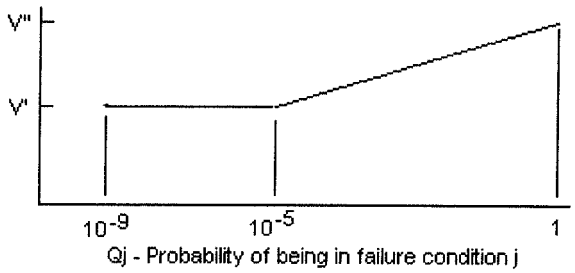
Figure 3
Clearance speed



V^{I} = Clearance speed as defined by § 25.629(b)(2).

V^{II} = Clearance speed as defined by § 25.629(b)(1).

$Q_j = (T_j)(P_j)$ where:

T_j = Average time spent in failure condition j (in hours).

P_j = Probability of occurrence of failure mode j (per hour).

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V^{II}.

(vi) Freedom from aeroelastic instability must also be shown up to V^{I} in Figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of 14 CFR part 25, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(c) Warning considerations. For system failure detection and warning, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by 14 CFR part 25, or significantly reduce the reliability of the remaining system. The flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of warning systems, to achieve the objective of this requirement. These certification maintenance requirements must be limited to components that are not readily detectable by normal warning systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane, and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of 14 CFR part 25, subpart C below 1.25, or flutter margins below V^{II}, must be signaled to the crew during flight.

(d) Dispatch with known failure conditions. If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of these special conditions must be met for the dispatched condition and for subsequent failures. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per hour.

Issued in Renton, Washington, on January 9, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–2423 Filed 1–31–03; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC052–7005, MD143–3096, VA152–5062; FRL–7445–8]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia; Post 1996 Rate-of-Progress Plans and One-Hour Ozone Attainment Demonstrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to conditionally approve the 1-hour ozone attainment demonstration and the 1996–1999 rate-of-progress (ROP) plans for the Metropolitan Washington DC ozone nonattainment area (the Washington area) submitted by the District of Columbia's Department of Health (DoH), by the Maryland Department of the Environment (MDE) and by the Virginia Department of Environmental Quality (VA DEQ), including enforceable commitments submitted by the District of Columbia, Virginia and Maryland as part of the 1-hour attainment demonstration plan to perform a mid-course review and to submit revised motor vehicle emissions budgets. We are also proposing to clarify what occurs if we issue a final conditional approval of any of these SIPs based on a State commitment to revise the SIP's 2005 motor vehicle emissions budgets in the future. If this occurs, the 2005 motor vehicle emissions budgets in the conditionally approved SIP will apply for transportation conformity purposes only until the budgets are revised consistent with the commitment and we have found the new budgets adequate. Once we have found the revised budgets adequate, then they would apply instead of the previous conditionally approved 2005 budgets. In the

alternative, the EPA is also proposing to disapprove the Washington area attainment demonstration with a protective finding for the 2005 motor vehicle emissions budgets and/or the 1996–1999 ROP plan with a protective finding for the 1999 motor vehicle emissions budgets.

DATES: Written comments must be received on or before March 5, 2003.

ADDRESSES: Comments may be mailed to Makeba Morris, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21 U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230, Baltimore, Maryland 21224; and Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814a–2179, or by e-mail at *cripps.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: The use of ''we,'' ''us,'' or ''our'' in this document refers to EPA.

This **SUPPLEMENTARY INFORMATION** section is organized to address the following questions:

I. What Action Is the EPA Proposing Today?

The EPA is proposing conditional approval of the 1996–1999 ROP plans and the one-hour attainment demonstrations submitted by the DoH, MDE and VADEQ for the Washington area. The following tables identify submittal dates and amendment dates for the 1996–1999 ROP plans and the attainment demonstrations:

TABLE 1.—1996–1999 ROP PLANS

	DC	MD	VA
Initial submittal dates	November 10, 1997	December 24, 1997	December 19, 1997.
Amendment dates	May 25, 1999	May 20, 1999	May 25, 1999.

TABLE 2.—ATTAINMENT DEMONSTRATIONS

	DC	MD	VA
Initial submittal dates	April 24, 1998	April 29, 1998	April 29, 1998.
Amendment dates	October 27, 1998	August 17, 1998	August 18, 1998.
Supplemental dates	February 16, 2000	February 14, 2000 (MD SIP No. 00–01).	February 9, 2000.
Supplemental dates	March 22, 2000	March 31, 2000 (MD SIP No. 00–02).	March 31, 2000.

Hereafter, the SIP revisions in the preceding Table submitted in April 1998 will be called the ''1998 Plans;'' those submitted in February 2000 will be called the ''February 2000 plans;'' and those submitted in March 2000 will be called the ''March 2000 plans.''

As noted elsewhere in this document, the EPA is also proposing in the alternative to disapprove these SIPs if we do not finalize the conditional approval of these SIPs.

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

shall be treated as a disapproval if the State fails to comply with such commitment.'' The EPA is proposing to conditionally approve these SIP submissions as a severe area attainment demonstration and the 1996–99 portion of the Washington area's ROP obligation on the basis of the commitments from the affected jurisdictions. EPA believes that this action is appropriate because the attainment date for the Washington area, which will be reclassified as severe effective March 25, 2003 (68 FR 3410), will be November 15, 2005, and because the States have committed in accordance with section 110(k)(4) to submit revisions to remedy the inadequacies with the RACM and contingency measure aspects of the attainment demonstration and the 1996–99 ROP plans. Since the Court viewed the contingency measures as an element of an attainment demonstration and ROP plan, and rejected EPA's argument that contingency measures were a separate SIP submission, EPA believes it is appropriate to proceed on the basis of a commitment to deal with that aspect of the attainment plan and ROP plan. Similarly, the RACM demonstration is merely another element of the attainment demonstration and EPA believes that it is appropriate to proceed with a conditional approval on the basis of a commitment regarding the RACM demonstration. As a consequence of the reclassification to severe, the Washington area will need to submit additional SIP revisions concerning other matters, such as the 1999–2005 ROP obligation and new NSR requirements, but EPA believes that it can proceed on the SIPs before it as a severe area attainment demonstration plan and a 1996–1999 ROP plan without those additional SIP submissions.

III. Attainment Demonstrations

A. What Is the Basis for the Attainment Demonstration SIP?

1. CAA Requirements

The Clean Air Act (CAA) requires the EPA to establish national ambient air quality standards (NAAQS or standards) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. *See* sections 108 and 109 of the CAA. In 1979, the EPA promulgated the 1-hour 0.12 parts per million (ppm) ground-level ozone standard. 44 FR 8202 (February 8, 1979). Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. Emissions of NO_X and VOC are referred to as precursors of ozone.

An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.124 ppm. An area is violating the standard if, over a consecutive three-year period, more than three exceedances are expected to occur at any one monitor. The CAA, as amended in 1990, required the EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the three-year period from 1987–1989. CAA section 107(d)(4); 56 FR 56694 (Nov. 6, 1991). The CAA further classified these areas, based on the area's design value, as marginal, moderate, serious, severe or extreme. CAA section181(a). Marginal areas were suffering the least significant air pollution problems while the areas classified as severe and extreme had the most significant air pollution problems. The control requirements and dates by which attainment needs to be achieved vary with the area's classification. Marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas are required to attain the 1-hour standard by November 15, 1999, and severe areas are required to attain by November 15, 2005, or November 15, 2007. The Washington area was classified as a serious nonattainment area with an attainment date of November 15, 1999. On January 24, 2003, the EPA published a final rule (68 FR 3410) reclassifying the area to severe ozone nonattainment, with an attainment date of November 15, 2005.

Under section 182(c)(2) and (d) of the CAA, serious and severe areas were required to submit by November 15, 1994, demonstrations of how they would attain the 1-hour standard and how they would achieve reductions in VOC emissions of 9 percent for each three-year period until the attainment year (rate-of-progress or ROP). (In some cases, NO_X emission reductions can be substituted for the required VOC emission reductions.) Today, in this proposed rule, the EPA is proposing action on the attainment demonstration SIP submitted by DoH, the MDE and the VADEQ for the Washington area.

