TABLE 52.384—EPA-APPROVED REGULATIONS—Continued

Connecticut State citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
		10/8/80	11/2/82	47 FR 49646	(c) 20	Correction to subparagraph designation.
		10/8/80	12/13/85	50 FR 50906	(c) 35	Approved definition of acceptable method.
		2/25/91	3/24/92	57 FR 10139	(c) 61	Requires use of low sulfur fuels at Connecticut Light & Power in Montville.
		2/14/92	11/20/92	57 FR 54703	(c) 59	Requires use of low sulfur fuels at Stones CT Paperboard Corp.
		2/5/92	11/20/92	57 FR 54703	(c) 59	Requires use of low sulfur fuel at Hartford Hospital.
22a–174–25	Effective date	4/4/72	5/31/72	37 FR 23085	(b).	
22a–174–27	Emission Standards for Motor Vehicles.	9/24/82	3/21/84	49 FR 10542	(c) 32	Exhaust "emission standards" for periodic motor vehicle inspection and maintenance.
14–164C	Periodic Motor Vehicle Emissions Inspection and Maintenance.	7/27/82	3/21/84	49 FR 10542	(c) 32	Department of Motor Vehicle Regulations establishing specifications for Connecticut I&M program.
22a–174–30	Gasoline Vapor Recovery.	1/12/93	12/17/93	58 FR 65930	(c) 62	Requires Stage II vapor recovery from gasoline dispensers.
			1/18/94	59 FR 2649	(c) 62	Correction to 12/17/93 notice.
22a–174–100	Permits for construction of indirect sources Rescinded from federal SIP.	1/9/74	2/25/74	39 FR 7280	(c) 4	Requires review of air impacts of indirect sources.
		8/20/74	2/13/76	41 FR 6765	(c) 6	Added indirect source review (ISR) regulations.
		6/30/77	1/26/79	44 FR 5427	(c) 9.	
		NA	12/23/79	45 FR 84769	(c) 11	SIP shown to attain standards as expeditiously as practicable without ISR regulation.

[FR Doc. 97–26434 Filed 10–3–97; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIPTRAX No.VA–076–5028; FRL–5904–2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA has determined that the Richmond moderate ozone nonattainment area has attained the 1-hour .12 parts per million (ppm) National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon the latest four years of ambient air monitoring data for the years 1993–96 that demonstrate that the 1-hour ozone NAAQS is being attained in this area. EPA has also determined that the Richmond area has continued to attain the 1-hour standard to date. On the basis of this determination, EPA is also determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements of part D of Title I of the Clean Air Act (CAA), are not applicable to the Richmond area so long as this area continues to attain the ozone NAAQS, or until the area is redesignated to attainment.

EFFECTIVE DATE: This final rule is effective on November 5, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, Ozone/Carbon Monoxide and Mobile Sources Section (3AT21), U.S. Environmental Protection Agency—Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, or by telephone at: (215) 566–2092. Questions may also be sent via e-mail, to the following address: Gaffney.Kristeen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On June 13, 1997, EPA published its determination that the Richmond ozone nonattainment area has attained the National Ambient Air Quality Standard (NAAQS) for ozone, and that Richmond has continued to attain the standard to date. On the basis of this determination, EPA further determined that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements of part D of Title I of the CAA are not applicable to this area as long as this area continues to attain the ozone NAAQS. See 62 FR 32204.

EPA made these determinations through direct final rulemaking without prior proposal because the Agency viewed the action as noncontroversial and anticipated no adverse comments. The final rule was published in the **Federal Register** with a provision for a 30-day public comment period. The final rule stated that if adverse comments were received during the comment period, the final rulemaking action would be withdrawn by publishing a notice announcing withdrawal of the final action in the **Federal Register**. At the same time, EPA published a proposed rule for the same action in the event that adverse comments were submitted to EPA within 30 days of publication of the rule in the **Federal Register** [62 FR 32258, June 13, 1997].

In a separate action, also on June 13, 1997, EPA proposed approval of the redesignation request and maintenance plan submitted by the Commonwealth of Virginia for the Richmond area and provided a 30-day public comment period. [62 FR 32258] On July 14, 1997, EPA received a letter from the New York State Department of Environmental Conservation (NYSDEC) submitting adverse comments that referenced both the determination of attainment rulemaking and the proposed approval of the redesignation request and maintenance plan rulemaking. The adverse comments all appear to pertain to the proposed approval of the redesignation request, and several comments were clearly identifiable as addressed solely to the proposal to approve the redesignation request. It was thus at best ambiguous as to whether any comments pertained to the rulemaking on the determination of attainment. However, to ensure that this comment letter was given proper consideration as it relates to EPA's determination of attainment and the resulting inapplicability of the RFP, attainment demonstration and section 172(c)(9) contingency measure requirements for the Richmond area, EPA removed the June 13, 1997 final rulemaking action in order to address the comments. [See 62 FR 43471, August 14, 1997.]

In today's action, the EPA is responding to the comments in NYSDEC's letter only as they may relate to the determination of attainment and the inapplicability of certain RFP and attainment demonstration requirements, along with certain other related requirements of part D of Title I of the CAA. EPA will respond to the comments received from NYSDEC related to the redesignation request and maintenance plan in a separate rulemaking on EPA's final action in the context of the requirements for redesignation to attainment under the CAA.

On July 18, 1997, EPA promulgated a new NAAQS for ozone replacing the 1-hour .12 ppm standard with an 8-hour 0.08 ppm standard [62 FR 38856]. EPA is in the process of developing guidance and proposed rules to implement the new ozone standard based on a Presidential Directive signed on July 16, 1997 and also published in the **Federal Register** on July 18, 1997. Today's action is a determination of attainment for the Richmond area of the 1-hour .12 ppm ozone standard and a determination of inapplicability of certain CAA requirements related to that standard only. Today's decision does not in any way make a determination regarding Richmond's attainment status for the newly promulgated 8-hour .08 ppm ozone standard. Decisions regarding the attainment status of areas for the new 8-hour .08 ppm ozone NAAQS will be conducted through a separate rulemaking to be published at a later date at the time EPA designates all areas as attainment or nonattainment under the new 8-hour NAAQS.

EPA's decision that certain CAA requirements related to the 1-hour .12 ppm ozone standard are inapplicable is based on an EPA policy memo of May 10, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Division Directors entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard." See the discussion and rationale contained in EPA's prior determination of attainment rulemakings for: Grand Rapids, MI [61 FR 31831, 31832–31834, June 21, 1996], Cleveland/Akron/Lorain, OH [61 FR 20458, May 7, 1996] and Salt Lake City/Davis County, UT [60 FR 36723, July 18, 1995]. See also the decision of the U.S. Court of Appeals for the 10th Circuit upholding the statutory interpretation contained in the May 10, 1995 Seitz memo. *Sierra Club* v. *EPA* 99f.3d 1551 (10th Cir. 1996).

Response to Public Comments

Comment #1

NYSDEC disagrees with EPA's statement in the proposed rulemaking for approval of the redesignation request and maintenance plan that the Richmond area has met all relevant requirements of the CAA that were due as of July 26, 1996, the date Virginia submitted its redesignation request. NYSDEC states that the Commonwealth of Virginia missed the "November 15, 1995" statutory deadline for implementing the nitrogen oxides (NO_X) reasonably available control technology (RACT) requirements of the CAA and continues to be delinquent.[1] It was noted that the Commonwealth of Virginia responded to EPA's July 8, 1994 finding of failure to submit a NO_X RACT state implementation plan (SIP) for the Richmond area with a petition for an exemption from the NO_X RACT requirement submitted on December 18, 1995. NYSDEC states that this December 18, 1995 petition was well after the mandated date of November 15, 1993 for submittal of a NO_X RACT SIP and after the mandatory implementation date. NYSDEC concludes that "[t]herefore, not implementing NO_X RACT in the Richmond area was not an option." NYSDEC objects to the proposed approval of the redesignation request on the grounds that the area failed to implement RACT on major sources of NO_X.

Response #1

Upon careful consideration of this comment, EPA concludes that this comment is relevant only to the proposed approval of the redesignation to attainment and not EPA's July 13, 1997 decision that the RFP, attainment demonstration and section 172(c)(9) contingency measure requirements of the CAA are inapplicable to Richmond. Section 107 of the CAA requires that the Commonwealth meet all applicable part D requirements prior to redesignation. However, there is no linkage of the section 182(f) NO_X RACT requirement with the determination of attainment and resulting inapplicability of certain part D requirements for RFP, the attainment demonstration and other requirements of CAA sections 172(c)(2), 172(c)(9), and 182(b)(1). Eligibility for this

[1] Section 182(b) of the Act specifies that RACT is to be implemented not later than May 15, 1995. The discrepancy in dates does not substantively affect the commenters argument.

determination is based solely on monitored air quality. Furthermore, on July 21, 1997, EPA published final approval of an exemption from the NO_X RACT requirement for the Richmond area contingent upon air quality monitoring that demonstrates continued attainment of the ozone NAAQS [62 FR 38922].

As discussed in the June 13, 1997 direct final rulemaking, EPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures where an area is monitoring attainment of the ozone standard. See 57 FR 13498, 57 FR 13564 (April 16, 1992). As discussed in the direct final rulemaking and in previous rulemakings in other areas cited above, EPA has concluded that it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner. This conclusion was upheld by the U.S. Court of Appeals for the 10th Circuit, *Sierra Club* v. *EPA* 99f.3d 1551 (10th Cir. 1996). According to the May 10, 1995 policy memo, three consecutive years of complete, quality assured ambient air quality monitoring data is the sole determinant of whether the Richmond area has attained the standard and is therefore eligible for a determination that certain part D requirements do not apply, for as long as the Richmond area continues to attain the standard, or until the area is no longer designated nonattainment.

Comment #2

NYSDEC also contests EPA's statement in the redesignation request and maintenance plan proposed rulemaking that the Commonwealth of Virginia has a fully approved SIP for the Richmond area under section 110(a)(2). NYSDEC states that any NO_X exemption petition would also be invalid because section 110(a)(2)(D) prohibits granting an exemption from NO_X RACT pursuant to section 182(f) of the CAA where there is evidence that the exemption would interfere with attainment of a NAAQS in another state. Therefore, NSYDEC claims the redesignation request does not meet this prerequisite for redesignation of section 107 of the CAA that the Commonwealth have a fully approved SIP under section 110(a)(2).

Response #2

Upon careful consideration of this comment, EPA concludes that this comment is relevant only to the proposed approval of the redesignation to attainment and not EPA's July 13, 1997 decision that the RFP, attainment demonstration and section 172(c)(9) contingency measure requirements of the CAA are inapplicable to Richmond. The commenter objected to the proposed approval of the redesignation request on the grounds that the area failed to implement RACT on major sources of NO_X. The commenter did not object to the determination that the area has attained the standard or that certain requirements of the CAA are no longer applicable for so long as the area continues to attain the standard, or until the area is no longer designated nonattainment.

While section 107 of the CAA requires the Commonwealth to have a fully approved SIP under section 110(a)(2) prior to redesignation to attainment, the determination of the inapplicability of certain part D requirements is based solely on air quality data. There is no requirement to have a fully approved SIP under section 110(a)(2) to be eligible for a determination that the area is attaining the standard and that, therefore, certain part D requirements of the CAA for RFP, attainment demonstration and other requirements of sections 172(c)(2), 172(c)(9) and 182(b)(1) are inapplicable.

On July 21, 1997, EPA published final approval of an exemption from the NO_X RACT requirement for the Richmond area contingent upon air quality monitoring that demonstrates continued attainment of the ozone NAAQS [62 FR 38922]. In the July 21, 1997 final rulemaking action on the NO_X exemption, EPA responded to adverse comments received that section 110(a)(2)(D) prohibits granting exemptions pursuant to section 182(f) where there is evidence that granting of the exemption would interfere with attainment of the ozone NAAQS in downwind areas. See 62 FR 38926. Furthermore, as EPA responded in the final rulemaking, the action to provide a NO_X RACT waiver under section 182(f) for any area would not shield that state from the obligation, in response to a SIP call under section 110 by EPA, to obtain NO_X emission reductions, if evidence such as photochemical grid modeling shows that NO_X emissions contribute significantly to downwind nonattainment or maintenance in another state.

Comment #3: NSYDEC states that it is not a relevant factor that Richmond is now attaining the ozone NAAQS because the Richmond area has avoided implementing the NO_X RACT requirements of the Act.

Response #3: As stated above, air quality data is directly relevant to this action. As set forth in the May 10, 1995 Seitz memo and subsequent rulemakings, EPA is authorized to conduct individual rulemakings concerning areas that have three consecutive years of clean air quality monitoring data demonstrating attainment of the ozone standard to make binding determinations that the areas have attained the standard and thus need not make the required SIP submissions for RFP, the attainment demonstration and the section 172(c)(9) contingency measure requirements for so long as the area remains in attainment, or until the area is redesignated to attainment. The fact that the Richmond area has not implemented the NO_X RACT requirements of the CAA is not relevant to EPA's determination of inapplicability of these other CAA requirements.

Other specific requirements of section 110 and the rationale for EPA's proposed action are explained in the June 13, 1997 direct final rulemaking and other rulemakings referenced in today's action, and will not be restated here.

Final Action

EPA has determined that the Richmond ozone nonattainment area has attained the 1-hour .12 ppm ozone standard and continues to attain that standard at this time. As a consequence of this determination, the requirements of sections 182(b)(1) and 172(c)(2) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are no longer applicable to the area so long as the area does not violate the 1-hour .12 ppm ozone standard, or until the area is redesignated to attainment.

EPA emphasizes that this determination is contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. In the event the area is still designated nonattainment and a violation of the ozone NAAQS is monitored in the Richmond nonattainment area (consistent with the requirements contained in 40 CFR part 58), EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation

plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

I. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

II. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. Today's determination does not create any new requirements, but suspends the indicated requirements. Therefore, because this action does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected.

III. Unfunded Mandates

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

EPA has determined that the approval action proposed/promulgated does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action does not create any new requirements, but suspends the indicated requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

IV. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 5, 1997. Filing a petition for reconsideration by the Administrator of this final rule regarding a determination of attainment of ozone standard and a determination regarding the applicability of certain CAA requirements in the Richmond area does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 27, 1997.

William T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart VV of chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart VV—Virginia

2. Section 52.2428 is added to read as follows:

§ 52.2428 Control Strategy: Carbon monoxide and ozone.

Determination—EPA has determined that, as of November 5, 1997, the Richmond ozone nonattainment area, which consists of the counties of Chesterfield, Hanover, Henrico, and part of Charles City County, and of the cities of Richmond, Colonial Heights and Hopewell, has attained the 1-hour .12 ppm ozone standard based on three years of air quality data for 1993, 1994 and 1995. EPA has further determined that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the Richmond area for so long as the area does not monitor any violations of the 1-hour .12 ppm ozone standard, or until the area is no longer designated nonattainment. If a violation of the ozone NAAQS is monitored in the Richmond ozone nonattainment area while the area is designated nonattainment, these determinations shall no longer apply.

[FR Doc. 97–26444 Filed 10–3–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5902–7]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Partial Deletion of Releases from the Saegertown Industrial Area Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of releases on certain properties at the Saegertown Industrial Area Superfund Site (Site) in Saegertown, Pennsylvania from the National Priorities List (NPL). Pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), EPA promulgated the National Oil and Hazardous Substances Contingency Plan (NCP) at 40 CFR part 300. The NPL is published at appendix B of 40 CFR part 300. EPA and the Commonwealth of Pennsylvania have determined that all appropriate Fund-financed and responsible party-financed responses under CERCLA have been implemented on the former GATX property at the Site, and that no further cleanup is appropriate for the former GATX property, the former SCI property or the SMC property at the Site. Moreover, EPA and the Commonwealth of Pennsylvania have determined that the remedial action conducted on the former GATX property to date remains