Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below.

Copies of the materials submitted by the Ohio Environmental Protection Agency may be examined during normal business hours at the following locations:

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Ohio Environmental Protection Agency, Division of Air Pollution Control, 1800 Watermark Drive, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano at (312) 886–6036.

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

Dated: February 19, 1998.

Michelle D. Jordan,

Acting Regional Administrator, Region V.

[FR Doc. 98–7130 Filed 3–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA–022–5022; FRL–5984–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; New Source Review in Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia to revise its new source review (NSR) regulations for nonattainment areas to bring them into conformance with the Clean Air Act (CAA) amendments adopted in 1990, and to make other changes desired by the Commonwealth. Virginia's NSR regulations for nonattainment areas require persons to meet certain requirements before constructing a new major source to be located in a nonattainment area, or constructing a major modification in such an area, if that source or modification is or would be major for the pollutant for which the area is nonattainment. The requirements include the installation of air pollution control technology capable of achieving the Lowest Achievable Emission Rate (LAER), and offsetting the increase in emissions from the new source or modification with decreases in emissions from other sources.

DATES: Comments must be received on or before April 22, 1998.

ADDRESSES: Comments may be mailed to Kathleen Henry, Chief, Permit Programs Section, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, 3AT23, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 566–2061. E-mail address: chalmers.ray@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Description of CAA NSR Requirements

The CAA requires that certain NSR requirements be met by any person seeking to construct a new major source to be located in a nonattainment area, or to construct a major modification in such an area, if the source or modification is or would be major for the pollutant for which the area is designated as nonattainment. The requirements which such persons must meet include installing LAER technology and obtaining emission offsets. Sections 172(c)(5) and 173 of the CAA require States to adopt NSR permitting regulations and to establish NSR permitting programs to implement these requirements. When Congress revised the CAA in 1990, it modified certain NSR requirements, and directed States to revise their NSR regulations to incorporate these modifications.

II. General Description of Virginia's NSR Submittal

As the CAA requires, Virginia's SIP includes a NSR regulation, entitled ''Permits—Major Stationary Sources and Major Modifications Locating in Nonattainment Areas,'' which specifies that new major sources or major modifications constructed in nonattainment areas must apply LAER and obtain emission offsets. This regulation is found in Virginia's Regulations for the Control and Abatement of Air Pollution at section 120–08–03. In response to the CAA revisions adopted in 1990, Virginia submitted, on November 9, 1992, a revision to this NSR regulation intended to update the requirements of the regulation.

The revised regulation contains, among other things, a provision allowing the crediting of emission reductions from preapplication shutdowns or curtailments which occurred on or after January 1, 1991, and which are permanent, quantifiable, and federally and state enforceable. This provision is the reason EPA is proposing only limited approval of Virginia's revised NSR regulation, because it allows credits for emission reductions resulting from shutting down an existing source or curtailing production or operating hours below baseline levels in all nonattainment areas, even those for which EPA has not approved an attainment demonstration. This issue is discussed in more detail later in this notice in the *EPA Analysis* section.

Virginia has one ozone nonattainment area. That area is Virginia's portion of the Metropolitan Washington DC serious ozone nonattainment area. At the time of its NSR SIP submittal, the Richmond area was classified as moderate ozone nonattainment area, and part of the Virginia portion of the Metropolitan Washington, D.C. area (Alexandria City and Arlington County) was designated as nonattainment for carbon monoxide. These two areas have since been redesignated to attainment. The remainder of Virginia is designated as attainment and/or unclassifiable with respect to all other criteria pollutant standards.

Under the CAA, and the Commonwealth's NSR regulation, sources of VOC or NO_X located in Virginia's serious ozone nonattainment area are considered major if they have the potential to emit 50 TPY or more of volatile organic compounds (VOC) or nitrogen oxides (NO_X).

III. CAA's Specific NSR Requirements

According to section 172(c)(5) of the CAA, SIPs must require that certain NSR requirements be met by any person seeking to construct a new major source to be located in a nonattainment area, or to make a major modification to a major source in such an area, if the source or modification is or would be major for the pollutant for which the area is designated as nonattainment. There are also special statutory permit requirements for ozone nonattainment areas, which are generally contained in revised section 173, and in subpart 2 of part D.

On July 23, 1996, EPA published in the **Federal Register** a comprehensive rulemaking which proposed significant changes to both the current nonattainment NSR and the current Prevention of Significant Deterioration (PSD) requirements. See 61 FR 38311. Upon EPA promulgation of the final rulemaking at a later date, all states, including Virginia, will be expected to evaluate their new source review regulations in accordance with the new requirements and to revise such regulations accordingly.

Important CAA requirements for new sources in nonattainment areas are found under sections 172, 173, 182, and 184 of the CAA, and are summarized below:

1. According to section 173(a)(1), the state regulation must assure that calculations of emissions offsets are based on the same emissions baseline used in the demonstration of reasonable further progress (RFP) towards attainment.

2. According to section 173(c)(1), the state regulation may include provisions which allow offsets to be obtained in another nonattainment area if that area has an equal or higher nonattainment classification and emissions from the other nonattainment area contribute to a National Ambient Air Quality Standard (NAAQS) violation in the area in which the source would construct.

3. According to section 173(c)(1), the state regulation must provide that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be in effect and enforceable by the time the new or modified source commences operation. This statutory condition for offsets augments the existing requirement under section 173 that provides that offsets must be federally-enforceable before permit issuance, although the required emissions reductions need not occur until the date on which the new or modified source commences operations.

4. According to section 173(c)(1), provisions of the state NSR regulation must assure that emissions increases from new or modified sources will be offset by real reductions in actual emissions. EPA's initial guidance interpreting general sections of the CAA is contained in the Title I General Preamble published in the **Federal Register** on April 16, 1992 (57 FR 13498). In the General Preamble, EPA reiterated that emission increases and decreases for netting are to be determined consistent with EPA's current new source rules and the December 4, 1986 emissions trading policy statement (51 FR 43823). EPA's new source rules state that a decrease in emissions is only creditable if, among other requirements, the decrease has not been relied upon by the state for any permit, attainment demonstration, or reasonable further progress. Therefore, emission reductions made because of reasonably available control technology (RACT) or other requirements that have been taken into account in the state's demonstration of reasonable further progress or attainment demonstration are not creditable for netting purposes.

5. According to section 173(c)(2), the state regulation must prevent emission reductions otherwise required by the CAA from being credited for purposes of satisfying part D offset requirements.

6. According to section 173(a)(5), the state regulation must require that prior to any part D permit being issued there be an analysis of alternative sites, sizes, production processes, and environmental control techniques for proposed sources that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

7. According to section 328, the state regulation must assure that sources located on the Outer Continental Shelf (OCS) are subject to the same requirements applicable if the source were located in the corresponding onshore area.

8. Section 173(a)(3) requires that the state regulation must assure that owners or operators of each proposed new or modified major stationary source demonstrate that all of their other major stationary sources in the state are in compliance.

9. The state regulation must define major new and major modified sources in accordance with the area's nonattainment classification under section 181 for ozone.

10. The state regulation must require emission offsets for major new and major modified sources in accordance with the area's nonattainment classification under section 181 for ozone.

11. As discussed in Section 184 of the CAA, the state regulation must require all applicable new source requirements to be met by sources locating in the ozone transport region (OTR). These provisions must also ensure that new or modified major stationary sources obtain VOC and, presumptively, NO_X offsets at a ratio of at least 1.15 to 1 in order to obtain a NSR permit. Higher offset ratios apply in areas classified as serious or above.

12. The state regulation must ensure that any new or modified major stationary source of NOx satisfies the requirements applicable to any new or modified major stationary source of VOC, unless a special NOx exemption is granted by the Administrator under CAA section 182(f).

13. State plans must, for serious and severe ozone nonattainment areas, implement sections 182(c)(6), (7) and (8) with regard to modifications.

IV. Summary of Regulatory Revisions

EPA discusses below the major changes by which Virginia has amended its NSR regulation. These changes include changes necessary to bring Virginia's NSR regulation into conformity with federal requirements and other changes not required by federal mandate. Because new subsections have been added, this SIP revision includes changes in the manner in which the regulation is codified. Listed below are the subsections in Virginia's regulation and the major proposed changes:

Section 120–08–03 A—Applicability (Amended)

Virginia has modified this subsection by including a provision to deter a company from constructing or modifying a facility in increments to avoid permit requirements. The provision states that where a source is constructed or modified in contemporaneous increments which individually are not subject to approval and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining applicability. It further states that an incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

Section 120 08 03 B—Definitions (Amended)

Virginia has modified many of the definitions found in this subsection. Key changes in the definitions are discussed below:

1. *Allowable Emissions*—Virginia modified this definition to indicate that any limits on emissions used when calculating allowable emissions must always be federally enforceable.

2. *Building, structure, facility, or installation*—Virginia modified its former definition of ''building, structure, or facility'' by now making this a definition of ''building, structure, facility, or *installation*. (Emphasis

added). In conjunction with this change, Virginia deleted its former separate definition of ''installation.''

3. *Federally enforceable*—Virginia modified this definition to include permits issued under an EPA approved program that is incorporated into the SIP and expressly requires adherence to any permit issued under such program.

4. *Major Modification*—Virginia made several modifications to this definition to indicate that certain provisions or changes must always be federally enforceable. In particular, the definition now states that any ''physical change or change in the method of operation'' shall not include ''[u]se of an alternative or raw material which a source was capable of accommodating before December 21, 1976, unless the change would be prohibited under any federally *and* state enforceable permit condition * * *'' (emphasis added). In addition the definition now says that such a change shall not include ''[a]n increase in the hours of operation or the production rate, unless the change in the hours of operation or the production rate would be prohibited under any federally *and* state enforceable permit condition * * *'' Virginia also deleted several items from its listing of items which do not qualify as physical changes or changes in method of operation.

5. *Major Stationary Source*—Virginia revised this definition to make its major source thresholds for sources located in ozone nonattainment areas consistent with EPA's requirements. Virginia specifies that a major stationary source includes not only sources which emit, or have the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the CAA, but also sources which emit ''50 tons per year or more of volatile organic compounds or nitrogen oxides in nonattainment areas classified as serious in Appendix K,'' or ''25 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as severe in Appendix K.'' Virginia also added to this definition a listing of the source categories from which fugitive emissions must be considered when determining if a source is major.

6. *Net emissions increase*—Virginia modified this definition to specify when increases or decreases in actual emissions are contemporaneous and when they are creditable.

7. *Nonattainment pollutant*—In this definition Virginia modified the statement ''For ozone nonattainment areas, the nonattainment pollutant shall be volatile organic compounds (including hydrocarbons)'' by adding ''and nitrogen oxides.''

8. *Potential to Emit*—In this definition Virginia now requires limits on potential to emit to be federally enforceable.

9. *Reconstruction*—In this definition Virginia removed a provision which stated that the assessment of whether or not a reconstructed stationary source is subject to a new source performance standard had to take into account any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

10. *Significant*—Virginia includes a new provision indicating that in serious or severe ozone nonattainment areas a 25 ton per year increase in volatile organic compound or nitrogen oxide emissions would be considered a significant emissions increase.

Section 120–08–03 C—General (Amended)

Virginia modified the general subsection by adding a provision stating that it may combine in one permit the requirements for emissions units subject to more than one of Virginia's regulatory requirements applicable to permitting, and that Virginia may also require a combined application for such emissions units. The permitting requirements for which such combined permits and applications may be required include those of Virginia's NSR regulation for sources locating in nonattainment areas and those of two other Virginia regulations, entitled, ''Permits—New and Modified Sources,'' and ''Permits—Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas.''

Section 120–08–03 D—Applications (Amended)

Virginia modified the applications subsection by revising its specification of the scope of permit applications. Virginia also added provisions defining who must sign permit applications and requiring the signer to certify that ''the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.''

Section 120–08–03 F—Standards/Conditions for Granting Permits (Amended)

Virginia made several changes in the standards and conditions subsection, which establishes the requirements which must be met before a permit can be issued. One major changed requirement pertains to offsets. Virginia now requires that a permit applicant demonstrate that ''By the time the source is to commence operation, sufficient offsetting emissions reductions shall have been obtained * * * such that total allowable emissions of qualifying nonattainment pollutants from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources, as determined in accordance with the requirements of this section, prior to the application for such permit to construct or modify so as to represent (when considered together with any applicable control measures in the State Implementation Plan) reasonable further progress * * *'' The only exception involves areas identified as zones where economic development should be targeted, in which emissions of a pollutant ''resulting from the proposed new or modified stationary source shall not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources in the State Implementation Plan.'' Virginia also added a provision requiring that any emission reductions required as a precondition of the issuance of a NSR permit ''shall be state and federally enforceable before such permit may be issued.'' Virginia also modified its provision requiring applicants to demonstrate, through an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source, that the benefits of the proposed source would significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Section 120–08–03 G—Action on Permit Application (Amended)

Virginia amended this subsection to specify that Virginia must notify applicants in writing of deficiencies in their permit applications. Virginia also (1) deleted certain public participation provisions from this section which it now includes in a separate section of the regulation; and (2) revised its description of permit processing steps by including in the description a reference to public participation requirements found elsewhere in the regulation.

Section 120–08–03 H—Public Participation (Added)

Virginia added a new subsection detailing public participation requirements. This subsection requires the applicant to provide the public with notice of its application for a permit and then, within 30 to 60 days, to provide

a public briefing. In addition, the subsection provides that Virginia must provide a public comment period of at least 30 days, and hold a public hearing, before it makes a decision on a permit application. The Commonwealth's Board has the option of providing a public briefing prior to the public comment period. In all cases, the public must be provided with the opportunity to review relevant information.

Section 120–08–03 I—Compliance Determination and Verification by Performance Testing (Amended, Formerly Designated as Section 120–08–03 H, This Section Replaces the Original Section 120–08–03 I, Which Was Deleted)

Virginia modified this subsection by specifying that source owners are responsible for conducting tests if any such tests are required.

Section 120–08–03 J—Application Review and Analysis (Formerly Designated as Section 120–08–03 K, This Section Replaces the Original Section 120–08–03 J, Which Was Deleted)

Virginia made no changes to this subsection.

Section 120–08–03 K—Circumvention (Formerly Designated as Section 120–08–03 L)

Virginia made no changes to this subsection.

Section 120–08–03 L—Interstate Pollution Abatement (Formerly Designated as Section 120–08–03 M)

Virginia made no changes to this subsection.

Section 120–08–03 M—Offsets (Amended, Formerly Designated as Section 120–08–03 N)

Virginia allows the crediting of emission reductions resulting from shutting down an existing source or curtailing production or operating hours below baseline levels if the shutdown or curtailment is in effect, if it occurred on or after January 1, 1991, and if it is permanent, quantifiable, and federally and state enforceable. Virginia requires that the increased emissions of the air pollutant(s) from the new or modified source must be offset by an equal or greater reduction in the actual emissions of such air pollutant(s) from the same or other sources. In the case of sources emitting ozone precursors (VOC and NO_x), the emission reductions must be greater than the increases by certain specified ratios, which are highest in the areas with the worst designated air quality levels. In most cases the reductions must be obtained from the same source or from other sources in the same nonattainment area. However, Virginia may allow reductions in ozone precursor emissions to be obtained from sources outside the nonattainment area if the other area has an equal or greater nonattainment designation than the area where the source is located and the emissions from the other area contribute to a violation of the ambient air quality standard(s) in the area where the new or modified source is to be located. Virginia allows reductions to be credited only if they are not otherwise required by its regulations. Virginia does allow incidental emission reductions to be credited, provided they are not required by regulation and meet certain other requirements. In this section Virginia also includes a special provision allowing increases in emissions from rocket engine and motor firing to be offset by alternative or innovative means.

Section 120–08–03 N—De Minimis Increases and Stationary Source Modification Alternatives for Ozone Nonattainment Areas Classified as Serious or Severe (Added)

Virginia specifies in this new subsection that VOC emissions increases resulting from modifications at sources in serious or severe ozone nonattainment areas can not be considered de minimis unless the increase in net emissions does not exceed 25 TPY when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.

Section 120–08–03 Q—Reactivation and Permanent Shutdown (Added)

Virginia specifies in this new subsection that a source which is reopened after having been determined to be shutdown must obtain a permit. Virginia also sets forth criteria by which sources are formally determined to be shutdown.

Section 120–08–03 R—Transfer of Permits (Added)

Virginia establishes in this new subsection provisions pertaining to transfer of permits.

Section 120–08–03 S—Permit Invalidation, Revocation, and Enforcement (Added)

Virginia sets forth in this new subsection the conditions under which owners of sources subject to permitting requirements may be subject to enforcement action and when permits may be invalidated or revoked.

Section 120–08–03 T—Existence of Permit No Defense (Added)

Virginia specifies in this new subsection that the existence of a permit under this section shall not constitute a defense to a violation of the Virginia Air Pollution Control Law or these regulations and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

V. EPA Analysis

EPA's has determined that the amendments to Virginia's NSR regulations are consistent with the CAA and currently promulgated federal NSR regulations with one exception. Virginia's NSR regulation allows persons who intend to build or modify a major source in a nonattainment area to take credit for emission reductions obtained from shutdowns or curtailments of production or operating hours which took place prior to the source's application for a new source review permit (prior shutdown or curtailment credits) even if EPA has not approved an attainment plan for the nonattainment area. Current EPA regulations, developed prior to the CAA Amendments of 1990, provide that States having nonattainment areas without EPA approved attainment demonstrations may allow persons intending to build or modify sources located in those areas to take credit for emission reductions resulting from shutdowns or curtailments of production or operating hours only if: (1) The reductions occurred on or after the date the new proposed source or modification files a permit application, or, (2) if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source. See 40 CFR 51.165 (a)(3)(ii)(C)(2). Thus, under current EPA regulations, states are prohibited from crediting emission reductions which occurred prior to the date the new proposed source or modification files a permit application (prior shutdown or curtailment credits) unless EPA has approved an attainment demonstration for the area. It is important to note that Virginia's current SIP regulations do not contain this so-called ''shutdown prohibition.''

Virginia's revised NSR regulation affirmatively allows persons seeking to build new major sources or major modifications to take credit for emission reductions resulting from shutdowns or

curtailments of production or operating hours if those shutdowns or curtailments occurred after January 1, 1991. Because Virginia's regulation allows persons seeking to construct new major sources or major modifications in a nonattainment area for which EPA has not approved an attainment plan to take credit for shutdowns or curtailments which occurred prior to the date they filed their permit application, Virginia's NSR regulation appears not to conform with the existing EPA prohibition on the use of prior shutdown or curtailment credits in nonattainment areas for which EPA has not approved an attainment demonstration. This prohibition is found at 40 CFR 51.165(a)(3)(ii)(C)(2).

However, on July 23, 1996, EPA published in the **Federal Register** a comprehensive rulemaking which proposed significant changes to the current PSD and nonattainment NSR rules. This proposed rulemaking is hereinafter referred to as the ''NSR Reform Rulemaking.'' See 61 FR 38311. The NSR Reform Rulemaking proposes to revise regulations for the approval and promulgation of SIPs and the requirements for preparation, adoption, and submittal of implementation plans governing the NSR programs mandated by Parts C and D of Title I of the CAA. Specifically, Section VII.A of EPA's NSR Reform Rulemaking, entitled ''Emissions Credits Resulting From Source Shutdowns and Curtailments,'' proposes to eliminate the current restrictions on crediting of emissions reductions from source shutdowns and curtailments that occurred after 1990. In the NSR Reform Rulemaking, EPA proposes two different alternatives for eliminating the prior shutdown prohibition. The second of these alternatives, entitled ''Shutdown Alternative 2'', generally lifts the current offset restriction applicable to emissions reductions from source shutdowns and source curtailments for all nonattainment areas and all pollutants where such reductions occur after the base year of the emissions inventory used (or to be used) to meet the applicable provisions of Part D of the CAA. See proposed § 51.165(a)(3)(ii)(C)(5) [Alternative 2], 61 FR 38314. Under this alternative, States could allow pre-application emission reductions from source shutdowns or curtailments to be used as offsets in all nonattainment areas and for all pollutants provided such reductions occurred after the base year of the emissions inventory used by the State to meet the applicable provisions of Part D of the CAA.

As explained above, Virginia's NSR rule allows sources to take credit for emissions reductions from shutdowns or curtailments of production or operating hours which occurred after January 1, 1991. This is consistent with Alternative 2 of EPA's NSR Reform Rulemaking, which credits only those emissions reductions from source shutdowns and curtailments occurring after 1990, i.e., the base year of the emissions inventory used to meet the applicable provisions of Part D of the CAA. Thus, EPA believes that Virginia's NSR regulation is generally consistent with ''Shutdown Alternative 2'' as described in EPA's proposed NSR Reform Rulemaking, because both Virginia's rule and Alternative 2 allow sources to take credit only from emission reductions or curtailments occurring after January 1, 1991.

