

and Union Bay Reach between Portage Bay and Webster Point on Lake Washington in Seattle, WA. The regulation prohibits persons and vessels from being in the regulated areas unless authorized by the Captain of the Port Puget Sound or a designated representative.

**DATES:** The regulations in 33 CFR 100.1311 will be enforced Saturday, May 6, 2023, from 7 a.m. to 1 p.m.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notification of enforcement, call or email Lieutenant Peter J. McAndrew, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206-217-6045, email [SectorPugetSound@uscg.mil](mailto:SectorPugetSound@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce special local regulations in 33 CFR 100.1311 for the Windermere Cup on May 6, 2023, from 7 a.m. to 1 p.m. This action is necessary to provide for the safety of life on navigable waterways during this one-day event. Our regulation for marine events within the Thirteenth Coast Guard District, § 100.1311(a), specifies the location of the regulated area for the Windermere Cup which encompasses waters from Montlake Cut and Union Bay Reach between Portage Bay and Webster Point on Lake Washington in Seattle, WA. All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port or their designated representative.

The Captain of the Port may be assisted by other federal, state, and local law enforcement agencies in enforcing this regulation.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he will issue a Broadcast Notice to Mariners to terminate this notice of enforcement.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: March 16, 2023.

**P.M. Hilbert,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

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**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2022-0870; FRL-9148-02-R3]

#### Air Plan Approval; Virginia; 1997 8-Hour Ozone National Ambient Air Quality Standards Second Maintenance Plan for the Richmond-Petersburg Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to the Commonwealth's plan, submitted by the Virginia Department of Environmental Quality (VADEQ), for maintaining the 1997 8-hour ozone national ambient air quality standards (NAAQS) (referred to as the "1997 ozone NAAQS") in the Richmond, Virginia Area (Richmond-Petersburg Area). EPA is approving this revision to the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on April 24, 2023.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2022-0870. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, e.g., confidential business information (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 through [www.regulations.gov](http://www.regulations.gov), or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

#### FOR FURTHER INFORMATION CONTACT:

Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2053. Ms. Nichols can also be reached via electronic mail at [Nichols.Serena@epa.gov](mailto:Nichols.Serena@epa.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Background

On January 12, 2023 (88 FR 2050), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Virginia. In the NPRM, EPA proposed approval of Virginia's plan for maintaining the 1997 ozone NAAQS in the Richmond-Petersburg Area through December 31, 2028, in accordance with CAA section 175A. The formal SIP revision was submitted by Virginia on September 21, 2021.

## II. Summary of SIP Revision and EPA Analysis

On June 1st, 2007 (72 FR 30485), EPA approved a redesignation request (and maintenance plan) from VADEQ for the Richmond-Petersburg Area for the 1997 ozone NAAQS. In accordance with CAA section 175A(b), at the end of the eighth year after the effective date of the redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the standard for an additional 10 years, and in *South Coast Air Quality Management District v. EPA*,<sup>1</sup> the District of Columbia (D.C.) Circuit held that this requirement cannot be waived for areas, like the Richmond-Petersburg Area, that had been redesignated to attainment for the 1997 8-hour ozone NAAQS prior to revocation and that were designated attainment for the 2008 ozone NAAQS. CAA section 175A sets forth the criteria for adequate maintenance plans. In addition, EPA has published longstanding guidance that provides further insight on the content of an approvable maintenance plan, explaining that a maintenance plan should address five elements: (1) an attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan.<sup>2</sup> VADEQ's September 21, 2021 submittal fulfills Virginia's obligation to submit a second maintenance plan and addresses each of the five necessary elements, as explained in the NPRM.

As discussed in the January 12, 2023, NPRM, EPA allows the submittal of a limited maintenance plan (LMP) to meet the statutory requirement that the area will maintain for the statutory period. Qualifying areas may meet the maintenance demonstration by showing

<sup>1</sup> 882 F.3d 1138 (D.C. Cir. 2018).

<sup>2</sup> "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni Memo).

that the area's design value<sup>3</sup> is well below the NAAQS and that the historical stability of the area's air quality levels indicates that the area is unlikely to violate the NAAQS in the future. EPA evaluated VADEQ's September 21, 2021 submittal for consistency with all applicable EPA guidance and CAA requirements. EPA found that the submittal met CAA section 175A and all CAA requirements, and proposed approval of the LMP for the Richmond-Petersburg Area as a revision to the Virginia SIP.

Other specific requirements of Virginia's September 21, 2021 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

### III. Final Action

EPA is approving VADEQ's second maintenance plan for the Richmond-Petersburg Area for the 1997 ozone NAAQS as a revision to the Virginia SIP.

### IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.11198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a

voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.11199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

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

CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

### V. Statutory and Executive Order Reviews

#### A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area

<sup>3</sup> The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone nonattainment area is the highest design value of any monitoring site in the area. [www.epa.gov/air-trends/air-quality-design-values](http://www.epa.gov/air-trends/air-quality-design-values).

where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it

is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, approving VADEQ’s second maintenance plan for the Richmond-Petersburg Area for the 1997 ozone NAAQS, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and

recordkeeping requirements, Volatile organic compounds.

**Adam Ortiz,**  
*Regional Administrator, Region III.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart VV—Virginia**

■ 2. In § 52.2420, the table in paragraph (e)(1) is amended by adding the entry “Second Maintenance Plan for the Richmond-Petersburg 1997 8-Hour Ozone Nonattainment Area” at the end of the table to read as follows:

**§ 52.2420 Identification of plan.**

*	*	*	*	*
(e)	*	*	*	
(1)	*	*	*	

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Second Maintenance Plan for the Richmond-Petersburg 1997 8-Hour Ozone Nonattainment Area.	Richmond-Petersburg Area.	09/21/21	3/23/23, [INSERT <b>Federal Register</b> CITATION].	The Richmond-Petersburg area consists of the counties of Charles City, Chesterfield, Hanover, Henrico, and Prince George, and the cities of Colonial Heights, Hopewell, Richmond, and Petersburg.

\* \* \* \* \*  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R05-OAR-2022-0976; FRL-10788-03-R5]

**Air Plan Approval; Michigan; Interim Final Determination To Stay and Defer Sanctions in the Detroit Sulfur Dioxide Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final rule.

**SUMMARY:** In the Proposed Rules section of this **Federal Register**, EPA is proposing conditional approval of Michigan’s State Implementation Plan

(SIP), as revised on December 20, 2022, for attaining the 2010 1-hour primary sulfur dioxide (SO<sub>2</sub>) national ambient air quality standard (NAAQS). Based on that proposed conditional approval, EPA is making an interim final determination (IFD) by this action. Although this action is effective upon publication, EPA will take comment on this interim final determination. **DATES:** This interim final determination is effective on March 23, 2023. However, comments will be accepted until April 24, 2023. **ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2022-0976 at <https://www.regulations.gov>, or via email to [arra.sarah@epa.gov](mailto:arra.sarah@epa.gov). For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of

submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit