''Niagara Escarpment''. For purposes of part 4 of this chapter, ''Niagara Escarpment'' is a term of viticultural significance.

(b) *Approved Maps.* The five United States Geological Survey (USGS) 1:25,000 scale, topographic maps used to determine the boundaries of the Niagara Escarpment viticultural area are titled—

(1) Lewiston, New York–Ontario, 1980;

(2) Ransomville, New York, 1980;

(3) Cambria, New York, 1980;

(4) Lockport, New York, 1980; and

(5) Gasport, New York, 1979.

(c) *Boundary.* The Niagara Escarpment viticultural area is located in Niagara County, New York. The area's boundaries are defined as follows—

(1) On the Lewiston map, south of the village of Lewiston within the Brydges State Artpark, begin on the east bank of the Niagara River at the mouth of Fish Creek; then

(2) Proceed north along the east bank of the Niagara River about 0.6 mile to the northern boundary of the Brydges State Artpark; then

(3) Proceed east along the northern boundary of the Brydges State Artpark about 0.8 mile to the park's northeast corner, and continue east in a straight line a short distance to the Robert Moses Parkway; then

(4) Proceed north along the Robert Moses Parkway about 0.25 mile to Ridge Road, and then east on Ridge Road (State Route 104) about 0.15 mile to the road's first intersection with the 400-foot contour line; then

(5) Continue easterly along the 400-foot contour line, through the Ransomville map (crossing Model City Road, Dickersonville Road, and State Route 429) and the Cambria map (crossing Baer Road, Plank Road, and State Route 93/270), and pass onto the Lockport map to the contour line's junction with Sunset Drive; then

(6) Proceed north on Sunset Drive 0.3 mile to its intersection with Stone Road, then east on Stone Road about 1.25 miles (crossing Eighteenmile Creek) to the intersection of Stone, Purdy, and Old Niagara Roads, and continue east along Old Niagara Road about 0.4 mile to its first intersection with the 400-foot contour line; then

(7) Proceed northeasterly along the 400-foot contour line to its first junction with Slayton Settlement Road, proceed east on Slayton Settlement Road to Day Road, and then proceed north on Day Road to its first junction with the 400-foot contour line; then

(8) Proceed easterly along the 400-foot contour line, pass onto the Gasport map (crossing Humphrey and Orangeport Roads), and continue to the contour line's junction with Quaker Road; then

(9) Proceed north on Quaker Road about 0.4 mile to its intersection with State Route 104, and then east on State Route 104 to its intersection with Johnson Creek (at the village of Johnson Creek); then

(10) Proceed south along Johnson Creek (crossing the Erie Canal), to the creek's junction with Mountain Road; then

(11) Proceed west on Mountain Road to its intersection with Gasport Road, then south on Gasport Road to its intersection with Mill Road, then west on Mill Road to its intersection with Kayner Road, then north on Kayner Road 0.65 mile to its junction with the 600-foot contour line; then

(12) Proceed westerly along the 600-foot contour line (crossing Cottage Road) to its junction with State Route 31, and continue west on State Route 31, passing onto the Lockport map and crossing the Erie Canal within the city of Lockport, to the intersection of State Route 31 and Upper Mountain Road; then

(13) Proceed north-northwesterly on Upper Mountain Road 0.65 mile and then northerly on Sunset Drive 0.25 mile to the junction of Sunset Drive and the 600-foot contour line; then

(14) Proceed westerly along the 600-foot contour line, continuing through the Cambria map (crossing State Route 93/270 and then Blackman and Baer Roads), through the Ransomville map (crossing State Route 429 just north of Pekin and then crossing Black Nose Spring and Model City Roads), and, passing onto the Lewiston map, continue westward along the contour line (through the Escarpment, Ramsey Ridge, and Lewiston Heights subdivisions), to the contour line's junction with Mountain View Drive (just east of State Highway 104 near the Niagara Falls Country Club); then

(15) Proceed west along Mountain View Drive a short distance to its intersection with State Route 104, and then proceed south on State Route 104 to its junction with Fish Creek; then

(16) Proceed westerly along Fish Creek and return to the beginning point on the east bank of the Niagara River at the mouth of Fish Creek.

Signed: February 2, 2005.

John J. Manfreda,

Administrator.

[FR Doc. 05–2489 Filed 2–8–05; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME NO. R03–OAR–2004–DC–0010; FRL–7870–8]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia; Metropolitan Washington DC 1-Hour Ozone Attainment Demonstration Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the attainment demonstration State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia and the District of Columbia for the Metropolitan Washington, D.C. severe 1-hour ozone nonattainment area (the Washington area). EPA is proposing to approve the attainment demonstration SIP revisions submitted by the State of Maryland for the Washington area contingent upon the State submitting an approvable SIP revision for certain penalty fees, required by the Clean Air Act (the Act), prior to the time EPA issues a final rule on Maryland's attainment demonstration. In the alternative, EPA is proposing to disapprove the attainment demonstration SIP revision submitted by the State of Maryland for the Washington area. In the event we issue a final rule disapproving Maryland's attainment demonstration for the State's failure to satisfy the Act's penalty fee provisions, EPA is also proposing to issue a protective finding to preclude a ''conformity freeze'' pursuant to the transportation conformity rule. These revisions are being proposed in accordance with the Act.

DATES: Written comments must be received on or before March 11, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0010 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Website: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov.*

D. Mail: R03–OAR–2004–DC–0010, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to R03–OAR–2004–DC–0010. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov websites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in an the RME index at *http://www.docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the 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 the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

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

SUPPLEMENTARY INFORMATION:

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

The use of the term ''the States'' or of the term ''the three States'' in this document refers to the State of Maryland, the Commonwealth of Virginia and the District of Columbia.

Outline

I. The Action EPA Is Proposing Today

The EPA is proposing approval of the attainment demonstration SIP revisions submitted by the District of Columbia (the District), and the Commonwealth of Virginia for the Washington area. In the case of the State of Maryland, EPA is proposing to approve the attainment demonstration SIP revision for the Washington area contingent upon Maryland submitting an approvable SIP revision to satisfy the section 185 of the Act for certain penalty fees, prior to the time EPA issues a final rule on the attainment demonstration; and, in the alternative, EPA is proposing to disapprove the attainment demonstration SIP revision submitted by the State of Maryland for the Washington area. In the event we issue a final rule disapproving Maryland's attainment demonstration for the State's failure to satisfy the Act's section 185 penalty fee provisions, EPA is proposing to issue a protective finding for the 2005 motor vehicle emissions budgets to preclude a ''conformity freeze'' pursuant to the transportation conformity rule, and is proposing to limit the duration such disapproval is in effect for only as long as the Maryland SIP lacks the section 185 penalty fee requirements or as long as those penalty fee requirements remain applicable under the Act. The following table identifies the submittal dates and amendment dates for these plans:

TABLE 1.—ATTAINMENT DEMONSTRATION AND VMT OFFSET PLANS

	DC	MD [1]	VA
Initial submittal dates	September 5, 2003	September 2, 2003	August 19, 2003.

TABLE 1.—ATTAINMENT DEMONSTRATION AND VMT OFFSET PLANS—Continued

	DC	MD [1]	VA
Amended submittal dates	February 25, 2004	February 19, 2004	February 25, 2004.

[1] Maryland SIP revisions 03–05 and 04–01.

Hereafter the SIP revisions listed in Table 1 of this document will be called the ''2004 SIP Revisions.'' The 2004 SIP revisions include an attainment demonstration and 2005 attainment motor vehicle emissions budgets (MVEBs) for purposes of transportation conformity.

The States' 2004 SIP revision submittals also included the post 1999–2005 rate of progress (ROP) plans, the VMT Offset SIPs, revisions to the 1990 base year emissions inventory, certain transportation control measures (TCMs) (namely those TCMs identified in Appendix J of the SIP revision submittals), a suite of nonregulatory control measures, and the contingency measures plans for both ROP and attainment for the Washington area. Those revisions are the subjects of separate rulemaking actions. On December 23, 2004 (69 FR 76889), EPA proposed approval of the suite of nonregulatory control measures. On January 12, 2005 (70 FR 2085), EPA published a notice of proposed rulemaking (NPR) regarding the post 1999–2005 ROP plan, the VMT Offset SIP, revisions to the 1990 base year emissions inventory, certain TCMs, and the contingency measures plans for both ROP and attainment. The NPR published on January 12, 2005 also proposed approval of the States' post 1996–1999 ROP plans for the Washington area. (*See* 70 FR 2085, January 12, 2005)

II. Background

A. What Is the Washington DC 1-Hour Ozone Nonattainment Area?

The Metropolitan Washington severe 1-hour ozone nonattainment area (the Washington area) is comprised of the entire District of Columbia (the District), a portion of Maryland (Calvert, Charles, Frederick, Montgomery, and Prince George's Counties), and a portion of Virginia (Alexandria, Arlington County, Fairfax, Fairfax County, Falls Church, Manassas, Manassas Park, Prince William County, and Stafford County).

B. What Previous Action Has EPA Taken on Attainment Demonstrations for the Washington Area?

On January 3, 2001 (66 FR 586), the EPA approved the States' post 1996–1999 ROP plans, earlier versions of their attainment demonstration plans (those submitted during 1998 and 2000, which have been withdrawn by the states and superceded by the plans that are the subject of this rulemaking) and an attainment date extension for the Washington area. A petition for review of that final rule was filed by the Sierra Club. On July 2, 2002, the United States Courts of Appeals for the District of Columbia Circuit (the Court) ruled on the petition and vacated our January 3, 2001 approval of the States' attainment demonstrations, their 1996–1999 ROP plans and the attainment date extension. (*See Sierra Club* v. *Whitman,* 294 F.3d 155, 163 (DC Cir. 2002) (''*Sierra Club I*''). With respect to the attainment date extension, the Court said that the EPA was without authority to extend the Washington area's attainment deadline unless it also ordered the area to be reclassified as a ''severe'' area. The Court also found that the attainment demonstration and ROP plans were deficient because neither SIP revision contained approved contingency measures as required by sections 172(c)(9) and 182(c)(9) of the Act. *Id.* at 164. Furthermore, the Court determined that in addition to a 9 percent reduction in baseline emissions post 1996–1999, an area with an attainment date in 2005 must include a ROP plan that demonstrates additional ROP to 2005. *Id.* at 163. Lastly, although the Court upheld the EPA's definition of reasonably available control measures (RACM), 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. *Id.* at 162–63.

On January 24, 2003 (68 FR 3410), EPA published a final action determining that the Washington area failed to attain the November 15, 1999 ozone attainment deadline for serious areas and reclassifying the Washington area to severe ozone nonattainment. On April 17, 2003 (68 FR 19106), EPA conditionally approved the States' 1996–1999 ROP plans and earlier versions (those submitted during 1998 and 2000) of the attainment demonstration plans, contingent upon the States fulfilling commitments they made to submit the additional elements required of those SIP revisions for a severe area. A petition for review of that final rule was filed by the Sierra Club. The petition alleged, among other things, that EPA could not lawfully conditionally approve the SIPs due to a lack of specificity in the States' commitment letters, that EPA should require the 1996–1999 ROP to be revised to use the latest mobile sources emission factor model and that the photochemical grid modeling supporting the attainment demonstration did not meet the requirements of the CAA. On February 3, 2004, the Court issued an opinion to vacate our rule conditionally approving the attainment demonstrations and 1996–1999 ROP plans insofar as that the court found our grant of conditional approval defective. The Court denied the petition for review in all other respects. *See Sierra Club* v. *EPA,* 356 F.3d at 301–07 (DC Cir. 2004) (''*Sierra Club II*'').[2] On April 23, 2004, the Court issued its mandate thereby relinquishing jurisdiction over the 1996–1999 ROP plans and the attainment demonstration SIP revisions, and remanding them back to EPA.

Effective as of the April 23, 2004 date the Court issued its mandate for its February 3, 2004 ruling, all three States withdrew their attainment demonstration SIP revisions which had been submitted during 1998 and 2000, specifically the SIP revisions listed in Table 2 of the April 17, 2003, final rule (68 FR 19107). The States withdrew these earlier versions of the attainment demonstration SIP revisions because the they had submitted revised attainment demonstration SIP revisions with a RACM analysis, post-1999 ROP plans demonstrating ROP for 2002 and 2005, VMT offset plans and contingency measures plans that superceded the earlier submissions.

C. What Agencies and Organizations Developed the Attainment Demonstration for the Washington Area?

The District, Virginia and Maryland must collectively demonstrate

[2] On April 16, 2004, the Court issued an order slightly revising the February 3, 2004, opinion to address a petition for rehearing filed by the Sierra Club, but otherwise leaving its decision to vacate and remand the conditional approval to EPA intact. *Sierra Club* v. *EPA,* 356 F.3d 296, 301–304 (DC Cir. 2004), *amended by* No. 03–1084, 2004 WL 877850 (DC Cir. Apr. 16, 2004).

attainment of the 1-hour ozone NAAQS in the Washington area buy no later than November 15, 2005. These jurisdictions, under the auspices of the Metropolitan Washington Air Quality Committee (MWAQC), with the assistance of the Metropolitan Washington Council of Governments (COG), collaborated on a coordinated attainment demonstration for the Washington area. The MWAQC includes state and local elected officials and representatives of the DC Department of Health (DoH), the Maryland Department of the Environment (MDE), the Virginia Department of Environmental Quality (VADEQ) and the National Capital Region Transportation Planning Board (TPB). The Act provides for interstate coordination for multi-state nonattainment areas. Because an attainment demonstration establishes motor vehicle emission budgets (MVEBs) for transportation improvement plans, the municipal planning organizations (MPO), which is mainly the TPB, have historically been involved in air quality planning in the Washington area. Although the plan was developed by a regional approach, the District, Maryland and Virginia are each required to submit the attainment demonstration to the EPA as a revision to its SIP.

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

Under the CAA, the EPA is to take final action on a State's submission no later than 12 months after the submission is determined or deemed complete. On May 3, 2004, EPA issued a letter to each of the three States deeming the States' February 2004 SIP revisions complete. EPA must conduct a comment period of thirty-days on the content of our proposed action for the attainment demonstration SIP revisions before issuing a final rule. Before issuing a final rule, EPA must consider and prepare a response to all relevant public comments received during the comment period. In the event we issue any final rule to disapprove, EPA must also forward such a final rule to the Office of Management and Budget (OMB) for review. EPA's believes we have sufficient time to accomplish these tasks and complete rulemaking on the States' attainment demonstration SIPs for the Washington area by May 3, 2005.

III. The Requirements of an Attainment Demonstration and Framework for Approving the Attainment Demonstration SIP

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

The Act requires 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. In 1979, EPA promulgated the 1-hour 0.12 parts per million (ppm) ground-level ozone standard. *See* 44 FR 8202, Feb. 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. 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 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. *See* Section 107(d)(4) of the Act; 56 FR 56694, Nov. 6, 1991. The CAA further required that ozone nonattainment areas be classified based on the area's design value, as marginal, moderate, serious, severe or extreme. *See* section 181(a) of the Act. 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.

Under section 182(c)(2) and (d) of the CAA, states with nonattainment areas classified as severe are required to submit demonstrations of how they would attain the 1-hour standard and how they would achieve the 9 percent ROP reduction in VOC emissions for each three-year period until the attainment year (in some cases, NO_X emission reductions can be substituted for the required VOC emission reductions). The Washington area is classified as severe and its attainment date is November 15, 2005. As stated previously, EPA is proposing action on the attainment demonstration SIPs submitted by the District, Maryland, and Virginia as part of the SIP revision submittals listed in Table 1.

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. Attainment demonstration SIP also establish and identify MVEBs 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 Act, attainment demonstrations necessarily include the estimates of motor vehicle emissions that are consistent with attainment, which then act as a budget or ceiling for the purposes of determining whether transportation plans and projects conform to the attainment SIP.

B. What Are the Requirements of a Modeled Attainment Demonstration?

The EPA provides that States may rely upon a modeled attainment demonstration supplemented with additional evidence to demonstrate attainment. In order to have a complete modeling demonstration submission, States submit the required modeling analysis and identify any additional evidence that EPA should consider in evaluating whether the area will attain the standard. The 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). *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). While the CAA section 182(c) requires that the attainment demonstration for serious and severe areas ''must be based upon photochemical grid modeling,'' the phrase ''based upon'' does not necessarily require that attainment demonstrations ''rest solely on grid modeling.'' *See Sierra Club II* at 301–07 (upholding EPA's approval of the modeling from the earlier versions of the Washington area attainment demonstration plans submitted during 1998 and 2000, which is identical to the modeling contained in the plans that are

the subject of this rulemaking [3]). When the modeling does not conclusively demonstrate attainment, additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in some of the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely. The process by which this is done is called a weight of evidence (WOE) determination. Under a WOE determination, the State can rely on and EPA will consider factors such as other modeled attainment tests (*e.g.*, a rollback analysis); other modeled outputs (*e.g.*, changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value); actual observed air quality trends; estimated emissions trends; analyses of air quality monitored data; the responsiveness of the model predictions to further controls; and, whether there are additional control measures that are or will be approved into the SIP but were not included in the modeling analysis.

In 1999, EPA issued additional guidance that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. When reviewing a SIP, EPA must make a reasonable determination that the control measures adopted more likely than not will lead to attainment. *See* ''Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled.'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711, November 1999.

The EPA's 1996 modeling guidance also recognizes a need to perform a mid-course review (MCR) as a means for addressing uncertainty in the modeling results. Because of the uncertainty in long term projections, an attainment demonstration that relies on WOE needs to contain provisions for periodic review of monitoring, emissions, and modeling data to assess the extent to which refinements to emission control measures are needed. The MCR requirement is discussed further in subsequent sections of this document.

C. What Are the Requirements for Reasonably Available Control Measures?

Section 172(c)(1) of the Act requires SIPs to contain RACM, including reasonably available control technology (RACT), as expeditiously as practicable. EPA has provided guidance interpreting the RACM requirements of section 172(c)(1) of the Act. *See* 57 FR 13498, 13560, April 16, 1992. In that guidance, EPA indicates that potentially available control measures, which would not advance the attainment date for an area, would not be considered RACM under the Act. EPA concludes that a measure would not be reasonably available if it would not advance attainment. EPA's guidance also indicates that states should consider all potentially available measures to determine whether they are reasonably available for implementation in the area, including whether or not they would advance the attainment date. Further, the guidance calls for states to indicate in their SIP submittals whether measures considered are reasonably available or not, and if so the measures must be adopted as RACM. Finally, the guidance indicates that states could reject potential RACM measures either because they would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or for various reasons related to local conditions, such as economics or implementation concerns. *See* ''Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' John S. Seitz, Director, Office of Air Quality Planning and Standards. November 30, 1999. The EPA guidance with regard to the implementation of the RACM requirements of Section 172(c)(1) has been upheld in *Sierra Club I,* 294 F.3d at 163.

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

In addition to the modeling analysis and RACM, the EPA has identified the following key elements which must be present in order for the EPA to approve the 1-hour attainment demonstration SIPs. In the following section of this document, these elements are first listed (and briefly described), and then each is subsequently described in more detail.

CAA Measures and Measures Relied on in the Modeled Attainment Demonstration—In order for EPA to approve the attainment plan, the SIP must include approved rules for all measures mandated by the Act for the specific area's classification, including contingency measures should the area fail to attain by the required date, and RACM. Measures that may not be specifically mandated under the Act for the Washington area's severe classification, but that the States relied on in the attainment demonstration plan for which we are proposing approval must also be SIP approved.

NO_X reductions consistent with the modeling demonstration—On January 10, 1997 (62 FR 1420), EPA began the process to issue a SIP call to require States to implement the reductions in nitrogen oxides (NO_X) necessary to address the ozone transport problem by publishing a notice of intent that articulated this goal. On November 7, 1997 (62 FR 60319), published the NPR for the NO_X SIP call. The EPA published a final rulemaking for the NO_X SIP Call on October 27, 1998 (63 FR 57356). 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.

Motor vehicle emissions budgets (MVEBs)—The attainment plan must establish and identify MVEBs determined by EPA be consistent with the attainment strategy.

Tier 2/Sulfur program benefits where needed to demonstrate attainment—The attainment plan includes the reductions expected from the EPA's Tier 2 tailpipe and low sulfur-in-fuel standards which are assumed in the attainment demonstration and accounted for in the MVEBs.

Mid-Course Review (MCR)—The attainment plan includes an enforceable commitment to conduct a MCR and evaluation based on air quality and emission trends. Such a MCR would show whether the adopted control measures are sufficient to reach

[3] EPA believes that the States were not required to redo the photochemical modeling. The 2004 SIP revisions provide for a greater percent reduction from the base year emissions than did the reductions in the superceded 1998 and 2000 SIP revisions, which form the basis for the photochemical grid modeling analysis. It is important to note that the modeling demonstration analyses predict that the Washington area will attain the 1-hour ozone standard by November 15, 2005 even *without* any of the severe area measures submitted with the superceding 2004 SIP revisions.

attainment by the area's attainment date, or that additional control measures are necessary.

Contingency Measures—The attainment plan for a serious or worse area must include specific measures to reduce emissions if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date.

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

The States must adopt the control measures and other mandated programs required under the CAA for a given area's classification. Further, the States may adopt control measures that go beyond those measures mandated by the CAA because additional emission reductions are needed to demonstrate attainment. For purposes of fully approving a State's attainment SIP, that State needs to submit rules, as SIP revisions, for all VOC and NO_X controls within the local modeling domain that were relied on for purposes of the modeled attainment demonstration. EPA must approve all of the VOC and NO_X reduction measures relied on for attainment (as well as all the measures required to demonstrate ROP and the ROP plans themselves), in order for EPA to issue a final rule fully approving the attainment plan as meeting section 182(c)(2) of the CAA. The information in Table 2 is a summary of the CAA requirements that must be met for each severe nonattainment area for the 1-hour ozone NAAQS. These requirements are specified in section 182 of the CAA.

TABLE 2.—CAA REQUIREMENTS FOR 1-HOUR OZONE AREAS CLASSIFIED AS SEVERE WITH AN ATTAINMENT DATE OF 2005

—New Source Review (NSR) for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) requires an offset ratio of 1.3:1 and a major source size applicability definition of 25 tons per year (tpy) sources.
—Reasonably Available Control Technology (RACT) for major sources VOC and NO_X with a major source size definition of 25 tpy sources.
—Enhanced Inspection and Maintenance (I/M) program.
—15 percent volatile organic compound reduction (VOC) plans.
—Emissions inventory.
—Emission statements.
—Attainment demonstration/RACM.
—3 percent per year ROP plan through attainment date.
—Clean fuel fleet program or a substitute measure (*e.g.,* national low emission vehicle program (NLEV).
—Enhanced Monitoring—Photochemical Assessment Monitoring Stations (PAMS).
—Stage II vapor recovery.
—Contingency Measures for failure to attain/failure to make ROP.
—VMT Offset SIP.
—The SIP revision to enforce the penalty fees pursuant to CAA section 185.

As explained previously, the applicable case law for the Washington area requires that the post-1996 plan for an area with an attainment date of November 15, 2005 must demonstrate ROP through November 15, 2005. *See Sierra Club I,* 294 F.3d at 163. In addition, EPA can only approve an ROP or attainment demonstration if EPA also approves a plan containing contingency measures to be implemented in the event the area fails to demonstrate ROP or attain the standard (the contingency measures plan). Under the *Sierra Club II,* the elements for the Washington area that need to be approved prior to or concurrently with the attainment demonstration include specific enforceable measures to offset growth in vehicle emissions (commonly referred to as the VMT offset SIP), RACT for additional major sources, the attainment demonstration to show attainment by no later than November 15, 2005, changes to the new source review (NSR) permitting programs to increase the offset ratio to a minimum of 1.3 to 1 and lower the major source applicability threshold to 25 tons per year, and a plan to enforce the penalty fees pursuant to section 185 of the Act (commonly referred to as the section 185 penalty fee SIP). *Sierra Club II,* 356 F.3d at 301.

As we discuss later in this document, the SIP revision to enforce the penalty fees pursuant to CAA section 185 is the only element for which we believe any one of the three States may have a deficiency, since we have not received a submission from Maryland meeting this requirement. The SIP revision to enforce the penalty fees pursuant to CAA section 185 is not a control measure to demonstrate timely attainment. Nor is it a contingency measure of either the attainment demonstration or any ROP plan. We have concluded that all of the other elements have already been approved into the States' SIPs or have been proposed for approval with an anticipated final approval date on or before the anticipated final approval date for this rulemaking.

2. NO_X Reductions Consistent With the Modeling Demonstration

On January 10, 1997 (62 FR 1420), EPA began the process to issue a SIP call to require States to implement the reductions in NO_X necessary to address the ozone transport problem by publishing a notice of intent that articulated this goal. On November 7, 1997 (62 FR 60319), published the NPR for the NO_X SIP call. The EPA published a final rulemaking for the NO_X SIP Call on October 27, 1998 (63 FR 57356). To address transport, the NO_X SIP Call established NO_X emissions budgets for 23 jurisdictions to reduce emissions in upwind States that significantly contribute to nonattainment problems. The emission reductions achieved through the states' plans (submitted and approved by EPA pursuant to the NO_X SIP Call) 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.

3. Motor Vehicle Emissions Budgets (MVEBs)

The attainment demonstration SIPs must identify 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. These estimates of motor vehicle emissions are known as the MVEBs, and are used to determine the conformity of transportation plans and programs to the SIP, as described by CAA section 176(c)(2)(A). The EPA believes that appropriately identified MVEBs are a necessary part of an attainment demonstration SIP.

4. Tier 2/Sulfur Program Benefits

On February 10, 2000 (65 FR 6698), 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.

5. Mid-Course Review

A mid-course review (MCR) is a reassessment of modeling analyses and more recent monitored data to determine if the prescribed control strategy is on track to achieve the emission reductions and air quality improvements needed to attain the 1-hour NAAQS for ozone as expeditiously as practicable but by no later than the statutory dates. The three States have each submitted an enforceable commitment to perform a MCR as part of their attainment demonstration plans.

6. Contingency Measures

The SIP for a serious or worse area must include specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date and provide for the implementation of specific measures to be undertaken if the area fails to meet any applicable milestone. See CAA sections 172(c)(9) and 182(c)(9). The three States have each submitted a contingency measures plan for the attainment demonstrations. EPA has proposed to approve those contingency measures plans. *See* 70 FR 2085, January 12, 2005.

IV. EPA's Review and Analysis of the Attainment Demonstration

A. The Modeling Demonstration

The following is a summary of our analysis of the local modeling and WOE. A more detailed description of the District's and the state submittals and 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 and is included in the E-Docket for this rulemaking.

1. Analysis of the Modeling for the Local Modeling Domain

The CAA requires that serious areas and above perform photochemical grid modeling to help determine the emission reductions of VOC and NO_X necessary to achieve the attainment of the 1-hour ozone standard. Maryland, Virginia and the District of Columbia fulfilled this requirement through the application of the Urban Airshed Model, Version 4 (UAM-IV) for the Washington area and through the use of the modeling results from the ozone transport assessment group (OTAG) application of the Urban Airshed Model, Version 5 (UAM-V). The ozone attainment demonstration for the Washington area contains local scale modeling that fulfills EPA recommended modeling procedures. It is noted that Maryland, Virginia and the District modeled two episodes rather than the three recommended by EPA. EPA modeling guidance specifies that a total of three episodes be modeled from at least two meteorological regimes. Given the severe nature of the episodes modeled, even if one more episode was modeled, the two episodes that were modeled (July 15–16, 1991 & July 18–20, 1991), due to their severity, would almost certainly be the controlling episodes in the determination of the emission reductions needed in the Washington area for attainment. The two episodes that were modeled also represent the most frequently occurring meteorological conditions conducive to high ozone in the Washington area. It should also be pointed out that three episodes were analyzed in the design value rollback analysis performed using the modeling results from EPA's NO_X SIP Call Supplemental Notice of Proposed Rulemaking (SNPR) (63 FR 25901, May 11, 1998).

When the emission inventory with the control strategy is modeled, peak ozone concentration is reduced by approximately 22 parts per billion (ppb) from the modeled peak concentrations in the 1988 and 1991 base cases. The attainment year inventory used in the photochemical grid modeling was based upon a 29 percent reduction in NO_X emissions and a 32 percent reduction in VOC emissions. When the average modeled ozone reduction is applied to the peak measured concentration for July 16 (137 ppb) and July 19 (132 ppb), the resulting concentrations are 115 ppb and 110 ppb, respectively. This indicates attainment for these days. However, when the modeled ozone reduction is applied to the peak monitored level on July 20 (178 ppb), the resulting concentration is 156 ppb. Because the ozone forming potential rank is very high for July 20, 1991 (12th most severe day out of a 46 year period covered by that study with an average reoccurrence of once every 4–5 years) this type of day is not likely to occur often enough to be a major causative factor for nonattainment, especially since the emission controls modeled in this attainment demonstration should eliminate ozone exceedances for all but the most meteorologically severe days.

EPA's analysis of model performance indicates that the local modeling for the Washington area systematically over-predicts ozone concentrations. The local 1991 base case modeling predicts peak concentrations in the Washington area of 167–198 ppb while ozone monitors in the same area during the same time period show peak concentrations ranging from 132 ppb to 178 ppb. This indicates that the model is over-predicting the actual ozone concentrations by an average of 19 percent. When model over-prediction (approximately 19 percent) is accounted for in both of the July 1991 episodes, the local scale modeled peak concentrations become 120 ppb for July 16th, 111 ppb for July 19th and 142 ppb for July 20th. The adjusted peak concentration for two out of the three primary episode days indicates attainment. The adjusted concentration for July 20th does not indicate attainment at 142 ppb. However, a concentration of 142 ppb on July 20, 1991 is only 5 ppb greater than the concentration that would be consistent with attainment (137 ppb) according to EPA's alternative attainment test guidance.[4] Furthermore, when the area's design value in the base modeling period (1991) is adjusted for the air quality improvement predicted in the attainment year by the local-scale modeling, according to the screening test described in EPA's guidance entitled ''Draft Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS'', the result is a 2005 projected design value of 119 ppb. These local-scale modeling results are close enough to attainment to warrant the consideration of weight-of-evidence arguments that support the demonstration of attainment.

[4] Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, EPA–454/B–95–007, (June 1996).

2. Weight of Evidence (WOE) Analyses

A WOE determination is a diverse set of technical analyses performed to assess the confidence one has in the modeled results and to help assess the adequacy of a proposed strategy when the outcome of local scale modeling is close to attainment.

The three States provided WOE arguments in their attainment demonstration plans to further corroborate that it is likely their attainment demonstrations contained sufficient local measures for the Washington area to attain the 1-hour ozone standard by the statutory date of November 15, 2005. In the 2004 SIP revisions, the States augmented with additional evidence the same WOE analysis used in the now superceded and withdrawn attainment demonstration plans submitted during 1998 and 2000 (the court in *Sierra Club II* upheld EPA's use of this particular WOE analysis. *See* 356 F.3d at 307) This additional evidence includes a demonstration that the 2004 SIP revisions provide for a larger percent reduction of 1990 base line emissions than the now withdrawn attainment demonstration plans submitted during 1998 and 2000. The States and the District used EPA-developed design value adjustment factors based on regional scale modeling performed for the NO_X SIP Call SNPR. These adjustment factors were used to adjust the 1996 area design values. The analysis showed all area adjusted design values below the level needed for attainment (124 ppb).

Because the local modeling for the Washington area showed some peak concentrations above levels deemed consistent with attainment, we conducted an analysis to determine what additional local emission reductions, if any, would be needed to support ozone attainment in the Washington area. Our analysis determined that the Washington area would not need any additional emission reductions beyond those contained in the area attainment demonstration plan to ensure attainment of the 1-hour ozone NAAQS.

The States evaluated the effect of the changes to the base year and future inventories have on the relative reduction in emissions provided by the controlled 2005 attainment year emissions in comparison to that percentage change modeled in the photochemical grid modeling. EPA has reviewed this analysis, and determined that the percent reduction from the base year emissions provided by the ROP plan is greater than the reductions assumed in the photochemical grid modeling as follows:

(a) A 38 percent reduction in 1990 NO_X emissions by 2005 from on-road mobile sources whereas the photochemical grid modeling assumed a 25 percent reduction;

(b) A 67 percent reduction in 1990 VOC emissions by 2005 from on-road mobile sources whereas the photochemical grid modeling assumed a 50.8 percent reduction;

(c) An overall 43.5 percent reduction in 1990 NO_X emissions by 2005 from all sources (point plus area plus nonroad plus on-road) whereas the photochemical grid modeling assumed an overall 33.1 percent reduction; and

(d) An overall 42.8 percent reduction in 1990 VOC emissions by 2005 from all sources (point plus area plus nonroad plus on-road) whereas the photochemical grid modeling assumed an overall 31.7 percent reduction.

These changes result from inclusion of all the measures in the Post 1996–1999 and Post 1999–2005 ROP plans. The projected 2005 year NO_X emissions levels resulting from measures for which EPA is proposing to credit towards the 2005 target of the ROP plans is 491.4 tons/day versus a 2005 ROP target level of 539 tons/day of NO_X. EPA has proposed to approve the ROP plans. *See* 70 FR 2085, January 12, 2005.

EPA believes that where a State relies on changes in emissions from the base year to an attainment or maintenance year inventory to estimate using photochemical grid modeling relative changes in monitored ozone levels, the State may rely upon a previous photochemical modeling analysis when the State demonstrates that the relative emission reductions between the base year and the attainment or maintenance year are the same or greater using MOBILE6 than they were using MOBILE5. In any case, if using the latest planning assumptions for emissions estimates results in changes to other emissions categories (*e.g.*, point or area emissions), the demonstration would apply to the entire inventory, rather than just the on-road mobile inventory. *See* Joint Memorandum dated January 18, 2002, From John S. Seitz, Director, Office of Air Quality Planning & Standards, and Margo Tsirigotis Oge, Director of Office of Transportation and Air Quality, ''Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity''. EPA concludes that the 2004 SIP revisions demonstrate that the reduction in emissions by 2005 relative to the 1990 base year emissions are far greater than that assumed in the photochemical grid modeling and thus the States may rely upon the prior modeling analysis.

3. Attainment and Transport

Boundary condition sensitivity modeling was performed for the Washington area using OTAG Base 1C and Run I boundary conditions. The OTAG Base 1C boundary conditions reflect the boundary conditions that will result from the implementation of all Clean Air Act mandated controls. OTAG Run I boundary conditions closely approximate the boundary conditions that will result from CAA measures and the additional emission reductions anticipated from the NO_X SIP Call. The Washington area model runs with OTAG Base 1C boundary conditions were compared to the runs with OTAG Run I boundary conditions. The model run with OTAG Run I boundary conditions show a 5 to 10 ppb reduction in peak ozone concentrations in areas with modeled peak concentrations above 124 ppb. A 5 to 10 ppb increase in ozone concentrations would increase projected design values based upon local modeling over 124 ppb and would increase future predicted exceedances beyond the range consistent with attainment. The District's, Maryland's and Virginia's submittals for the Washington area demonstrate attainment of the 1-hour ozone standard by including in their analysis the reduction of ozone and ozone precursor transport that will result from regional NO_X controls.

4. Control Strategies in the Attainment Demonstration

The attainment demonstration describes the emission reduction credits that the Washington area jurisdictions are claiming toward their attainment demonstration. Just as for ROP plans, we can credit reductions in the attainment demonstration for rules promulgated by the EPA and for state measures approved into SIP. The control measures used in the attainment demonstration for the Washington area are listed in Table 3 of this document and described in more detail in the TSD for this rulemaking.

TABLE 3.—2002 AND 2005 VOC AND NO_X EMISSION REDUCTIONS FROM MEASURES IN THE ATTAINMENT DEMONSTRATION FOR THE WASHINGTON AREA

[Tons/Day]

Line No.	Measure	2002 reductions		2005 reductions	
		VOC	NO_X	VOC	NO_X
1	Tiers 1 & 2 FMVCP, Reformulated Gasoline (On-road), Federal Heavy Duty Diesel Engines rule, NLEV & Enhanced Inspection and Maintenance.	56.0	44.9	80.5	85.8
2	Reformulated Gasoline (Nonroad/Off-road)	2.7		2.9	
3	Surface Cleaning/Decreasing	9.3		9.8	
4	Autobody Refinishing	9.3		9.8	
5	AIM	16.7		17.5	
6	Consumer Products	4.1		4.3	
7	Seasonal Open Burning Ban	7.4	1.6	7.4	1.6
8	Graphics Arts	3.8		4.0	
9	Landfill Regulations	2.4		2.5	
10	Non-CTG RACT to 50 tons/yr MD/VA/DC	1.5		1.5	
11	Stage I Enhancement	1.5		1.6	
12	Expanded State Point Source Regulation/VOC RACT to 25 tpy	2.4		2.5	
13	Stage II Vapor Recovery Nozzles	15.1		15.1	
14	RFG refueling benefits	2.6		2.3	
15	Non-road Gasoline Engines Rule	22.2		26.6	
16	Non-road Diesel Engines		14.9		22.1
17	State NO_X RACT/beyond RACT		203.8		279.4
18	State Portable Fuel Container Rules—MD/VA	0.9		2.4	
19	State Solvent Cleaning Rules—VA			9.0	
20	EPA's Non-road Engines and vehicles rule—Large Spark Ignition Engine Rule.		0.6		0.5
21	EPA's Non-road Engines and vehicles rule—Spark Ignition Marine Engines.	1.3		3.1	
22	TCMs in 2004 SIP Revisions	0.3	0.5	0.3	0.7
23	State AIM Rules			12.3	
24	Voluntary Measures Bundle			3.19	.19
25	State Portable Fuel Container Rules—DC			0.2	
	Total Reductions	154.3	266.3	213.39	390.29

5. Creditable Reductions in the Attainment Demonstration

As stated previously, emissions reductions may be credited in an attainment demonstration from rule in the ''applicable implementation plan,'' from a rule promulgated by EPA, or from a permit issued pursuant to Title V of the Act. The term ''applicable implementation plan'' is defined in section 302(q) of the Act to mean the SIP approved by EPA. All of the reductions from national rules for which the States seek credit in the attainment demonstration have been promulgated by EPA. All of the reductions from State rules listed in lines 1 through 21 of Table 3 for which the States seek credit in the attainment demonstration have been approved into the applicable SIPs. As for the rest of the State measures, EPA may only credit the attainment demonstration with reductions from a measure approved into the applicable SIP, and, hence, can only issue a final rule approving the attainment plan after or concurrently with EPA's approval of the state measures projected to generate sufficient reductions to demonstrate attainment. However, EPA may propose approval of an attainment demonstration if we have proposed approval of the measures which are projected to generate sufficient reductions to demonstrate attainment. EPA has already proposed approval for all the measures listed in Table 3 as follows:

(a) EPA proposed approval of the Maryland and Virginia State AIM rules on May 25, 2004 (69 FR 29674); and June 7, 2004 (69 FR 31780), respectively;

(b) EPA proposed approval of the District's AIM rule on December 27, 2004 (69 FR 77149);

(c) EPA proposed approval of the Maryland and Virginia Voluntary Measures on December 23, 2004 (69 FR 76889);

(d) EPA proposed approval of the District's Portable Fuel Container Rules rule on December 29, 2004 (69 77970); and

(e) EPA proposed approval of transportation control measures (TCMs) Maryland's, Virginia's and the District's SIPs on January 12, 2005 (70 FR 2085).

B. How Has RACM Been Satisfied?

The 2004 SIP Revisions address the RACM requirement in several ways. First, the 2004 SIP Revisions contain an analysis that no remaining RACM remain. Secondly, the 2004 SIP Revisions detail the control measures in the SIP and the projected benefits from the measures in the SIP in conjunction with those federal measures promulgated by EPA.

1. How Did the States Analyze Measures?

The analyses submitted by the States as part of the 2004 SIP revisions addresses the RACM requirement. The States first analyzed each measure in terms of economic and technological feasibility. If a measure was determined to be either economically or technologically infeasible, the States did not consider the measure further. If the States concluded that the measure was feasible, the States compared estimated benefits against a *de minimis* threshold of 0.1 tons per day (tons/day). The States then considered whether the measure could be implemented in time to advance the attainment date. For the

first step in determining whether a measure might advance the attainment date, the States determined whether the measure could achieve reductions by May 2004. For those measures that the States concluded be implemented by May 2004, the States determined if the aggregate reductions from these measures would advance the attainment date.

How Did the States Determine Economic Reasonableness?

The State analysis rejected measures that were not technologically and/or economic ally feasible based upon whether or not they would cause widespread and substantial adverse impacts or would require intensive resources/costs to implement, thereby placing an undue burden on the affected sources and/or state without commensurate environment benefits to reduce ozone.

The States screened measures for economic feasibility by comparing the cost effectiveness of a potential measure versus the cost effectiveness of RACT for stationary sources and versus the cost effectiveness of those emission mitigation measures (commonly referred to as transportation emission reduction measures or TERMS) adopted in the transportation improvement plans in order to demonstrate conformity. The States concluded that the cost effectiveness threshold for RACT and TERMS less than $10,000 per ton of emissions reductions. However, to ensure consideration of some measures that exceed this threshold, the States established a cut-off of $20,000 per ton. The States established a 0.1 tons/day cutoff to exclude an otherwise feasible measure on the grounds that a large number of these would be necessary to advance the attainment date and thus would pose an undue burden to implement.

The States' analysis process eliminated measures that were technically infeasible in the Washington area. The States also eliminated each measure that either was not determined to be cost-effective, or that would produce a less than 0.1 tons/day reduction.

How Did the States Determine if Measures Would Advance the Attainment Date?

The States then considered whether the measure could be implemented in time to advance the attainment date. For the first step in determining whether a measure might advance the attainment date, the States determined whether the measure could deliver reductions by May 2004 (the beginning of the last ozone season before the attainment year of 2005). The States eliminated any measure that could not do so on the grounds that it would not reduce the potential for exceedances during the 2004 ozone season. The next step in determining whether a measure might advance the attainment date, the State estimated the benefits of each measure which had not been eliminated and totaled the estimated benefits for all of these remaining measures. The States then considered whether these measures in the aggregate would provide sufficient reductions to advance the attainment date.

The photochemical grid modeling analysis assumed a 32 percent reduction in VOC emissions and a 29 percent reduction in NO_X emissions relative to the 1990 base year anthropogenic emissions. The revised 1990 base year anthropogenic emissions inventories are 869.3 tons/day of NO_X and 578.7 tons/day of VOC emissions. Reducing these by 29 and 32 percent, respectively, would yield emissions levels of 617.2. tons/day of NO_X and 393.5 tons/day of VOC emissions. The reductions (relative to the 1990 base year emissions) needed to achieve these levels are 252.1 tons/day of NO_X and 185.2 tons/day of VOC.

The Post-1996 ROP plan for 1999–2005 projects that the measures in the ROP plan would result in emissions levels of 373.3 tons/day of VOC and 614.3 tons/day of NO_X emissions and be sufficient to achieve the relative reduction in emissions modeled as part of the photochemical grid modeling sometime before November 15, 2002. In other words, the measures supporting the ROP plan would be in place before the start of the 2003 ozone season.

EPA has concluded, based upon the Urban Airshed Model modeling in the attainment demonstration that the Washington area is significantly affected by transport of ozone precursors from a number of upwind States (63 FR 57356, October 27, 1998). Under the final NO_X SIP call rule such significant contribution would not likely be mitigated prior to May 2004 when the states upwind of the Washington area were required to implement measures to eliminate their downwind contribution to ozone nonattainment. The Washington area relies on background reductions of transported ozone to attain the 1-hour ozone standard. Therefore, advancing the attainment date for the Washington area would require sufficient additional reductions within the Washington area to fully mitigate the significant transport component.

The States have quantified the transport impact in their photochemical grid modeling. The States performed boundary condition sensitivity modeling for the Washington area using various boundary conditions reflecting the conditions that will result from the implementation of only the Clean Air Act mandated controls versus those that closely approximate the boundary conditions that will result from the additional emission reductions anticipated from the NO_X SIP call. The model run with boundary conditions approximating the NO_X SIP call show a 5 to 10 ppb reduction in peak ozone concentrations in areas with modeled peak concentrations above 124 ppb in comparison with the model run without the NO_X SIP call.

In their RACM analysis the States used the locally derived sensitivity modeling analysis results to determine that a one ton reduction in NO_X emissions within the Washington area would result in a peak ozone concentration reduction of 0.114 ppb; a similar analysis for VOC emissions yielding a result that a one ton reduction in VOC emissions would result in a peak ozone concentration reduction of 0.029 ppb. The States concluded that emissions reductions of 34.0 tons/day of VOC or 8.8 tons/day NO_X would have to be required within the Washington area in order to mitigate 1 ppb of the transported contribution. The States used these thresholds to determine if potential RACM (which had passed the technically and economically feasible ''test'' in the aggregate) would be sufficient to offset 1 ppb of transported ozone and ozone precursors.

3. What Measures Did the States Consider and What Did the States Conclude?

Stationary Source Control Measures—The stationary source controls that were considered included the adoption of additional levels of NO_X controls on large stationary sources beyond the rules already approved into the SIPs or the RACT rule changes required by the reclassification of the area to severe nonattainment. The States concluded that the necessary regulations could not be promulgated in time to deliver benefits by May 2004.

Area Source Control Measures—The area source controls that were considered included airport congestion pricing, measures to reduce aircraft idling at airports, adoption of rules to reduce emissions from small bakeries, banning road paving and traffic marking activities on ozone action days, various regulations to require low emission asphalt, furnaces and water heaters, control of locomotive idling or incentives to repower locomotives,

expanding RACT rules to areas outside the Washington area. The States concluded that only the episodic restriction on road paving and traffic marking activities on ozone action days and the locomotive idling measures passed the initial criteria of economic and technical feasibility, exceeded the 0.1 tons/day threshold, and could be implemented by May 2004. The States estimated the benefits from these measures to see if these measures along with others would provide sufficient reductions to advance the attainment date.

Non-Road Mobile Control Measures—The States considered a variety of potential nonroad mobile source control measures such as requiring existing equipment be retrofitted, requiring the use of low-NO_X fuel by agricultural and other nonroad equipment, offering cash rewards to owners to scrap older, higher-emitting equipment, awarding preference in government contracts for lawn maintenance to bidders using low-emission equipment, or develop a voluntary program to reduce idling by airport ground service equipment. Most of the measures were determined not to be RACM because the measures did not meet the economic feasibility threshold or would not deliver benefits by May 2004. The States concluded that two measures—awarding preference in government contracts for lawn maintenance to bidders using low-emission equipment, and developing a voluntary program to reduce idling by airport ground service equipment—passed the initial criteria of economic and technical feasibility, exceeded the 0.1 tons/day threshold, and the could be implemented by May 2004. The States estimated the benefits from these measures to see if these measures along with others would provide sufficient reductions to advance the attainment date.

On-Road Mobile Control Measures—The States considered over 100 potential on-road mobile source control measures. The States considered measures that fall into the following general categories: Alternative fuel vehicles; bicycle and pedestrian improvements; early retirement of older motor vehicles; land use and development changes; transit improvements; employer based programs; traffic flow improvements; outreach and education; parking restrictions; market-based/economic incentive-based program; low emission vehicle standards; and other measures such as trip reduction ordinances, and highway ramp metering. The States considered various measures to increase the numbers of advanced technology vehicles, such as additional low emission buses for the transit system. The States considered traffic system and traffic flow improvements such as additional HOV lanes, allowing the use of right-turn-on-red, and installation of round-abouts (traffic circles) instead of traffic lights. The States considered land use measures such as incentives for mixed use at transit centers, in-fill development and zoning changes to allow neighborhood retail outlets in residential areas. The States considered various market strategies such as a fee on every commuter parking space in the area, annual surcharge on gasoline powered vehicles in the area, cash for clunkers, commuter choice programs, voluntary cash-out subsidies, a VMT tax, congestion pricing and free parking for carpools. The States considered various outreach programs including an employer outreach program to encourage implementation of alternative commuting and a mass marketing campaign aimed at increasing transit usage and ridesharing. The States considered transit improvements such as flat fare for transit, bus service expansion, or providing for ''queue jumps by transit buses at over-capacity signalized intersections.[5] The States concluded that a number of measures passed the initial criteria of economic and technical feasibility, exceeded the 0.1 tons/day threshold, and could be implemented by May 2004. These measures were: (1) Telecommuting centers—including marketing activity, commuter and employer information and assistance; (2) government actions—ozone action day similar to snow day—implement a liberal leave policy for local, state and federal employees on code red ozone action days, permitting employees to work from home or take unscheduled leave; (3) integrated rideshare—to provide transit, park & ride, and telecenter information to all commuters on a match list; (4) permit right turn on red to reduce vehicle idling time by permitting right turn on red, where safety allows; (5) employer outreach (private sector) to provide regional outreach to encourage large private-sector employers to voluntarily implement alternative commute strategies to reduce vehicle trips to work sites; (6) mass marketing campaign marketing effort involving business-to-business advertising campaign in print media and on world wide web to increase transit, ridesharing and other travel demand management programs; (7) transit prioritization—queue jumps to provide queue jumps for buses at over-capacity signalized intersections throughout the region. For these measures, the States estimated the benefits and aggregated the results to see if these measures along with others would provide sufficient reductions to advance the attainment date.

The estimated aggregate benefits from all of the measures described in the preceding paragraphs that passed the economic and technical feasibility test, exceeded the 0.1 tons/day threshold, and could be implemented by May 2004 was 5.1 tons/day of VOC and 3.4 tons/day of NO_X reductions. The States concluded that these measures in the aggregate would not advance the attainment date even if implemented collectively. This is because 5.1 tons/day of VOC and 3.4 tons/day of NO_X do not not equal or exceed the 34.0 tons/day VOC or 8.8 tons/day NO_X emission reductions necessary to mitigate1 ppb of transported ozone.

4. What Is EPA's Analysis of the RACM Demonstration?

EPA believes the States' process is sound and reasonable. The first logical step is to screen-out infeasible measures. As for the cost-effectiveness threshold EPA finds the States' cutoff is reasonable. EPA has recognized that cost-effectiveness is a factor in determining what emission limitation is RACT. EPA has provided guidance to allow States to set *de minimis* levels for exemption of small emissions units from NO_X RACT rules. Part of this determination was the cost-effectiveness of controls. EPA used a cut-off of $1,300 per ton reduced as a cut-off.[6] The States started with a $8,000 to $10,000 per ton cutoff. Secondly, the States have recognized that the TERMS which are adopted as part of the transportation conformity analysis reflect a judgement of what the agency responsible for funding transportation related considers economically reasonable. By doubling the $10,000 per ton threshold to a $20,000 per ton cut-off the States considered more measures to be presumptively reasonable.

EPA agrees with the states that part of the determination as to whether measures advance the attainment date has to consider the need to mitigate ozone transport from upwind areas. EPA finds that the States have been conservative when determining that a suite of measures (that pass the initial

[5] A ''queue jump'' allows a bus to use a shoulder or other designated lane to bypass intersection queues (line of other vehicles) and move forward towards the stop line.

[6] See the memorandum entitled ''De Minimis Values for NO_X RACT'' G. T. Helms, Group Leader, Ozone Policy and Strategies Group (MD–15), to the Air Branch Chiefs, Region I—X, dated January 1, 1995.

feasibility and reasonableness tests) in the aggregate will not advance the attainment date if the total reductions are not projected to reduce peak ozone concentration by 1 ppb. After all, EPA believes the local photochemical grid modeling analyses indicate that 5 to 10 ppb in peak ozone concentrations is attributable to upwind emissions that will be mitigated by the NO_X SIP call. The States' 1ppb ''contribute to attainment significance threshold'' is only one-fifth that size and less than one-one-hundredth of the 1-hour ozone NAAQS. Given that reductions of 34.0 tons/day of VOC or 8.8 tons/day of NO_X are needed to reduce peak ozone concentrations in the Washington area by 1 ppb, EPA believes the 0.1 tons/day reduction threshold for eliminating measures is also reasonable.

For those measures which the States concluded passed the initial of economic and technical feasibility criteria, EPA concurs that these measures are not RACM. The total estimated benefits are far less than the 34.0 tons/day of VOC or 8.8 tons/day of NO_X emission reductions necessary to mitigate 1 ppb of transported ozone and are small in comparison with the reductions needed to achieve attainment (252.1 tons/day of NO_X and 185.2 tons/day of VOC).

The States have adopted rules to reduce emission from many of the area VOC source categories. These rules include solvent cleaning operations, lithographic printing operations, open burning, and landfills. The recently adopted measures to regulate or further regulate architectural and industrial maintenance coatings, solvent cleaning operations and portable fuel containers will provide additional emission reductions of ozone precursors. Under the November 30, 1999 guidance EPA needs to consider whether the State's implementation schedules are as expeditiously as practicable. Given that the implementation/compliance dates for these States' measures have already past, EPA cannot realistically require the States to implement the measures any more quickly.

The photochemical grid modeling analysis assumed a 32 percent reduction in VOC emissions and a 29 percent reduction in NO_X emissions relative to the 1990 base year anthropogenic emissions. The revised 1990 base year anthropogenic emissions inventories are 869.3 tons/day of NO_X and 578.7 tons/day of VOC emissions. Reducing these by 29 and 32 percent, respectively, would yield emissions levels of 617.2 tons/day of NO_X and 393.5 tons/day of VOC emissions. The Post-1996 ROP plan for 1999–2005 projects that the measures in the ROP plan would result in emissions levels of 614.3 tons/day of NO_X and 373.3 tons/day of VOC, and be sufficient to achieve the relative reduction in emissions modeled as part of the photochemical grid modeling sometime before November 15, 2002. In other words, the measures supporting the ROP plan would be in place before the start of the 2003 ozone season. EPA concludes that the SIPs provided for sufficient reductions to advance the attainment date where it not for transported emissions due to be mitigated at the start of the 2004 ozone season under the NO_X SIP Call.

The EPA, therefore, concludes that the States have adopted all RACM.

C. The District's, Maryland's and Virginia's Submittals To Satisfy EPA's Framework for Proposing Action on Attainment Demonstration SIPs

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

Table 2 contains a summary of the CAA required ozone SIP elements for severe areas. The following paragraphs discuss the approval status of the elements listed in Table 2.

(a) *NSR*—For each of the three States, EPA has either approved or proposed for approval a SIP revision to implement the severe area NSR requirements in the Washington area for both VOC and NO_X including an offset ratio of 1.3:1 and a major source applicability definition of 25 tons/year. *See* 69 FR 77690, December 28, 2004; 69 FR 56170, September 20, 2004; and 69 FR 48150, August 9, 2004, for the District, Maryland, and Virginia, respectively.

(b) *RACT*—For each of the three States, EPA has fully approved a SIP revision to implement Reasonably Available Control Technology (RACT) for major sources of VOC and NO_X with major source size definition of 25 tons/year. *See* 69 FR 77690, December 28, 2004; 69 FR 56170, September 20, 2004; and 69 FR 48150, August 9, 2004, for the District, Maryland, and Virginia, respectively.

(c) *Enhanced I&M*—For each of the three States, EPA has fully approved a SIP revision to implement an Enhanced Inspection and Maintenance (I/M) program in the Washington area. *See* 64 FR 31498, June 11, 1999; 64 FR 47670, September 1, 1999; and 64 FR 58340, October 29, 1999.

(d) *15 Percent Plans*—For each of the three States, EPA has fully approved a SIP revision for the 15 percent volatile organic compound reduction (VOC) rate-of-progress plan for the Washington area. *See* 64 FR 42629, August 5, 1999;65 FR 44686, July 19, 2000; and, 65 FR 59727, October 6, 2000.

(e) *Base Year Inventories*—For each of the three States, EPA has fully approved a SIP revision consisting of a 1990 base year emissions inventory for the Washington area. *See* 63 FR 36864, July 8, 1998. On January 12, 2005 (70 FR 2085), EPA published a proposed rule approving amendments to the base year inventories.

(f) *Emission Statements*—For each of the three States, EPA has fully approved a SIP revision to require emission statements in the Washington area. *See* 59 Fed. Reg. 51517, October 12, 1994; 60 Fed. Reg. 21451, May 2, 1995; and, 60 Fed. Reg. 27889, May 26, 1995.

(g) *RACM*—In section IV. B. of this document, we provide our analysis and determination that the SIP revisions submitted by the District, Maryland and Virginia satisfy the RACM requirement.

(h) *Modeled Attainment Demonstration*—In section IV. A. of this document, we provide our analysis and determination that the modeled demonstration of attainment for the Washington area submitted by the District, Maryland and Virginia satisfies the Act and applicable guidance. Furthermore, the District, Maryland and Virginia have adopted and submitted sufficient measures to support that attainment demonstration, and the weight of evidence and relative reduction tests.

(i) *Post 1996*—2005 ROP Plans—On January 12, 2005 (70 FR 2085), EPA published a proposed rule to approve SIP revisions consisting of both a post 1996 to 1999 ROP plan and a post 1999–2005 ROP plan from the District, Maryland and Virginia for the Washington area.

(j) *NLEV*—For each of the three States, EPA has fully approved a SIP revision which substituted NLEV for the clean fuel fleet program the Washington area. *See*, 65 FR 44981, July 20, 2000 and 64 FR 72564, December 28, 1999.

(k) *PAMS*—For each of the three States, EPA has fully approved a SIP revision to implement the photochemical assessment monitoring stations (PAMS) in the Washington area. *See*, 60 FR 47081, September 11, 1995.

(l) *Stage II Vapor Recovery*—For each of the three States, EPA has fully approved a SIP revision to fully implement Stage II vapor recovery in the Washington area. *See*, 59 FR 29730, June 9, 1994; 59 FR 32353, June 23, 1994; and, 64 FR 57777, October 27, 1999.

(m) *VMT Offset SIP*—For each of the three States, on January 12, 2005 (70 FR 2085), EPA published a NPR proposing

to approve SIP revisions including the VMT Offset SIPs.

(n) *185 Penalty Fee SIPs*—On January 12, 2005 (70 FR 2085), EPA published a NPR proposing to approve the District's and Virginia's SIP revisions to enforce the penalty fees pursuant to CAA section 185 in the Washington area if the area fails to attain the 1-hour ozone NAAQS by November 15, 2005 (or by any attainment date extension granted pursuant to section 181 of the CAA). On May 21, 2004, EPA issued a finding that Maryland failed to submit a SIP revision to implement section 185 of the CAA. *See*, 69 FR 29236, May 21, 2004.

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. As explained previously, all of the measures in Table 3 have been Federally promulgated, approved as SIP revisions, or have been proposed for approval as SIP revisions.

3. Motor Vehicle Emissions Budgets

As discussed previously, the MVEBs 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 States have demonstrated that revised MVEBs for 2005 in the attainment demonstration for the Washington area are adequate by showing that overall emissions reductions (including those resulting in the 2005 MVEBs), when considered with emissions reductions from all other sources by 2005, are greater than the relative reduction assumed in the modeling demonstration.

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 AREA IN 2005

Control measure	Implementation year	In the 2005 motor vehicle emissions budget?
Federal Motor Vehicle Control Program (FMVCP):		
Tier 1	1994	Yes.
Tier 2	2004	Yes.
High enhanced I/M (CAA Mandate)	1997	Yes.
Reformulated Gasoline (State Opt-in):		
Phase I	1995	Yes.
Phase II	2000	Yes.
Clean Fuel Fleets Substitute—National Low Emissions Vehicles (NLEV)	1999	Yes.
Federal Heavy-duty Diesel Vehicle (HDV) 2 gm std	2004	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 States developed the Washington area attainment demonstration in the 2004 SIP revisions with the MOBILE6 model.

5. Mid-Course Review (MCR)

The EPA requires receipt of an enforceable commitment to include a MCR from each of the three Washington area States before their attainment demonstrations can be approved. The three States submitted these commitments in section 10.8 of the 2004 SIP revisions. The EPA has concluded that the enforceable commitments found in section 10.8 of the 2004 SIP revisions are approvable.

Note: On December 16, 2004, the District of Columbia and the Commonwealth of Virginia each submitted a MCR for the Washington area. On December 20, 2004, the State of Maryland submitted a MCR for the Washington area.

6. Contingency Measures

On January 12, 2005 (70 FR 2085), EPA published a NPR proposing approval of the three States contingency measures plans for the Washington area to address any potential failure to attain by the severe area attainment deadline of November 15, 2005 as well as any failures to demonstrate ROP.

V. MVEBs and a Protective Finding

A set of MVEBs only apply and may be used for purposes of transportation conformity once they have either been SIP-approved or found adequate by EPA. According to the transportation conformity rule, MVEBs in a submitted SIP may apply for conformity purposes even before we have approved the SIP, under certain circumstances. First, there must not be any other SIP-approved MVEBs that have been established for the same time frame and with respect to the same CAA requirements. Second, MVEBs in submitted SIPs may not be used before we have approved the SIP unless we have found that the submitted SIP's MVEBs 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'' both as amended by 69 FR 40004, July 1, 2004. For more details about the applicability of submitted and approved budgets, *see* 61 FR 36117, July 9, 1996; 62 FR at 43783–43784, August 15, 1997; and 69 FR 40004 at 400038, July 1, 2004.

A. What MVEBs Currently Apply in the Washington Area?

As stated elsewhere in this document, EPA's approvals of the1996–1999 ROP plan and the earlier versions of the attainment demonstration SIP revisions (those submitted during 1998 and 2000) were vacated by the court. Therefore, the MVEBs in these SIP revisions are not currently in the approved SIP. EPA had issued adequacy findings for the MVEBs in the post 1996–1999 ROP plan and those earlier versions of the attainment demonstration SIP revisions prior to our January 3, 2001 final approval (66 FR 586) of those SIPs. (*See* 64 FR 43698, August 11, 1999, and 65 FR 36439, June 8, 2000). Even though EPA issued findings of adequacy on these budgets, EPA has always interpreted the transportation conformity rule such that a final rulemaking action approving a control strategy or maintenance plan SIP renders any prior adequacy determination made for budgets related to that particular control strategy or maintenance plan SIP of no further force or effect. Instead, the final rulemaking on the SIPs governs which budgets apply for conformity purposes. We also interpret our transportation conformity rule to mean that once a SIP approval is vacated the prior adequacy determination on the vacated budgets is not resurrected.

Therefore, the only MVEBs in the approved SIPs for the Washington area are those for VOC in the approved 15 percent ROP plan for 1996. (*See* 64 FR 42629, August 5, 1999; 65 FR 44686, July 19, 2000; and, 65 FR 59727, October 6, 2000). However, on December 16, 2003 (68 FR 70012), EPA made a finding of adequacy for the 2005 ROP and 2005 attainment year MVEBs in the SIP revisions submitted by Virginia, Maryland and the District of Columbia on August 19, 2003, September 2, 2003, and September 5, 2003, respectively (the December 16, 2003 finding of adequacy). In accordance with the transportation conformity rule, once found adequate, these 2005 MVEBs superceded the MVEBs in the 15 percent ROP plan because these 2005 budgets cover a later year and are more stringent. (*See* 40 CFR 93.118)

B. Will EPA Initiate a Separate Adequacy Review for the 2005 MVEBs in the Attainment Demonstration Plans Submitted in February of 2004?