In general, an attainment demonstration SIP includes a modeling analysis component showing how the area will achieve the standard by its attainment date and the control measures necessary to achieve those reductions. Another component of the attainment demonstration SIP is motor vehicle emissions budgets for transportation conformity purposes. Transportation conformity is a process for ensuring that States consider the effects of emissions associated with new or improved federally-funded roadways on attainment of the standard. As described in section 176(c)(2)(A) of the CAA, attainment demonstrations must include the estimates of motor vehicle emissions that are consistent with attainment, which then act as budgets for the purposes of determining whether transportation plans and projects conform to the attainment SIP.[1]

2. What Are the Components of a Modeled Attainment Demonstration?

The EPA allows that States may rely upon a modeled attainment demonstration supplemented with additional evidence to demonstrate attainment.[2] In order to have a complete modeling demonstration submission, States should have submitted the required modeling analysis and identified any additional evidence that the EPA should consider in evaluating whether the area will attain the standard.

The EPA addressed the sufficiency of the modeling demonstration to attain by November 15, 2005, in its previous notices regarding the Washington area attainment demonstration. See 64 FR 70460, December 16, 1999, and 66 FR 586, January 3, 2001. Since the Circuit Court did not address issues regarding the adequacy of the modeling demonstration, EPA believes that it may approve that modeling demonstration at this time. EPA incorporates by reference herein its prior proposal, the comments submitted thereon, and its response to those comments. EPA is not reprinting that discussion here but will address any further comments submitted in response to this re-proposal of its approval of the modeling demonstration showing attainment of the Washington area by November 2005.

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[1] Under the CAA, the District of Columbia has the same attainment planning authorities and responsibilities as any of the 50 States.

[2] EPA issued guidance on the air quality modeling that is used to demonstrate attainment with the 1-hour ozone NAAQS. *See* U.S. EPA, (1991), Guideline for Regulatory Application of the Urban Airshed Model, EPA–450/4–91–013, (July 1991). (A copy may be found on EPA's web site at *http://www.epa.gov/ttn/scram/* (file name: ''UAMIVGUIDE'')). *See also* U.S. EPA, (1996), Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996). A copy may be found on EPA's web site at *http://www.epa.gov/ttn/scram/* (file name: ''O3TEST'').

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 are 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.

3. Motor Vehicle Emissions Budgets

The EPA believes that attainment demonstration SIPs must necessarily estimate the motor vehicle emissions that will be produced in the attainment year and demonstrate that this emissions level, when considered with emissions from all other sources, is consistent with attainment. This estimate of motor vehicle emissions is used to determine the conformity of transportation plans and programs to the SIP, as described by CAA section 176(c)(2)(A). For transportation conformity purposes, these estimates of motor vehicle emissions are known as the motor vehicle emissions budgets. The EPA believes that appropriately identified motor vehicle emissions budgets are a necessary part of an attainment demonstration SIP. A SIP cannot effectively demonstrate attainment unless it identifies the level of motor vehicle emissions that can be allowed while still demonstrating attainment.

4. Tier 2/Sulfur Program Benefits

On February 10, 2000 (65 FR 6698), the EPA published a final rule promulgating a major, comprehensive program designed to significantly reduce emissions from passenger cars and light trucks (including sport-utility vehicles, minivans, and pickup trucks) and to reduce sulfur in gasoline. Under this program, automakers would produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners would provide that cleaner gasoline nationwide.

The final rule was supported by 1-hour ozone modeling and monitoring information that support the EPA's conclusion that the Tier 2/Sulfur program is necessary to help areas attain the 1-hour NAAQS. See 64 FR 35112, June 30, 1999, and 64 FR 57827, October 27, 1999. Under the final rule, NO_X and VOC emission reductions (as well as other reductions not directly relevant for attainment of the 1-hour ozone standard) would occur beginning in the 2004 ozone season. Nationwide, the Tier 2/Sulfur program is projected to result in emissions reductions of NO_X per year of approximately 856,000 tons per year by 2007 and 1,236,000 tons by 2010 tons (65 FR at 6698).

In the October 27, 1999, supplemental notice (64 FR at 57830), the EPA reported that the EPA's regional ozone modeling indicated that 17 metropolitan areas for which the 1-hour standard applies need the Tier 2/Sulfur program reductions to help attain the 1-hour ozone standard. The Washington area whose attainment demonstration the EPA is proposing to conditionally approve today is included on that list.

The EPA issued a memorandum that provides estimates of the emissions reductions associated with the Tier 2/Sulfur program proposal.[3] The memorandum provides the tonnage benefits for the Tier 2/Sulfur program in 2007 on a county-by-county basis for all counties within many serious and severe nonattainment areas and the 2005 tonnage benefits for the Tier 2/Sulfur program for each county for three areas.

The EPA also issued a memorandum which explains the connection between the Tier 2/Sulfur program, motor vehicle emissions budgets for conformity determinations, and timing for SIP revisions to account for the Tier 2/Sulfur program benefit.[4] This memorandum explains that conformity analyses in serious and severe ozone nonattainment areas can begin including Tier 2/Sulfur program benefits once the EPA's Tier 2 rule is promulgated, provided that the attainment demonstration SIPs and associated motor vehicle emissions budgets include the Tier 2 benefits. The motor vehicle emissions budgets in the February 2000 plans include Tier 2 benefits.

The District, Maryland and Virginia need to revise their motor vehicle emissions budgets in their attainment demonstration SIPs using the MOBILE6 model because the motor vehicle emissions budgets in the February 2000 plans to include the effects of the Tier 2/Sulfur program, which can not be accurately reflected with the MOBILE5 model. In addition, the budgets need to be revised using MOBILE6 even in an area that does not need the Tier 2/Sulfur program for attainment but decide to include its benefits in the motor vehicle emissions budgets anyway.

When we first proposed action on the attainment demonstration for the Washington area (64 FR 70460, December 16, 1999), the District, Maryland and Virginia needed to submit an enforceable commitment in the near term to revise their motor vehicle emissions budgets if the budgets include the effects of the Tier 2/Sulfur program within one year after the EPA's release of MOBILE6. When we released the Tier 2 guidance and policy in November 1999, we could not forecast the MOBILE6 release date in relation to final action on the attainment demonstration SIP revisions. Such release date could have been over one-year past the time we approved the attainment demonstration for an area, and therefore, a conditional approval would not have been a suitable approval option. Therefore, at that time, approval of an enforceable commitment would ensure the requirement to revise the motor vehicle emissions budgets could be enforced in court by the EPA or citizens. The enforceable commitment was to be submitted to the EPA along with the other commitments discussed elsewhere in this document, or alternatively, as part of the SIP revision that modified the motor vehicle emission inventories and budgets to include the Tier 2/Sulfur program benefits needed in order for the EPA to approve the SIP submittal. The MOBILE6 model was released on January 29, 2002 (67 FR 4254). Now that MOBILE6 has been released, the EPA may issue a conditional approval based on a State's commitment to expeditiously revise and submit not later than one-year after the EPA issues a conditional approval to the EPA an updated attainment demonstration SIP that reflects revised MOBILE6-based motor vehicle emissions budgets.

5. Mid-Course Review

A mid-course review (MCR) is a reassessment of modeling analyses and more recent monitored data to determine if a prescribed control strategy is resulting in emission reductions and air quality improvements needed to attain the ambient air quality standard for ozone as expeditiously as practicable but by no later than the statutory dates. The EPA believes that an enforceable commitment to perform a MCR is a critical element of the WOE analysis for the attainment demonstration on which the EPA is proposing to take action today. The State of Maryland, the Commonwealth of Virginia and the District submitted an enforceable commitment to perform a MCR as described here. However, an enforceable commitment to perform and submit a MCR is meaningless outside of the context of an approved attainment demonstration. For this reason, our conditional approval of the attainment

[3] Memorandum, ''1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking'' from Lydia Wegman, Office of Air Quality Planning and Standards and Merrylin Zaw-Mon, Office of Mobile Sources to the Air Division Directors, Regions I–IV, issued November 8, 1999. A copy of this memorandum may be found on the EPA's web site at *http://www.epa.gov/oms/transp/traqconf.htm.*

[4] Memorandum, ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations'', from Merrylin Zaw-Mon, Office of Mobile Sources, to Air Division Directors, Regions I–VI, issued November 3, 1999. A copy of this memorandum may be found on the EPA's web site at *http://www.epa.gov/oms/transp/traqconf.htm.*

demonstration includes the enforceable commitment to perform a mid-course review.