Because Virginia's NSR regulation is generally consistent with Alternative 2 of EPA's proposed NSR Reform Rulemaking (as discussed above), and because approval of the revised version of Virginia's NSR regulation submitted on November 9, 1992 would strengthen the SIP to be consistent with the CAA's provisions for NSR, EPA believes that Virginia's revised NSR regulation warrants limited approval. If EPA promulgates Alternative 2, this limited approval of Virginia's NSR regulations would convert to a full approval.

The alternative shutdown related provision set forth in EPA's NSR Reform Rulemaking proposal is entitled ''Shutdown Alternative 1.'' This alternative proposes, for ozone nonattainment areas, to lift the current offset restriction applicable to emissions reductions from source shutdowns and curtailments in such areas without EPA-approved attainment demonstrations, provided the emissions reductions occur after November 15, 1990 and the area has kept current with the CAA's scheduled Part D ozone nonattainment planning requirements. See proposed § 51.165(a)(3)(ii)(C)(5) and (6) [Alternative 1].

EPA acknowledges that either Alternative 1 or 2 may be eventually incorporated into the final NSR Reform Rulemaking upon its final promulgation. It is also noted that while EPA is with this rulemaking proposing to grant limited approval of Virginia's NSR regulation based on the rule's consistency with Shutdown Alternative 2 in EPA's NSR Reform rulemaking, the Commonwealth may need to amend its NSR regulation if Shutdown Alternative 1 rather than Shutdown Alternative 2 is promulgated. If Alternative 1 is promulgated, EPA would determine the status of Virginia's conformance with Part D ozone planning requirements for any nonattainment area. If Virginia's SIP were not current with the Part D ozone planning requirements for any nonattainment area, EPA would make a SIP call for Virginia to amend its NSR rule to conform with Alternative 1 as provided in EPA's final NSR Reform Rulemaking.

Virginia's regulation does not state that any emission reductions must also have occurred after the base year of the emissions inventory used (or to be used) to meet the applicable provisions of Part D of the CAA. If an area in Virginia is designated as a new nonattainment area in the future, the baseline year of the inventory used in the attainment demonstration for that area would likely be after the January 1, 1991 baseline year used for areas designated as nonattainment at the time of the 1990 CAA amendments. Because Virginia does not state in its NSR regulation that any emission reductions must also have occurred after the base year of the emissions inventory used (or to be used) to meet the applicable provisions of Part D of the CAA, Virginia would have to modify its NSR rule if, in the future, Virginia is required to do a new attainment demonstration because a new area in Virginia is designated as nonattainment or a current nonattainment area fails to meet its statutory attainment deadline.

After making its NSR submittal to EPA on November 9, 1992, in 1995 Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege law, Va. Code section 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The privilege does not extend to documents or information that are: (1) Generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that

demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On December 29, 1997, the Office of the Attorney General provided a legal opinion that states, with regard to the Privilege law: Virginia's Immunity law, Va. Code section 10.1–1199, provides that *''[t]o the extent consistent with requirements imposed by federal law,''* (emphasis added) any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. Thus, EPA has determined that Virginia's Privilege and Immunity legislation will not preclude the Commonwealth from enforcing its NSR program consistent with the CAA's requirements.

VI. Proposed Action

EPA is proposing limited approval of the revisions to the Virginia SIP NSR regulations submitted on November 9, 1992 because such approval would strengthen the SIP so that it meets the NSR requirements of the CAA as discussed herein. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VII. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove Virginia's NSR SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 9, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 98–7489 Filed 3–20–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5984–2]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete Anaconda Aluminum/Milgo Electronics Site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces its intent to delete the Anaconda Aluminum/Milgo Electronics Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Florida Department of Environmental Protection (FDEP) have determined that the Site poses no significant threat to public health or the environment and therefore, further response measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before: April 22, 1998.

ADDRESSES: Comments may be mailed to: Richard D. Green, Acting Director, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 100 Alabama Street S.W., Atlanta, Georgia 30303–3104.

Comprehensive information on this Site is available through the Region 4 public docket, which is available for viewing at the Anaconda Aluminum/Milgo Electronics Site information