The EPA shall not initiate a separate adequacy review of the 2005 attainment budgets of the attainment plans submitted by the three States in February of 2004. In this notice of proposed rulemaking, EPA is initiating the process of reviewing the adequacy of the 2005 MVEBs in the attainment demonstration SIP revisions listed in Table 1 of this document simultaneously with our action to approve or disapprove these SIP revisions. We are seeking public comments on this proposed rule including the adequacy of the MVEBs and will accept such comments provided they are submitted by as specified in the **DATES** and **ADDRESSES** sections of this document. We will not hold a separate comment period on the adequacy of these budgets through a separate adequacy process under the conformity rule pursuant to 40 CFR 93.118(f)(1)(i) and (ii). Subsequent to the close of the public comment period specified in the **DATES** of this document, we will indicate whether the 2005 MVEBs in the attainment demonstration revisions are adequate and thus can be used for conformity either: (1) In EPA's final rulemaking on these plans; or (2), prior to any final action, pursuant to 40 CFR 93.118(f)(1)(iii) through (v) and 93.118(f)(2)(iii), by informing the District, Maryland and Virginia in writing and by announcing the adequacy finding by publishing a notice of adequacy status in the **Federal Register**. We will address all comments germane to the adequacy of the MVEBs either in our final rulemaking action or in response to comments in the docket for any separate adequacy finding. *See* 40 CFR 93.118(f) and 69 FR 40004 at 40041, July 1, 2004.

C. What Are the 2005 Budgets in the Attainment Demonstration?

The 2005 MVEBS in the attainment demonstration are area-wide budgets covering the entire Washington area. The MVEBs for 2005 are 97.4 tons/day of VOC and 234.7 tons/day of NO_X.

D. What Effect Will This Action Have on MVEBs for the Washington Area?

This proposed action would approve the 2005 MVEBs in the attainment demonstration into the District of Columbia and Virginia SIPs. In the case of Maryland, this action proposes to either: approve the attainment demonstration, contingent upon Maryland submitting an approvable section 185 penalty fee SIP in time for EPA to approve it prior to the time we must issue our final action on the attainment demonstration; or, in the alternative, to disapprove the Maryland attainment demonstration with a protective finding for the 2005 attainment MVEBs. A protective finding is a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as attainment.

E. What Effects Might This Action Have on Transportation Planning in the Washington Area?

If EPA disapproves an attainment demonstration SIP revision (with or without a protective finding), the conformity status of the transportation plan and transportation improvement plan (TIP) will 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 CAA.[7] No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

Under section 93.120(a)(2) of the conformity rule (40 CFR 93.120(a)(2)), a final disapproval of an attainment demonstration without a protective finding would result in a ''conformity freeze.'' Under a ''conformity freeze,'' only projects in the first three years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning on the effective date of a disapproval without a protective finding, no transportation plan, TIP, or project not in the first three years of the currently conforming transportation plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the attainment demonstration requirement is submitted, EPA finds its MVEBs adequate pursuant to 40 CFR 93.118 or approves the submission, and conformity to the implementation plan revision is determined. A disapproval with a protective finding for the 2005 motor vehicle emissions budgets does not create a ''conformity freeze'' but a lapse would still occur at the same time the highway sanctions would be imposed for a SIP-related failure.

[7] The finding that EPA issued to the State of Maryland on May 21, 2004 (69 FR 29236) for failure to submit the 185 fee SIP was effective June 21, 2004. So long as the section 185 fee provision remains an applicable requirement in the Washington area, the conformity status of the transportation plan and TIP will lapse on the date that highway sanctions are imposed pursuant to this finding (40 CFR 93.120(b)).

F. What Would Be the Basis for Issuing a Protective Finding?

In the preamble to the 1997 amendments to the conformity rule (62 FR 43780, August 15, 1997), EPA explained the implications of a disapproval of an attainment demonstration and how a protective finding works. The recent revisions to the conformity rule have not altered those explanations. When disapproving a control strategy SIP revision the EPA may give the SIP revision a protective finding. If the EPA disapproves a SIP but gives a protective finding, the MVEBs 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. As discussed previously, 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.

If the EPA does not issue a protective finding then a conformity freeze would occur on the effective date of the disapproval. *See* 40 CFR 93.120(a)(2).

The EPA may confer a protective finding only if a submitted SIP contains adopted control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the SIP was submitted, such as demonstrating attainment. That is, the EPA will give such an attainment demonstration SIP submission a protective finding if it contains enough emissions reduction measures to achieve its purpose of demonstrating attainment. *See* 40 CFR 93.120(a)(3). *See* also 62 FR 43796, August 15, 1997.

The sole reason EPA is proposing disapproval of the Maryland attainment demonstration is the lack of a section 185 penalty fee SIP revision to cover the Maryland portion of the Washington area. The presence or absence of a section 185 penalty fee SIP revision does not impact the ability of the area to attain by the attainment date because the penalty fees imposed pursuant to section 185 of the CAA are authorized only after EPA determines that area has failed to attain the 1-hour NAAQS by the applicable deadline. Moreover, the section 185 penalty fee requirements do not, in and of themselves, guarantee any further reductions in emissions. Therefore, the effects, *if any,* that these penalty fees will have on emissions will not occur before the applicable attainment date and have not been relied upon in the attainment demonstration for the Washington area.

The EPA is proposing that the attainment plans submitted by the three States demonstrate that the Washington area will attain the 1-hour ozone NAAQS no later than November 15, 2005. The EPA believes that the attainment demonstration SIP submitted by the State of Maryland 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 for Maryland's attainment demonstration SIP.

VI. Proposed Actions

A. *District of Columbia*—EPA is proposing approval of the District of Columbia's 1-hour ozone attainment plan for the Washington area which was submitted on September 5, 2003 as supplemented on February 25, 2004. Final approval of the attainment plan is contingent upon final approval of the ROP plans, TCMs, VMT offset SIP and contingency measures plan which EPA proposed for approval on January 12, 2005 (70 FR 2085).

B. *Maryland*—EPA is proposing approval of Maryland's 1-hour ozone attainment plan for the Washington area which was submitted on September 2, 2003 as supplemented on February 24, 2004. Final approval of the attainment plan is contingent upon final approval of the ROP plans, TCMs, VMT offset SIP and contingency measures plan which EPA proposed for approval on January 12, 2005 (70 FR 2085). In addition, final approval is contingent upon the State of Maryland's submittal of an approvable section 185 fee SIP in time for EPA to approve it prior to the time we take final action on the attainment plan.

In the alternative, EPA is proposing to disapprove Maryland's 1-hour ozone attainment plan for the Washington area which was submitted on September 2, 2003 as supplemented on February 24, 2004 for its failure to include provisions to implement the section 185 penalty fee provisions of the Clean Air Act. In conjunction with this alternative proposed disapproval, EPA is also proposing to grant a protective finding for the MVEBs of Maryland's 1-hour attainment plan such that they could still be used for purposes of transportation conformity.

C. *Virginia*—EPA is proposing approval of Virginia's 1-hour ozone attainment plan for the Washington area which was submitted on August 19, 2003 as supplemented on February 25, 2004. Final approval is contingent upon final approval of the contingency measure plan in the 2004 SIP revisions. Final approval of the attainment plan is contingent upon final approval of the ROP plans, TCMs, VMT offset SIP and contingency measures plan which EPA proposed for approval on January 12, 2005 (70 FR 2085).

D. Motor Vehicle Emissions Budgets

EPA is proposing to approve the MVEBs established and identified in the 1-hour ozone attainment plans for the Washington area submitted by the District, Maryland and Virginia on the dates as provided in this document. The attainment plan MVEBs for 2005 are 97.4 tons/day of VOC and 234.7 tons/day of NO_X . In the case of the State of Maryland, EPA is proposing, in the alternative, to disapprove the attainment plan for its failure to include provisions to implement the section 185 penalty fee provisions the Clean Air Act. In conjunction with this alternative proposed disapproval, EPA is also proposing to grant a protective finding for the MVEBs of the attainment plan such that they could still be used for purposes of transportation conformity.

EPA is also initiating the adequacy process under 40 CFR 93.118(f) for the 2005 budgets in the attainment plans. EPA will not be initiating a separate adequacy process. Persons wishing to comment on the adequacy of these MVEBs should do so at this time.

EPA is soliciting public comments on all these proposed actions and the associated issues discussed in this document. These comments will be considered before taking final actions.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that the proposed approvals in this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed disapproval in the alternative 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, the Administrator certifies that this proposed disapproval action does not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4). Sections 202 and 205 of UMRA 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. This proposed rule also does 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), nor will it 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 proposes to approve 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. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive order.

This proposed rule to approve the District of Columbia's, and Virginia's 1-hour ozone attainment plan demonstration for the Washington area; and to approve Maryland's 1-hour ozone attainment plan demonstration for the Washington area, and in the alternative, to disapprove Maryland's 1-hour ozone attainment plan demonstration for the Washington area with a protective finding for the 2005 motor vehicle emissions budgets 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 31, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–2508 Filed 2–8–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7870–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by Shell Oil Company in Deer Park, Texas (Shell) to exclude (or delist) a certain sludge waste generated by its Houston, TX Deer Park facility from the lists of hazardous wastes.

EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude that Shell's petitioned waste is nonhazardous with respect to the original listing criteria. EPA would also conclude that Shell's waste concentrations are such that short-term and long-term threats from the petitioned waste to human health and the environment are minimized.

DATES: We will accept comments until March 11, 2005. EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by February 24, 2005. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to the Section Chief of the Corrective Action/Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue, Suite A, Houston, TX 77023. Identify your comments at