C. The EPA's Review and Analysis of the District's, Maryland's and Virginia's Submittals Against the EPA's Framework for Proposing Action on Attainment Demonstration SIPs

This section provides a review of Maryland's, Virginia's and the District's submittals and an analysis of how these submittals satisfy the frame work previously discussed.

As noted previously, the EPA addressed the sufficiency of the modeling demonstration of attainment in its previous notices regarding the Washington area attainment demonstration and incorporated by reference its prior proposal, the comments submitted thereon, and its response to those comments. *See* 64 FR 70460, December 16, 1999, and 66 FR 586, January 3, 2001. EPA is not reprinting that discussion here but will address any further comments submitted in response to this re-proposal of its approval of the modeling demonstration showing attainment of the Washington area by November 2005.

1. CAA Measures and Measures Relied on in the Current SIP Submission

Table 3 contains a summary of the CAA required ozone SIP elements for serious areas and any additional measures included in the attainment demonstration.

TABLE 3.—CONTROL MEASURES IN THE 1-HOUR OZONE 1996–1999 ROP PLAN AND ATTAINMENT PLANS FOR THE METROPOLITAN WASHINGTON NONATTAINMENT AREA

Control measure	Type of measure	Credited in 1996—1999 ROP plan	Credited in attainment plan
Enhanced Inspection & Maintenance	Approved SIP	Yes	Yes.
Federal Motor Vehicle Control program	Federal	Tier 1	Tier 1 and 2.
NLEV	Approved SIP opt-in	Yes	Yes[1].
Reformulated Gasoline (Phase 1 & 2)	State opt-in	Phase 1	Phase 2.
Transportation Control Measures (TCM)	Approved SIP	Yes	Yes.
Federal Non-road Gasoline Engine standards	Federal	Yes	Yes.
Federal Non-road Heavy Duty diesel engine standards	Federal	Yes	Yes.
Rail Road Locomotive Controls	Federal	No	Yes.
NO_X RACT	Approved SIP	Yes	Yes.
Non-CTG RACT to 50 tpy	Approved SIP	Yes	Yes.
VOC Point Source Regulations to 25 tons/year[2]	Approved SIP	Yes	Yes.
Stage II Vapor Recovery[3] &	Approved SIP	Yes	Yes.
On-board Refueling Vapor Recovery (ORVR)	Federal		
AIM Surface Coatings	Federal	Yes	Yes.
Consumer & commercial products	Federal	Yes	Yes.
Autobody refinishing	Federal/State	Yes	Yes.
Surface Cleaning/Degreasing	Approved SIP	Yes	Yes.
Open Burning Ban[2]	Approved SIP	Yes	Yes.
Stage I Vapor Recovery[4]	Approved SIP	Yes	Yes.
Graphic Arts	Approved SIP	Yes	Yes.
Heavy Duty Diesel Engines (On-road)	Federal	No	Yes.
Beyond RACT NO_X Requirements on Utilities	Approved SIP	No	Yes.

Notes:
[1] To the extent NLEV not superceded by Tier 2.
[2] Maryland and Virginia only.
[3] Reduction credits calculated for Maryland and Virginia only. The District required implementation of Stage II in 1985 for most sources, and has claimed no reductions since 1990. (The District's Stage II regulation was amended after 1990 to comply with the requirements for Stage II controls set forth in the 1990 amendments to the Clean Air Act. The EPA has approved the District's rule into the SIP.
[4] Reductions in only in those additional areas in Maryland and Virginia that were added to the Metropolitan Washington DC area after 1990.

The MDE, VADEQ and DoH have submitted all measures relied on in the attainment demonstration and all required measures except RACM and specific contingency measures. All submitted measures have been approved to date with the exception of Transportation Control Measures (TCMs), which are as part of the Washington area attainment demonstration and 1996–1999 ROP plan that the EPA is proposing to conditionally approve in this document. TCMs are strategies to both reduce vehicle miles traveled (VMT) and decrease the amount of emissions per VMT. The CAA classifies TCMs as programs for improved transit, traffic flow, fringe parking facilities for multiple occupancy transit programs, high occupancy or share-ride programs, and support for bicycle and other non-automobile transit. The TCMs for Virginia and Maryland included projects programmed between fiscal years 1994–1999 in the transportation improvement plan (TIP) under the Congestion Mitigation and Air Quality (CMAQ) Improvement Program and funded for implementation in the Washington area. The specific projects that Virginia and Maryland are claiming credit for and the estimated benefits are listed in Appendix H of the 1996–1999 ROP plan and Appendix J of the February 2000 plans. TCMs are considered acceptable measures for states to use to achieve reductions and EPA has determined that the VOC and NO_X reductions attributable to these measures are creditable for the 1996–1999 ROP plan and attainment demonstration.

The EPA is also proposing to conditionally approve the attainment demonstration based on the District, Maryland and Virginia having committed to submit contingency measures that will be implemented if the area fails to attain the ozone standard by November 15, 2005. In addition, the District, Maryland and Virginia have committed to submitting to the EPA an appropriate RACM analysis and any revisions to the attainment demonstration necessitated by such an analysis, including revised emissions budgets as applicable.

2. NO_X Reductions Consistent With the Modeling Demonstration

Inside the Baltimore-Washington modeling domain, the District, Maryland and Virginia modeled only the measures indicated in Table 3. The only NO_X control measure beyond CAA requirements was an additional level of control beyond RACT at large stationary sources of NO_X in the District's and Maryland's portion of the Washington area. The status of all measures was discussed in the preceding section of this document.

3. Motor Vehicle Emissions Budgets

As discussed in section III.B.3 of this document, the motor vehicle emissions budgets are the estimate of motor vehicle emissions in the attainment year that when considered with emissions from all other sources is consistent with attainment. The attainment demonstrations for the Washington area contain levels of modeled emissions that the EPA concludes demonstrate attainment once transport from upwind areas is addressed. The basis for this conclusion will not be altered if the Washington area can demonstrate that the level of nonattainment area emissions in 2005 is equal to or less than the 1999 control strategy levels contained in the attainment demonstrations considering growth. Thus, Maryland, Virginia and the District have demonstrated that revised motor vehicle emissions budgets for 2005 in the attainment demonstrations for the Washington area are adequate by showing that overall emissions including the revised motor vehicle emissions budgets when considered with emissions from all other sources are less than the 1999 control strategy levels. In the February 2000 plans, the States submitted such a demonstration. The EPA has reviewed these submittals and found that all measures upon which the States relied are now in the approved SIP.

The EPA has interpreted the general adequacy criteria with respect to the 1-hour ozone attainment demonstrations to require the motor vehicle emissions budgets to include the effects of all motor vehicle controls, including Federal measures and the mobile source control measures assumed in the NO_X SIP Call, that will be in place in the attainment year. Therefore, the revised motor vehicle emissions budgets presumptively must include all currently promulgated Federal measures and State SIP measures and opt-ins shown in Table 4.

TABLE 4.—ON-ROAD MOBILE SOURCE CONTROL MEASURES CONTRIBUTING TO ATTAINMENT OF THE 1-HOUR OZONE NAAQS IN THE WASHINGTON NONATTAINMENT AREA IN 2005

Control measure	Implementation year	Assumed in local modeling demonstration?	In the 2005 motor vehicle emissions budget?
Federal Motor Vehicle Control Program (FMVCP):			
Tier 1	1994	Tier 1 FMVCP only	Yes.
Tier 2	2004		Yes.
High enhanced I/M (CAA Mandate)	1997	Yes	Yes.
Reformulated Gasoline (State Opt-in):			
Phase I	1995	Yes	Yes.
Phase II	2000	No	Yes.
Clean Fuel Fleets/National Low Emissions Vehicles (NLEV)	1999	No	Yes.
Federal Heavy-duty Diesel Vehicle (HDV) 2 gm std	2004	No	Yes.

4. Tier 2/Sulfur Program Benefits

The EPA concludes that based on the modeling and WOE that the Washington area would not need any additional emission reductions beyond those contained in the area attainment demonstration to ensure attainment of the ozone NAAQS by 2005. Like other areas that rely, in part or in full, on Tier 2 reductions in order to demonstrate attainment, the Washington area attainment demonstration was revised in the February 2000 plans to estimate the effects of Tier 2 according to our policy. However, as noted, this was done with the MOBILE5 model which is inaccurate and must be redone with the MOBILE6 model.

The EPA is proposing to conditionally approve the attainment demonstration SIP revisions which include the commitment found in section 9.1.1.2 of the March 2000 plans for the Washington area because the State of Maryland, Commonwealth of Virginia and the District of Columbia have committed to revise and submit to the EPA by April 17, 2004, an updated attainment demonstration SIP that reflects revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to demonstrate that the SIP continues to demonstrate attainment by November 15, 2005.

5. Mid-Course Review (MCR)

In accordance with the provisions of section III.B.5. of this document, the EPA must receive an enforceable commitment to include a MCR from each of the three Washington area States before their attainment demonstrations can be approved. Virginia, Maryland and the District submitted these commitments on February 9, 14 and 22, 2000, respectively. The EPA has concluded that the enforceable commitments found in February 2000 plans are acceptable. However, an enforceable commitment to perform a mid-course review is meaningless outside of the context of an approved attainment demonstration. For this reason, our proposal to conditionally approve the attainment demonstration includes the enforceable commitment to perform and submit the MCR contained within the February 2000 plans.

IV. Rate-of-Progress Plans

A. What Agencies and Organizations Developed the 1996–1999 ROP Plan for the Washington Area?

The District of Columbia, Virginia and Maryland must demonstrate reasonable further progress (RFP) for the Washington area. These jurisdictions, under the auspices of the Metropolitan Washington Air Quality Committee (MWAQC) (with the assistance of the Metropolitan Washington Council of Governments) collaborated on a coordinated 1996–1999 ROP plan for the Washington area. The MWAQC includes state and local elected officials and representatives of the DC

Department of Health, the Maryland Department of the Environment, the Virginia Department of Environmental Quality and the National Capital Region Transportation Planning Board (TPB). The Act provides for interstate coordination for multi-state nonattainment areas. Because ROP requirements such as the 1996–1999 ROP plan establish emission budgets for transportation improvement plans, municipal planning organizations have historically been involved in air quality planning in the Washington area. The MWAQC ensures consultation with the TPB during the development of the 1996–1999 ROP plan and emission budgets. As explained below, the regional 1996–1999 ROP plan determined the regional target level, regional projections of growth and finally the total amount of creditable reductions required under the 9 percent requirement in the Washington area. The District of Columbia, Maryland and Virginia agreed to apportion this total amount of required creditable reductions among themselves. Although the plan was developed by a regional approach, each jurisdiction is required to submit its portion of the 1996–1999 ROP plan to the EPA as a revision to its SIP.

B. What Are the Rate-of-Progress Requirements Applicable to the Washington Area?

The CAA requires that serious and above ozone nonattainment areas develop plans to reduce area-wide VOC emissions after 1996 by 3 percent per year until the year of the attainment date required for that classification of nonattainment area. In addition, section 172(c)(9) of the CAA requires the SIP to provide for specific measures to be undertaken if an area fails to make reasonable further progress. The Washington area is classified as a serious ozone nonattainment area with an attainment date of November 15, 1999. However, the EPA published its final rule reclassifying the Washington area to severe ozone nonattainment effective March 25, 2003. The statutory attainment date for severe areas is November 15, 2005. As a serious area, the 3 percent per year requirement is expressed as an average over consecutive 3-year periods; thus, the requirement is a 9 percent reduction by 1999. However, the Circuit Court ruling on the EPA's approval of the Washington area attainment demonstration and 1996–1999 ROP plan indicated 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 for the Washington area that demonstrates additional ROP to 2005. 294 F. 3d at 163. The **Federal Register** notice reclassifying the Washington area to severe ozone nonattainment imposes additional requirements on the Washington area including, among other things, ROP plans that achieve an additional 18 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. This proposed action is confined to the 1996-1999 ROP requirements for a severe ozone nonattainment area that are currently pending before the Agency.

The ROP plans were to be submitted by November 15, 1994, and the first 9 percent reductions were required to be achieved within 9 years after enactment, that is, by November 15, 1999. This 9 percent reduction requirement is a continuation of the requirement for a 15 percent reduction in VOC by 1996. For the 1996–1999 ROP plan, the Act allows the substitution of NO_X emissions reductions for VOC emission reductions where equivalent air quality benefits are achieved as determined using the applicable EPA guidance. The 9 percent VOC/NO_X reduction required by November 15, 1999, is a demonstration of reasonable further progress in the Washington area. Our assessment of the 1996–1999 ROP plan is limited to whether or not the 9 percent reduction requirement is met.

C. How Is the 3 Percent per Year 1996–1999 Reduction Calculated?

A 1996–1999 ROP plan consists of a plan to achieve a target level of emissions. There are several important emission inventories and calculations associated with the plan. These include: The base year emission inventory, future year projection inventories, and target level calculations.

The EPA addressed the sufficiency of the 1996–1999 ROP plan base year emission inventory, future year projection inventories, and target level calculations in its previous notices regarding the Washington area attainment demonstration. *See* 65 FR 58243, September 28, 2000, and 65 FR 62658, October 19, 2000. Since the Circuit Court did not address issues regarding the adequacy of the base year emission inventory, future year projection inventories, and target level calculations, the EPA believes that it may approve these calculations at this time. EPA incorporates by reference herein its prior proposal, the comments submitted thereon, and its response to those comments. EPA is not reprinting that discussion here but will address any further comments submitted in response to this re-proposal of its approval of the base year emission inventory, future year projection inventories, and target level calculations.

D. Nonattainment Area-Wide Plan—Apportionment of Reduction Needs

The EPA must determine whether or not the Washington area 9 percent requirement has been met. In general, the emission reduction from a measure is the difference between the future year projected uncontrolled emissions and the future year controlled emissions, or is equal to a percentage of the future year projected uncontrolled emissions. For on-road mobile sources, the emission reductions from a measure or suite of measures are determined by the difference of projected future year emissions with and without new control measures.

The Washington area 1996–1999 ROP plan apportions among the District, Maryland and Virginia the amount of creditable emission reductions that each must achieve in order for the nonattainment area to achieve, as a region, the required 9 percent reduction in VOC net of growth. The 1996–1999 ROP plan identifies the amount of creditable emission reductions that each state must achieve for the nonattainment area-wide plan to get a 9 percent reduction accounting for any growth in emissions from 1990 to 1999. The District of Columbia, Maryland and Virginia each committed to achieving the necessary NO_X and VOC reductions, found in Table 5.

TABLE 5.—EMISSION REDUCTION COMMITMENTS FOR THE WASHINGTON AREA THROUGH 1999

[tons/day]

	District of Columbia	Maryland	Virginia	Area total
Total VOC reduction by 1999	10.6	63.7	57.2	131.5
Total NO_X reduction by 1999	7.2	96.8	46.6	150.6

The required VOC and NO_X emission reductions for each jurisdiction have been apportioned using a ratio of the regional reduction requirement to the claimed creditable measures for the nonattainment area. This result was then multiplied by each jurisdiction's total creditable measures to determine its emission reduction requirement. The EPA has determined that this apportionment of the emission reduction needed for ROP is approvable because the Act provides for interstate planning of SIPs, and because all three jurisdictions have committed to achieving, in the aggregate, sufficient reductions to achieve the 9 percent requirement in the entire nonattainment area.

E. What Control Strategies Are the District, Maryland and Virginia Including in the 1996–1999 ROP Plan?

The 1996–1999 ROP plan describes the emission reduction credits that the Washington area jurisdictions are claiming toward their 9 percent reduction requirement. We can credit reductions for the ROP requirement for rules promulgated by the EPA and for state measures in the approved SIP.

Transportation Control Measures (TCMs): TCMs are strategies to both reduce VMT and decrease the amount of emissions per VMT. The CAA classifies as TCMs programs for improved transit, traffic flow, fringe parking facilities for multiple occupancy transit programs, high occupancy or share-ride programs, and support for bicycle and other non-automobile transit. The 1996–1999 ROP plans for Virginia and Maryland included TCM projects programmed between fiscal years 1994–1999 in the transportation improvement plan (TIP) under the Congestion Mitigation and Air Quality (CMAQ) Improvement Program and funded for implementation in the Washington area. The specific projects that Virginia and Maryland are claiming credit for and the estimated benefits are listed in Appendix H of the 1996–1999 ROP plan and Appendix J of the February 2000 plans. TCMs are considered acceptable measures for states to use to achieve reductions and EPA has determined that the VOC and NO_X reductions attributable to these measures are creditable for the 1996–1999 ROP plan and attainment demonstration.

The 1996–1999 ROP plan control measures for the Washington area are listed in Table 3 of this document and described in more detail in the TSD for this rulemaking.

F. What Are the Total Reductions in the 1996–1999 ROP Plan?

Tables 6, 7 and 8 summarize the VOC and NO_X creditable measures in Maryland's, Virginia's and the District's 1996–1999 ROP plan for the Washington area.

TABLE 6.—CREDITABLE VOC EMISSION REDUCTIONS IN THE 1996–1999 ROP PLAN FOR THE METROPOLITAN WASHINGTON AREA

[tons/day]

Measure	District of Columbia	Maryland	Virginia
Tier 1 FMVCP	1.4	5.5	5.9
RFG Refueling Benefits	0.0	0.9	0.7
NLEV	0.2	0.6	1.3
Reformulated Gasoline (on/off road)	2.2	7.9	8.0
Surface Cleaning/Degreasing	0.0	2.9	0.0
Autobody Refinishing	0.5	3.8	2.7
AIM	1.6	6.6	5.6
Consumer Products	0.6	2.2	1.9
Seasonal Open Burning Ban	0.0	3.7	2.6
Graphic Arts	0.9	1.0	1.5
Landfill Regulations	0.0	0	0.3
Non-CTG RACT to 50 TPY	0.0	0.4	0.4
RACT on Additional Sources >25 TPY and <50 TPY	N/A	0.3	0
Stage II Vapor Recovery	0.0	8.9	7.9
Stage I Enhancement (excluding Loudoun County, VA)	0.0	0.9	0.3
Non-road Gasoline Engines Rule	0.9	6.3	6.8
TCMs	0.0	0.1	0.1
Enhanced I/M	3.9	18.0	17.9
Total Creditable Reductions	11.8	70.0	63.9

TABLE 7.—CREDITABLE NO_X EMISSION REDUCTIONS IN THE 1996–1999 ROP PLAN FOR THE METROPOLITAN WASHINGTON AREA

[tons/day]

Measure	District of Columbia	Maryland	Virginia
Enhanced I/M	2.4	14.8	16.9
Tier 1	2.5	13.7	14.7
NLEV	.2	0.3	1.5
Reformulated Gasoline (on-road)	0.0	0.1	0.1
Non-road Gasoline Engines	−0.1	−0.4	−0.5
Non-road Diesel Engines	0.4	3.7	3.2
State NO_X RACT	2.1	67.9	12.0
Open Burning Ban	0	0.8	0.6
TCMs	0	0.2	0.2
Total Creditable Reductions	7.5	101.1	48.7

TABLE 8.—CREDITABLE EMISSION REDUCTIONS VERSUS REDUCTION NEEDS FOR THE 1996–1999 ROP PLAN FOR THE METROPOLITAN WASHINGTON AREA

[tons/day]

	District of Columbia	Maryland	Virginia	Area-wide
VOC Reductions in Plan	11.8	70.0	63.9	145.7
Commitment/Area-wide Needs	10.6	63.7	57.2	131.5
Surplus	1.2	6.3	6.7	14.2
NO_X Reductions in Plan	7.5	101.1	48.7	157.3
Commitment/Area-wide Needs	7.2	96.8	46.6	150.6
Surplus	0.3	4.3	2.1	6.7

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 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 contingency measures that will be implemented should EPA notify the Washington area jurisdictions that the area did not achieve the required 9 percent reductions by November 15, 1999. These measures need to provide for a 3 percent reduction in base line emissions and be fully adopted rules or measures that can 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.

V. Applicability of Revised Motor Vehicle Emissions Budgets

A. What Is the Background on Transportation Conformity?

1. What Is Transportation Conformity?

Transportation conformity is a Clean Air Act (CAA) requirement for metropolitan planning organizations and the U.S. Department of Transportation to ensure that federally supported highway and transit activities are consistent with (''conform to'') the SIP. Conformity to a SIP means that an action will not cause or contribute to new violations; worsen existing violations; or delay timely attainment. The conformity requirements are established by CAA section 176(c). We issued the transportation conformity rule (40 CFR part 93) to implement this CAA requirement.

2. What Are Motor Vehicle Emissions Budgets?

As described in CAA section 176(c)(2)(A), attainment demonstrations necessarily include estimates of motor vehicle emissions to help areas reach attainment. These estimates act as a budget or ceiling for emissions from motor vehicles, and are used in conformity to determine whether transportation plans and projects conform to the attainment SIP. In order for transportation plans and projects to conform, estimated emissions from transportation plans and projects must not exceed the emission budgets contained in the attainment demonstration.

3. Which Motor Vehicle Emissions Budgets Usually Apply?

According to the transportation conformity rule, motor vehicle emissions budgets in a submitted SIP apply for conformity purposes even before we have approved the SIP, under certain circumstances. First, there must not be any other approved SIP motor vehicle emissions budgets that have been established for the same time frame and with respect to the same CAA requirements. For example, if there is already an approved attainment demonstration SIP that establishes motor vehicle emissions budgets for the attainment date, and the State submits a revision to those motor vehicle emissions budgets, the newly submitted budgets do not apply for conformity purposes until we have approved them into the SIP.

Second, submitted SIP motor vehicle emissions budgets cannot be used before we have approved the SIP unless we have found that the submitted SIP motor

vehicle emissions budgets are adequate for conformity purposes. Our process for determining adequacy is explained at 40 CFR 93.118(e) and the EPA's May 14, 1999, memo entitled, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.''

For more details about the applicability of submitted and approved budgets, *see* 61 FR 36117 (July 9, 1996) and 62 FR 43783 (August 15, 1997).

B. What Is the EPA Proposing Today Regarding Clarification of the Applicability of Revised Motor Vehicle Emissions Budgets?

We are proposing to clarify this proposal with regard to applicability of revised budgets under a conditional approval of the attainment demonstration SIPs for the Washington area. The following discussion addresses this issue specifically pertaining to the motor vehicle emissions budgets in the attainment demonstration for the Washington area.

1. How Are We Proposing to Clarify the Applicability of Revised Budgets?

In this notice, we are proposing to clarify what occurs if we issue a conditional approval of any of the February 2000 plans based on a State commitment to revise the 2005 motor vehicle emissions budgets for the Washington area in the future. If this occurs, the approved SIP motor vehicle emissions budgets will apply for conformity purposes only until the revised motor vehicle emissions budgets have been submitted and we have found the submitted motor vehicle emissions budgets to be adequate for conformity purposes.

In other words, when the State submits revised motor vehicle emissions budgets as they have committed, those revised motor vehicle emissions budgets will apply for conformity purposes as soon as we have found those motor vehicle emissions budgets to be adequate for conformity purposes and our adequacy finding is effective. The revised motor vehicle emissions budgets would then replace the motor vehicle emissions budgets in the conditionally approved attainment demonstration SIP, provided that (as we expect) the revised motor vehicle emissions budgets are submitted as a revision to part of the attainment demonstration SIP and are established for the same year as those in the approved SIP.

2. Why Are We Proposing to Clarify the Applicability of Revised Budgets?

In this notice of proposed rulemaking, we are proposing that for reasons described in section III.C. we would not conditionally approve the attainment demonstration SIPs unless the States commit to revise the SIPs' budgets in the future. As described in prior sections of this preamble, the motor vehicle emissions budgets must be revised using MOBILE6 because the attainment year budgets that would be conditionally approved reflect the benefits of our Tier 2/Sulfur regulation. The budgets might also be revised as a result of the RACM analysis the area has committed to complete.

Since we are proposing to approve attainment year motor vehicle emissions budgets only because the States have committed to revise them, we want our approval of the budgets to last only until adequate revised budgets are submitted pursuant to the commitments. We believe the revised motor vehicle emissions budgets should apply as soon as we find them adequate; we do not believe it is appropriate to wait until we have fully approved the revised attainment demonstration SIP. This is because we already know that once we have confirmed that the revised motor vehicle emissions budgets are adequate, they will be more appropriate than the originally approved budgets for conformity purposes.

In addition, we know now that the area cannot estimate accurately the benefits of the Tier 2 program until they revise the budgets using the MOBILE6 model. We are proposing to conditionally approve motor vehicle emissions budgets based on interim approximations of Tier 2 benefits only because the States are committing to recalculate the budgets using MOBILE6 in a timely fashion.

Finally, we know now that if the area identifies any additional mobile source RACM, the budgets, as revised to include those measures, will more accurately reflect the emissions levels necessary to demonstrate attainment. If we do not clarify our proposed conditional approval of the motor vehicle emissions budgets, States will revise their budgets as they have committed, but they will not be able to start using them quickly for conformity purposes. This would defeat the purpose of our original requirements for the budgets to be revised quickly. In contrast, according to this proposal, the revised budgets could be used for conformity after we have completed our adequacy review process, which we have committed to complete within 90 days after revisions are submitted, provided they are adequate.

This notice does not propose any change to the existing transportation conformity rule or to the way it is normally implemented with respect to other submitted and approved SIPs, which do not contain commitments to revise the motor vehicle emissions budgets.

C. How Does the 18-Month Clock Apply With Respect to These Budget Revisions?

Section 93.104(e)(2) of the conformity rule requires conformity of the transportation plan and transportation improvement program (TIP) to be redetermined within 18 months following the date of a State's initial submission of each SIP establishing a budget.

As described at 60 FR 44792 (August 29, 1995), the first submission of a given type of SIP that establishes a motor vehicle emissions budget (*e.g.*, an ozone attainment demonstration) starts the 18-month clock for redetermining conformity. However, the 18-month clock is unaffected by subsequent changes to that submitted SIP.

Therefore, the revisions to the attainment demonstration SIPs to reflect MOBILE6 or any additional RACM will not start a new 18-month clock. Of course, whenever conformity is determined in the future (in accordance with the 18-month clock or for any other reason), the demonstration must use whatever motor vehicle emissions budgets are applicable at that time. If an initial submission starts the 18-month clock but then is changed and the revised motor vehicle emissions budgets are found adequate, any subsequent conformity determination must use the new, adequate budgets.

Section 93.104(e)(3) also requires conformity of the transportation plan and TIP to be redetermined 18 months following our approval of a SIP that establishes or revises a budget. If we conditionally approve an ozone attainment demonstration, an 18-month clock will be started on the effective date of our conditional approval. A subsequent conversion of the conditional approval to full approval will not start another 18-month clock, unless the motor vehicle emissions budgets we are approving have changed since the conditional approval.

D. What Are the Budgets in the Plans?

The motor vehicle emissions budgets in the 1996–1999 ROP plan and attainment demonstrations are area-wide budgets for the entire Washington area. The motor vehicle emissions budgets for 1999 in the 1996–1999 ROP plan are 196.4 tons per day of NO_X and 128.5 tons per day of VOC. The motor vehicle emissions budgets for 2005 in the attainment demonstration are 101.8

tons per day for VOC and 161.8 tons per day of NO_X.

E. What Is the Status of the 1999 Motor Vehicle Emission Budgets Contained in the 1996–1999 ROP Plan for the Area?

We are proposing to conditionally approve the 1996–1999 ROP plan for the area including the 1999 motor vehicle emission budgets, or in the alternative, to disapprove this SIP with a protective finding. It should be noted that the 1999 budgets in the ROP plan do not have to be revised using MOBILE6 since these budgets were established for a year prior to the implementation of the Tier 2/sulfur regulations.

VI. What Is the Basis for the Proposed Actions?

A. Conditional Approval

In the previous sections of this document, the EPA has presented our analysis of the 1996–1999 ROP plan and attainment demonstration plans submitted for the Washington area. The EPA has concluded that these submittals will be fully approvable once several deficiencies are corrected. Two of these deficiencies were identified by the Circuit Court, namely that the 1996–1999 ROP plan and the attainment demonstration lack contingency measures, and the attainment demonstration lacks an analysis showing that all RACM have been adopted for implementation in the Washington area. A third deficiency we have identified with the attainment demonstration is the lack of revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

To cure these deficiencies and allow for full approval of the SIPs the States must undertake the actions set forth below. For contingency measures related to the attainment demonstration, the States need to identify which measures have been implemented since the area failed to attain by November 15, 1999. In addition, because the Washington area will on March 25, 2003, become a severe nonattainment area, the attainment demonstration for the Washington area must also include contingency measures if the area fails to attain by November 15, 2005. For the 1996–1999 ROP plan contingency requirement, the area needs to identify those adopted measures that qualify as contingency measures to be implemented if EPA notifies the states that the Washington area did not achieve the required 9 percent rate of progress reductions by November 15, 1999.

The deficiencies in the SIPS are due to the actual (or potential) lack of certain enforceable measures in the SIPs. 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 shall be treated as a disapproval if the State fails to comply with such commitment.''

The EPA concludes that the SIP revisions identified in the section of this document entitled ''I. What action is the EPA proposing today?'' can be conditionally approved because each of the States has committed to all of the following:

(1) Submit to the EPA by April 17, 2004, a contingency plan containing those adopted measures that qualify as contingency measures due to the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999, and also those adopted measures that qualify as contingency measures to be implemented if EPA notifies the states that the Washington area did not achieve the required 9 percent rate of progress reductions by November 15, 1999.

(2) Revise and submit to the EPA by April 17, 2004, an updated attainment demonstration SIP that reflects revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(3) Submit to the EPA by April 17, 2004, adopted contingency measures to be implemented if the Washington area does not attain the one-hour ozone NAAQS by November 15, 2005.

(4) Submit to the EPA by April 17, 2004, an appropriate RACM analysis for the Washington area, along with any revisions to the attainment demonstration SIP necessitated by such analysis, should there be any.

These commitments are embodied in the following letters:

(1) A letter, dated January 14, 2003, from Richard F. Pecora, Secretary, Maryland Department of the Environment, to Donald S. Welsh, Regional Administrator, EPA. Region III.

(2) A letter, dated January 14, 2003, from Robert G. Burnley, Director, Virginia Department of Environmental Quality, to Donald S. Welsh, Regional Administrator, EPA. Region III.

(3) A letter, dated January 14, 2003, from Theodore J. Gordon, Senior Deputy Director for Environmental Health Science and Regulation, Government of the District of Columbia Department of Health, to Donald S. Welsh, Regional Administrator, EPA. Region III.

These letters contain the commitments that are acceptable in form and substance to comply with sections 110(k)(3) and (4) of the Act.

Although each of the Washington area States has committed to submitting the RACM analysis, the contingency measures and the 2005 revised mobile vehicle emissions budgets to EPA by April 17, 2004, these three things are among the severe area SIP elements required by the reclassification of the Washington area to severe ozone nonattainment. Therefore, as a practical matter, these three elements will have to be submitted to EPA consistent with the schedule for submission of the severe area SIP revisions to EPA. Under the schedule set forth in the final rule reclassifying the Washington area, each of the three Washington area States must submit all of the severe area SIP revisions no later than March 1, 2004. (*See* 68 FR 3410). Notwithstanding the April 17, 2004, commitment date, failure of the States to submit these three elements by March 1, 2004, can have repercussions. If EPA makes a finding that any of the Washington area States have failed to submit any of the required severe area SIP elements by March 1, 2004, or if EPA makes a finding that any of the required submittals is incomplete in accordance with section 110(k)(1)(B) and 40 CFR part 51, Appendix V, section 179(a) provides for the imposition of two sanctions. *See* section 179(a) of the CAA and 40 CFR 52.31. Under EPA's sanctions regulations, 40 CFR 52.31, the first sanction would be 2:1 offsets for sources subject to the new source review requirements under section 173 of the CAA unless the EPA has determined the State has submitted the required SIP revisions meeting the completeness criteria section 110(k)(1)(B) and of 40 CFR part 51. If 6 months after the first sanction is imposed EPA has not determined that State has submitted the required SIP revisions meeting the completeness criteria section 110(k)(1)(B) and of 40 CFR part 51, the second sanction will apply. The second sanction is a limitation on the receipt of Federal highway funds.

However, as discussed previously in this document, because the commitment letter recites April 17, 2004, as the

controlling date for submission of the RACM analysis, the contingency measures and the 2005 revised mobile vehicle emissions budgets, any conditional approval issued pursuant to this proposed rulemaking shall convert to a disapproval only if the State fails to make the required submissions by April 17, 2004. If EPA disapproves a required SIP, such as an attainment demonstration SIP, section 179(a) provides for the imposition of two sanctions. In the event of a disapproval the two sanctions would be imposed in accordance with the EPA's sanctions regulation, 40 CFR 52.31, and in the same order as described in the preceding paragraph.

B. Disapproval in the Alternative

The EPA believes that the proposed conditional approval is consistent with sections 110(k)(3) and (4) of the Act and with rulings by the Circuit Court and the District Court cited previously in this document. We also believe that the proposed conditional approval is the most reasonable of the legally supported alternatives for allowing the Washington area to deal with the situation created by the two court rulings adverse to EPA. However, EPA is well aware that its past actions with respect to this area have been controversial and have resulted in separate actions in two different Federal courts. EPA is also well aware that it is under a District Court-ordered deadline to publish its final action on the Washington area attainment demonstration and ROP SIPs by no later than April 17, 2003. Because EPA anticipates that the proposed conditional approvals may receive adverse comment, we are also proposing in the alternative to disapprove either or both the attainment demonstration and ROPs SIPs. EPA believes that the proposed disapproval in the alternative is a prudent step to take to preserve the court-ordered schedule in the event that we cannot issue a timely final conditional approval for both the attainment demonstration and ROP SIP revisions.

In the event that we cannot issue a final conditional approval with respect to the attainment demonstration SIP revision, we propose to disapprove those submissions due to the following deficiencies: (1) Lack of contingency measures; (2) lack of an analysis showing that all RACM have been adopted for implementation in the Washington area; and, (3) lack of revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005. With respect to the 1996–1999 ROP plan, in the event that we cannot issue a final conditional approval, we propose to disapprove the submissions because they lack contingency measures. As explained in the following paragraphs at VI.C. the EPA is proposing that disapproval of either the attainment demonstration or the 1996–1999 ROP plan will be made with a protective finding regarding their respective motor vehicle emissions budgets.

C. Proposed Protective Findings

Under the conformity rule if EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and transportation improvement plan (TIP) shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under section 179(b)(1) of the Clean Air Act.[5] No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same Clean Air Act requirements is submitted and conformity to this submission is determined. *See* 40 CFR 93.120(a).

When the EPA disapproves a control strategy SIP the EPA has to determine whether to issue a protective finding. If the EPA does not issue a protective finding then the conformity freeze established by section 93.120(a)(2) of the conformity rule will occur on the effective date of the disapproval. *See* 40 CFR 93.120(a)(2).

Alternatively, when disapproving a control strategy implementation plan revision, the EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment. *See* 40 CFR 93.120(a)(3).

In the preamble to the conformity rule, EPA explained the implications of a disapproval of a ROP plan or attainment demonstration and how a protective finding works. When disapproving a control strategy SIP revision the EPA may give the SIP a protective finding. If the EPA disapproves a SIP but gives a protective finding, the motor vehicle emissions budget in the disapproved SIP could still be used to demonstrate conformity. There would be no adverse conformity consequences unless highway sanctions were imposed, as is the case with respect to all other SIP planning failures. Highway sanctions would be imposed two years following the EPA's disapproval if the SIP deficiency had not been remedied. The conformity of the plan and TIP would lapse once highway sanctions were imposed. The EPA will make a protective finding only if a submitted SIP contains adopted control measures or commitments to adopt measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the SIP was submitted, such as ROP. That is, the EPA will give such a submitted SIP a protective finding if it contains enough emissions reduction measures to achieve its purpose of either demonstrating ROP or attainment. The EPA will not make a protective finding with respect to a SIP that does not contain emission reduction measures or commitments adequate to achieve the required ROP or attainment. *See* 62 FR at 43796, August 15, 1997.

The EPA is proposing that based on the analysis discussed in section IV of this document that the 1996–1999 ROP plan meets the ROP requirement by providing enough reductions with the adopted measures to have achieved the 9 percent reduction requirement. The EPA believes that the ROP plan meets the requirement for a protective finding, however, the EPA will take final action with respect to this protective finding only if it finalizes the disapproval in the alternative option proposed in this document.

Likewise, the EPA is proposing that, based on the analysis discussed previously in this document, the attainment demonstration has demonstrated that the Washington area will attain the ozone NAAQS no later than November 15, 2005, by providing enough reductions with the adopted measures to demonstrate attainment. The EPA believes that the attainment demonstration meets the requirement for a protective finding, however, the EPA will take final action with respect to this protective finding only if it finalizes the disapproval in the alternative option proposed in this document.

[5] Under the conformity rule the term ''control strategy implementation plan revisions'' includes ROP and attainment demonstrations, or, more generally, those implementation plans which contain specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sectons 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

Under this proposed protective finding the mobile source budgets that were established in the 1996–1999 ROP plan and attainment demonstration plans will be in effect for transportation planning and conformity purposes and can be used until such time that highway sanctions as required in accordance with 40 CFR 52.31 and would apply two years after the disapproval of the ROP plan, unless EPA takes final action to approve a revised plan correcting the deficiency within 2 years of EPA's findings. The 1999 mobile emissions budgets in the 1996–1999 ROP plan which would remain in place under the proposed protective finding are 196.8 tons of NO_X and 128.5 tons for VOC. The 2005 mobile emissions budgets in the attainment demonstration which would remain in place under the proposed protective finding are 101.8 tons of NO_X and 161.8 tons for VOC.

VII. Proposed Action

A. The District of Columbia—Rate-of-Progress Plan

EPA is proposing conditional approval of the District of Columbia's 1996–1999 ROP plan SIP revision for the Washington area which was submitted on November 3, 1997, and supplemented on May 25, 1999, and the transportation control measures in Appendix H of the May 25, 1999, submittal, because the District has committed to submit to the EPA by April 17, 2004, (a date that will not be later than 1 year after the date of approval of the plan revision) a contingency plan containing those adopted measures that qualify as contingency measures to be implemented if EPA notifies the states that the Washington area did not achieve the required 9 percent rate of progress reductions by November 15, 1999.

With respect to the 1996–1999 ROP plan, in the event that we cannot issue a final conditional approval, we propose in the alternative to disapprove the District of Columbia's 1996–1999 ROP plan SIP because it lacks contingency measures. The EPA is proposing disapproval in the alternative with a protective finding with respect to the 1999 ROP motor vehicle emissions budgets.

B. The District of Columbia—Attainment Demonstration

EPA is proposing conditional approval of the revisions to the State Implementation Plan submitted by the District of Columbia on April 24, 1998, October 27, 1998, and February 16, 2000, and only section 9.1.1.2 of the March 22, 2000, SIP supplement dealing with a commitment to revise the 2005 attainment motor vehicle emissions budgets within one-year of the EPA's release of the MOBILE6 model. EPA is proposing conditional approval because the District has committed to:

(1) Submit to the EPA by April 17, 2004, a contingency plan containing those adopted measures that qualify as contingency measures due to the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999;

(2) Revise and submit to the EPA by April 17, 2004, an updated attainment demonstration SIP that reflects revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005;

(3) Submit to the EPA by April 17, 2004, adopted contingency measures to be implemented if the Washington area does not attain the one-hour ozone NAAQS by November 15, 2005; and

(4) Submit to the EPA by April 17, 2004, a revised RACM analysis and any revisions to the attainment demonstration SIP as necessitated by such analysis should there be any.

