.

In 40 CFR 51.392 EPA defines a motor vehicle emissions budget as that portion of the total allowable emissions of any criteria pollutant or its precursors, which is defined in a revision to the SIP required to meet reasonable further progress, attainment or maintenance demonstrations, and which is allocated to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area designates a motor vehicle emissions budget for VOCs and may also allocate a similar budget for NO_x in the case of the Post 1996 Reasonable Further Progress Plans required in ozone nonattainment areas classified as serious or above. The applicable SIP for an ozone nonattainment area may also include a NO_x budget if NO_x reductions are being substituted for reductions of VOCs in milestone years required for reasonable further progress. The applicable SIP must demonstrate that this NO_x budget will be achieved with measures contained therein.

40 CFR 51.404 requires that long range transportation plans specifically describe the transportation system envisioned for certain future years, which are called horizon years. For maintenance areas, the regional analysis of emissions from this transportation system in each horizon year must be less than or equal to the motor vehicle emissions budget established by the maintenance plan. EPA's transportation conformity regulations require long range transportation plans to demonstrate conformity for a period of time (20 years) that goes well beyond the actual control strategy period on which the budget is based. The maintenance plan requires adopted rules to cover only a ten year maintenance period (Virginia's maintenance period for Richmond lasts until 2007).

Virginia is required by the Clean Air Act to perform a regional emissions analysis on their long range transportation plans and compare the ozone precursor emissions from this analysis to the VOC and NO_x motor vehicle emissions budgets, in ten year increments for the 20 year timeframe of the long range transportation plan. The Commonwealth chose to create a VOC and NO_x motor vehicle emissions budget for the Richmond area for the years after the 10-year timeframe of the maintenance plan in order to facilitate transportation conformity determinations. To accommodate the projected mobile emissions growth in the Richmond area in the horizon years of the transportation planning cycle (2015 and beyond), additional emission reductions from enforceable control measures are necessary for positive conformity determination purposes. To be creditable, such reductions must be included in the SIP for the area.

On July 30, 1996, Virginia submitted a SIP revision modifying the motor vehicle emissions budgets in the Richmond maintenance plan in support of the area's transportation plans for the period beginning in 2015. Although mobile source emissions of NO_x and VOC are predicted to rise in the year 2015 as VMT increases, Virginia anticipates that emission reductions will occur during this time period. The mobile emissions budget relies on reductions from a ban on open burning of such materials as trees, shrubs and brush from land clearing, trimmings from landscaping and household or business trash in the maintenance area during the ozone season months of June-August beginning in the year 2000. Additionally, reductions are anticipated from pending national emission control programs on non-road sources to offset growth, specifically new engine standards for marine engines, locomotive engines and heavy duty diesel engines. The Act requires that EPA promulgate new emission standards for marine engines, locomotive engines and heavy duty diesel engines. The emissions reductions from the open burning ban and the national control programs create a safety margin. For Richmond the safety margin for VOCs is 3.78 tons/day and for NO_x 6.64 tons/day. All these reductions from the area and non-road source categories are allocated to the motor vehicle emissions budget for the purposes of conformity determinations. The motor vehicle emissions budgets in the maintenance plan are increased to 35.64 tons/day for VOCs and 67.71 tons/day for NO_x, effective on January 1,

2015. Virginia used applicable EPA guidance in calculating the anticipated emission benefits from the national control programs. EPA's guidance includes two policy memos "Future Nonroad Emission Reduction Credits for Locomotives" dated January 3, 1995 and "Future Nonroad Emission Reduction Credits for Court Ordered Nonroad Standards" dated November 28, 1996.

In general, approved budgets in the SIP are not superseded until the replacement budgets in the next SIP are actually SIP approved. However, because budgets after 2007 are not required by the Act for this maintenance plan and are being established for conformity purposes only to bridge the gap between the end of the first maintenance plan and the horizon years, these budgets will cease to apply once the second ten-year maintenance plan is submitted to EPA. The new submitted budget prepared by the Commonwealth for the second 10-year maintenance plan will replace the budget being approved today, as soon as it is submitted to EPA because these budgets will be a more appropriate basis of conformity. If the national emission control programs relied on in this SIP revision are not implemented according to the current schedule or do not produce the emission benefits anticipated, the Commonwealth commits to revising the SIP to include other measures as necessary to compensate any shortfall. Furthermore, the long range motor vehicle emission budget approved today will have to be incorporated into the second ten-year maintenance plan demonstrating continued attainment of the ozone NAAQS developed for the Richmond area. To satisfy conformity requirements in outlying years, EPA is approving the motor vehicle emissions budget for the Richmond area submitted on July 30, 1996 into the Virginia SIP.

V. Proposed Action

EPA has evaluated the Commonwealth's redesignation request for Richmond for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that the redesignation request and maintenance plan submitted by the Commonwealth meet the requirements of section 107(d)(3)(E) and policy set forth in the General Preamble and policy memorandum discussed in this notice for area redesignations, and today is proposing approval of Virginia's redesignation request for Richmond submitted on July 26, 1996. Furthermore, EPA is proposing approval

of the required maintenance plan into the Virginia SIP because it meets the requirements of section 175A. EPA is also proposing to approve the motor vehicle emissions budget for the Richmond area into the SIP. The Richmond nonattainment area is subject to the Act's requirements for moderate ozone nonattainment areas until and unless it is redesignated to attainment. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources.

The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under 40 CFR section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Regional Administrator's decision to approve or disapprove Virginia's redesignation request for Richmond, the associated maintenance plan and the Richmond area mobile emissions budget will be based on whether it meets the requirements of section 110(a)(2) (A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401-7671q.

Dated: June 5, 1997.

W. Michael McCabe,

Regional Administrator, Region III.

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