In the alternative, the EPA is proposing to disapprove the State Implementation Plan submitted by the District of Columbia on April 24, 1998, October 27, 1998, and February 16, 2000, and only section 9.1.1.2 of the March 22, 2000, SIP supplement, due to the following deficiencies: (1) Lack of contingency measures; (2) lack of an analysis showing that all RACM have been adopted for implementation in the Washington area; and, (3) lack of revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005. The EPA is proposing disapproval with a protective finding with respect to the 2005 attainment motor vehicle emissions budgets.

C. The State of Maryland—Rate-of-Progress Plan

EPA is proposing conditional approval of the State of Maryland's 1996–1999 ROP plan SIP revision for the Washington area which was submitted on December 24, 1997, and supplemented on May 20, 1999, and the transportation control measures in Appendix H of the May 25, 1999, submittal because Maryland has committed to submit to the EPA by April 17, 2004, a contingency plan containing those adopted measures that qualify as contingency measures to be implemented if EPA notifies the states that the Washington area did not achieve the required 9 percent rate of progress reductions by November 15, 1999.

With respect to the 1996–1999 ROP plan, in the event that we cannot issue a final conditional approval, we propose in the alternative to disapprove the State of Maryland's 1996–1999 ROP plan SIP because it lacks contingency measures. The EPA is proposing disapproval in the alternative with a protective finding with respect to the 1999 ROP motor vehicle emissions budgets.

D. The State of Maryland—Attainment Demonstration

EPA is proposing conditional approval of the revisions to the State Implementation Plan submitted by the State of Maryland on April 29, 1998, August 17, 1998, and February 14, 2000, and the transportation control measures in Appendix J of the February 9, 2000, submittal and only section 9.1.1.2 of the March 31, 2000, SIP supplement dealing with a commitment to revise the 2005 attainment motor vehicle emissions budgets within one-year of the EPA's release of the MOBILE6 model. EPA is proposing conditional approval because Maryland has committed to:

(1) Submit to the EPA by April 17, 2004, a contingency plan containing those adopted measures that qualify as contingency measures due to the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999;

(2) Revise and submit to the EPA by April 17, 2004, an updated attainment demonstration SIP that reflects revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005;

(3) Submit to the EPA by April 17, 2004, adopted contingency measures to be implemented if the Washington area does not attain the one-hour ozone NAAQS by November 15, 2005; and

(4) Submit to the EPA by April 17, 2004, a revised RACM analysis and any revisions to the attainment demonstration SIP as necessitated by such analysis should there be any.

In the alternative, the EPA is proposing to disapprove the State Implementation Plan submitted by the State of Maryland on April 29, 1998,

August 17, 1998, and February 14, 2000, and the transportation control measures in Appendix J of the February 9, 2000, submittal and only section 9.1.1.2 of the March 31, 2000 SIP supplement due to the following deficiencies: (1) Lack of contingency measures; (2) lack of an analysis showing that all RACM have been adopted for implementation in the Washington area; and, (3) lack of revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005. The EPA is proposing disapproval with a protective finding with respect to the 2005 attainment motor vehicle emissions budgets.

E. The Commonwealth of Virginia—Rate-of-Progress Plan

EPA is proposing conditional approval of the Commonwealth of Virginia's 1996–1999 ROP plan SIP revision for the Washington area which was submitted on December 19, 1997, and supplemented on May 25, 1999, and the transportation control measures in Appendix H of the May 25, 1999, submittal because Virginia has committed to submit to the EPA by April 17, 2004, a contingency plan containing those adopted measures that qualify as contingency measures to be implemented if EPA notifies the states that the Washington area did not achieve the required 9 percent rate of progress reductions by November 15, 1999.

With respect to the 1996–1999 ROP plan, in the event that we cannot issue a final conditional approval, we propose in the alternative to disapprove the Commonwealth of Virginia's 1996–1999 ROP plan SIP because it lacks contingency measures. The EPA is proposing disapproval in the alternative with a protective finding with respect to the 1999 ROP motor vehicle emissions budgets.

F. The Commonwealth of Virginia—Attainment Demonstration

EPA is proposing conditional approval of the revisions to the State Implementation Plan submitted by the Commonwealth of Virginia on April 29, 1998, August 18, 1998, and February 9, 2000, and the transportation control measures in Appendix J of the February 9, 2000, submittal, and only section 9.1.1.2 of the March 31, 2000, SIP supplement dealing with a commitment to revise the 2005 attainment motor vehicle emissions budgets within one-year of the EPA's release of the MOBILE6 model. EPA is proposing conditional approval because Virginia has committed to:

(1) Submit to the EPA by April 17, 2004, a contingency plan containing those adopted measures that qualify as contingency measures due to the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999;

(2) Revise and submit to the EPA by April 17, 2004, an updated attainment demonstration SIP that reflects revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005;

(3) Submit to the EPA by April 17, 2004, adopted contingency measures to be implemented if the Washington area does not attain the one-hour ozone NAAQS by November 15, 2005; and

(4) Submit to the EPA by April 17, 2004, a revised RACM analysis and any revisions to the attainment demonstration SIP as necessitated by such analysis should there be any.

In the alternative, the EPA is proposing to disapprove the State Implementation Plan submitted by the Commonwealth of Virginia on April 29, 1998, August 18, 1998, and February 9, 2000, and the transportation control measures in Appendix J of the February 9, 2000, submittal, and only section 9.1.1.2 of the March 31, 2000, SIP supplement due to the following deficiencies: (1) Lack of contingency measures; (2) lack of an analysis showing that all RACM have been adopted for implementation in the Washington area; and, (3) lack of revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling and/or weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005. The EPA is proposing disapproval with a protective finding with respect to the 2005 attainment motor vehicle emissions budgets.

G. Applicability of Revised Motor Vehicle Emissions Budgets

In this notice, we are proposing to clarify what occurs if we issue a conditional approval of any of the February 2000 plans based on a State commitment to revise the 2005 motor vehicle emissions budgets for the Washington area in the future. If this occurs, the conditionally approved 2005 motor vehicle emissions budgets will apply for conformity purposes only until the revised motor vehicle emissions budgets have been submitted and we have found the submitted motor vehicle emissions budgets to be adequate for conformity purposes.

The EPA is soliciting public comments on the issues discussed in this document and any other relevant issues regarding the attainment demonstration for the Washington area. 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. A more detailed description of the state submittal and the EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code sec. 10.1–1198, precludes granting a privilege to documents and

information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, the EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because the EPA has also determined that a State audit privilege and immunity law can affect only State enforcement and cannot have any impact on Federal enforcement authorities, the EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the State plan, independently of any State enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, State audit privilege or immunity law.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045

Executive Order entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Executive Order entitled ''Federalism'' (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

E. Executive Order 13211

This action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA

to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, I certify that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

The EPA's alternative proposed disapproval of the State request under section 110 and subchapter I, part D of the Act would not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements would remain in place after this disapproval. Federal disapproval of the State submittal does not affect State-enforceability. Moreover EPA's disapproval of the submittal would not impose any new Federal requirements. Therefore, I certify that the proposed disapproval would not have a significant impact on a substantial number of small entities.

G. 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 annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under 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 this proposed approval action does not include a Federal mandate that may result in estimated annual 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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Sections 202 and 205 do not apply to the proposed disapproval because the proposed disapproval of the SIP submittal would not, in and of itself, constitute a Federal mandate because it would not impose an enforceable duty on any entity. In addition, the Act does not permit EPA to consider the types of analyses described in section 202 in determining whether a SIP submittal meets the CAA. Finally, section 203 does not apply to the proposed disapproval because it would affect only the District of Columbia, the State of Maryland and the Commonwealth of Virginia, which are not small governments.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

This proposed rule regarding the 1-hour ozone attainment demonstration and the 1996–1999 ROP plan for the Washington area does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 24, 2003.

James J. Burke,

Acting Regional Administrator, Region III.

[FR Doc. 03–2333 Filed 1–31–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD129/130–3089b; FRL–7437–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Amendments to Volatile Organic Compound Requirements From Specific Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland for the purpose of establishing two (2) amendments to COMAR 26.11.19, from specific processes on volatile organic compound (VOC) requirements. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 5, 2003.

ADDRESSES: Written comments should be addressed to Walter K. Wilkie. Acting Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 1800 Washington Blvd., Suite 730, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Betty Harris at (215) 814–2168, at the EPA Region III address above, or by e-mail at *harris.betty@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments