

life requirement of this AD with the following provisions:

1. Upon accumulating 1,600 hours time-in-service (TIS), inspect the outboard two lower spar cap bolt holes following Snow Engineering Process Specification PS 197, dated June 4, 2002.

2. Repeat these inspections at intervals of (as applicable):

a. 800 hours TIS (all serial numbers except as noted in b).

b. 600 hours TIS (serial numbers AT502B-0187 through AT502B-0618 that do not have the part number 20998-1/-2 web plate installed).

c. If the outboard two lower spar cap bolt holes have been cold worked following Snow Engineering Service Letter # 233 or #234, both dated May 18, 2004, then you may double (1,600 hours TIS or 1,200 hours TIS, as applicable) the inspection interval (See Note 1—re: mid cycle cold work).

3. If at any time a crack is found, and:

a. If the crack indication goes away by drilling the hole to the next larger size, then you may modify your center splice following Snow Engineering Drawing 20989. After modification, proceed to step 5.

b. If the crack indication does not go away, then you must replace your lower spar caps before further flight.

4. For all serial numbers, upon accumulating 4,000 hours TIS, you must modify your center splice connection following ATI drawing 20989, unless previously done. Prior to the modification perform an eddy-current inspection following PS #197 (See Note 2).

5. Upon accumulating 1,600 hours TIS after modification, inspect the outboard two lower spar cap bolt holes following Snow Engineering Process Specification PS 197.

6. Repeat the inspection at intervals of:

a. 800 hours TIS; or

b. 1,600 hours TIS if the outboard two lower spar cap bolt holes have been cold worked following Snow Engineering Service Letter #233 or #234, both dated May 18, 2004 (See Note 1).

c. If at any time a crack is found, you must replace before further flight your lower spar caps, splice blocks, and wing attach angles and hardware.

7. Upon accumulating 8,000 hours TIS, you must replace before further flight your lower spar caps, splice blocks, and wing attach angles (P/N 20693-1) and associated hardware.

**Note 1:** If you decide to cold work your bolt holes following Snow Engineering Service Letter #233 or #234, both dated May 18, 2002, at a TIS that does not coincide with a scheduled inspection following this AD, then inspect at the time of cold working and then begin the 1,600/1,200 hour TIS inspection intervals.

**Note 2:** If you have modified your airplane prior to accumulating 4,000 hours TIS, then you may continue to fly your airplane past modification + 4,000 hours TIS provided you cut your inspection intervals in half. Upon accumulating 8,000 hours TIS, you must comply with step 7 above. See example:

Example: An AT-502B had the two-part modification installed at 3,000 hours TIS and

the bolt holes have not been cold worked. The first inspection would occur at 4,600 hours TIS, followed by inspections at 5,400, 6,200 and 7,000 hours TIS. This airplane may continue to fly if inspected again at 7,400 and 7,800 hours TIS (this is at 400 hour TIS intervals instead of 800 hours TIS intervals). Upon accumulating 8,000 hours TIS, you must modify the wing following Step 7 above.

8. If you have elected to use repetitive inspections in this AMOC instead of the safe life, you must make a logbook entry as follows:

“Following AD 2002-26-05, at XXXX {insert hours TIS} hours TIS an eddy-current inspection has been performed. As of now, the safe life listed in the AD no longer applies to this airplane. This airplane must be eddy-current inspected at intervals not to exceed {800/600/1,200/1,600 as applicable} hours TIS.”

*For Model AT-502B airplanes, serial number 0643 and all serial numbers beginning with 0655, you may extend your safe life as an alternative to the safe life requirement of AD 2002-26-05, as follows:*

1. Upon accumulating 2,100 hours TIS, perform an eddy-current inspection of the outboard two bolt holes of the lower spar wing center splice following PS #197, dated June 4, 2002.

2. If no cracks are found, then you may fly an additional 1,000 hours TIS.

3. You must replace the lower spar caps before further flight if cracks are found or upon accumulating the additional 1,000 hours TIS, whichever occurs first.

Issued in Kansas City, Missouri, on February 3, 2005.

**Nancy C. Lane,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05-2507 Filed 2-8-05; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 9

[Notice No. 33]

RIN 1513-AA97

### Proposed Establishment of the Niagara Escarpment Viticultural Area (2004R-589P)

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the “Niagara Escarpment” viticultural area in Niagara County, New York. We designate viticultural areas to allow bottlers to better describe the origin of wines and to allow consumers to better

identify the wines they may purchase. We invite comments on this proposed addition to our regulations.

**DATES:** We must receive written comments on or before April 11, 2005.

**ADDRESSES:** You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 33, P.O. Box 14412, Washington, DC 20044-4412.

- 202-927-8525 (facsimile).
- [nprm@ttb.gov](mailto:nprm@ttb.gov) (e-mail).
- <http://www.ttb.gov/alcohol/rules/index.htm>. An online comment form is posted with this notice on our Web site.
- <http://www.regulations.gov>. Federal e-rulemaking portal; follow instructions for submitting comments.

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive about this notice by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call (202) 927-2400. You may also access copies of the notice and comments online at <http://www.ttb.gov/alcohol/rules/index.htm>.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, P.O. Box 18152, Roanoke, VA 24014; telephone (540) 344-9333.

#### SUPPLEMENTARY INFORMATION:

##### Background on Viticultural Areas

##### TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

### Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

### Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, elevation, physical features, and soils, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

### Niagara Escarpment Petition

Michael VonHeckler of Warm Lake Estate Vineyard and Winery petitioned TTB for the establishment of an American viticultural area to be called "Niagara Escarpment" in Niagara County, New York. The proposed area runs in a narrow, 28-mile long band from the Niagara River at Lewiston in the west, through the towns of Lockport and Gasport, to Johnson Creek in the east. According to the petitioner, the proposed area contains about 18,000 acres and has approximately 400 acres of established vineyards.

### Name Evidence

The proposed Niagara Escarpment viticultural area derives its name from the Niagara Escarpment, a limestone ridge that runs for more than 650 miles through the Great Lakes region. The Niagara Escarpment forms a horseshoe that begins near Rochester, New York, continues west through southern Ontario, Lake Huron, and the upper peninsula of Michigan, and ends in eastern Wisconsin. The Niagara Escarpment enters Niagara County in the east near the village of Johnson Creek and then runs west through the middle of the county along State Route 104 to the town of Lewiston. At the county's western end, the escarpment forms the Niagara River Gorge, and, at the head of the gorge, the escarpment forms the cliff over which the Niagara Falls plunge.

To demonstrate that the proposed viticultural area is known locally and nationally as "Niagara Escarpment," the petitioner submitted several excerpts from government and travel Internet sites that discuss the Niagara Escarpment in Niagara County. These included:

- A page on the Institute for Local Governance and Regional Growth Web site that discusses how the Niagara River flows over the Niagara Escarpment creating Niagara Falls. (See <http://www.regional-institute.buffalo.edu/regi/natu>.)
- Vintage New York's Web site states that the prime vineyard sites in western New York are "bordered by the Niagara River on the west, Lake Ontario on the north and the Niagara escarpment on the south." (See <http://www.vintagenewyork.com/regions/erie>.)
- The Niagara Tourism and Convention Corporation's Web site notes that Niagara Landing Wine Cellars, a Niagara County winery, is "located at the base of the Niagara Escarpment." (See <http://www.niagara-usa.com/attractions/niagaralanding>.)
- The Western New York Regional Information Network's Town of Cambria Web site describes the town as an agricultural town "divided in the middle by the Niagara Escarpment." (See [http://www.wnyrin.com/c\\_niag/welc/juri/juri\\_cambt](http://www.wnyrin.com/c_niag/welc/juri/juri_cambt).)

In addition, a July 26, 2004, Toronto Star newspaper article on New York wineries included with the petition discusses the Niagara Escarpment, and notes that:

Ontario wine lovers are keenly aware of the Niagara Escarpment, and "the Bench" creating a special microclimate for grape growing in Niagara. Well, guess what: It comes up in New York State on the other

side of the lake, in Lockport, north of Lewiston.

Although the Niagara Escarpment continues westward from Niagara County for several hundred miles, the petitioner notes that most of its length runs through Canada or the waters of the Great Lakes. The petitioner adds that remaining areas through which the escarpment runs, the upper peninsula of Michigan and eastern Wisconsin, are not known as grape growing areas.

### Boundary Evidence

The geography of the Niagara Escarpment defines the boundary of the proposed viticultural area, according to the petitioner. He states that the steepness of the Niagara Escarpment makes it topographically distinct from the Ontario Plain, which extends from the south shore of Lake Ontario to the escarpment's base, and the Huron Plain, which begins at the escarpment's crest and extends southward past the Niagara County line. Both plains are relatively flat, with slopes of less than 20 feet per mile, according to the "Soil Survey of Niagara County, New York (1972)", a report submitted with the petition.

In contrast, the Niagara Escarpment has a steep slope of 106 to 317 feet per mile. The southern and northern boundaries of the proposed Niagara Escarpment viticultural area encompass the escarpment's north-facing slope between the 600- and 400-foot elevation lines, which, the petitioner states, generally delineate the slope's top and bottom within the proposed viticultural area.

The Niagara River, which forms the international boundary between the United States and Canada, marks the western boundary of the proposed viticultural area. The portion of the Niagara Escarpment that extends west of the Niagara River into the Canadian province of Ontario is included in the Niagara Peninsula viticultural area designated by the Government of Canada.

In the eastern end of Niagara County, a portion of Johnson Creek, south of the village of the same name, forms the eastern boundary of the proposed viticultural area. East of the creek, elevations at the base of the Niagara Escarpment climb from 400 to 500 feet, and its slope becomes much narrower and steeper, according to the petitioner and the "Soil Survey of Niagara County, New York." The petitioner states that these changes in the escarpment's topography make it less desirable for wine grape production east of Johnson Creek, and, for this reason, the petitioner did not include the

escarpment east of Johnson Creek within the proposed viticultural area.

#### *Growing Conditions*

##### Topography and Soils

According to the petitioner, the topography and soils of the proposed area create distinct conditions for grape growing than those in surrounding areas. He notes that the Ontario and Huron Plains are nearly flat with deep soils that can harbor excessive water and nutrients. In contrast, the petitioner notes, the Niagara Escarpment has rather shallow soils with poor nutrient content, and has sufficient slope (2–6%) to allow for drainage. The petitioner states that the conditions found in the proposed area—well drained soils, a steady but moderate water supply, and restricted mineral content—result in superior pigment and flavor compounds in the resultant wine. On the other hand, he states, the conditions of the surrounding areas—poor drainage and high nutrient content—result in less pigmentation, diluted flavors, and lower quality wine.

As evidence of these soil differences, the petitioner cites the “Soil Survey of Niagara County, New York.” The survey states that the central portion of Niagara County, along the escarpment, contains the Hilton-Ovid-Ontario soil association. It describes this association as “deep, well-drained to somewhat poorly drained soil.” In contrast, the survey states that the Ontario Plain north of the escarpment contains the Rhinebeck-Ovid-Madalin association, which it describes as having “deep, somewhat poorly drained to very poorly drained soils.” The Huron Plain south of the escarpment contains the Odessa-Lakemont-Ovid association, which the survey also describes as having “deep, somewhat poorly drained to very poorly drained soils.”

##### Climate

According to the petitioner, the location of the proposed Niagara Escarpment viticultural area in relation to Lake Ontario creates a microclimate conducive to grape growing. He states that the maritime influence of Lake Ontario on the Niagara Escarpment allows for sufficient growing season heat accumulation in what is otherwise a cool climate. The “Soil Survey of Niagara County, New York,” notes that Lake Ontario greatly influences the climate of Niagara County, and it states that “in fall the lake waters are a source of heat that reduces cooling at night and increases the length of [the] freeze-free growing season.”

The climatic relationship between Lake Ontario and the Niagara Escarpment is discussed in greater detail in “Site Selection for Grapes in the Niagara Peninsula,” a publication issued by the Horticultural Research Institute of Ontario to assist grape growers in Canada’s Niagara Peninsula in selecting the best vineyard sites. The petitioner notes that this publication’s climate information can be applied to the proposed viticultural area, which is adjacent to the Niagara Peninsula and shares Lake Ontario and the Niagara Escarpment with it.

According to the site selection publication, a unique airflow pattern affects the land between Lake Ontario and the crest of the escarpment. While the land warms quickly on warm days and cools rapidly on cool nights, the lake’s temperature changes more slowly. Therefore, in the spring the lake’s temperature is cooler than the temperature of the adjacent land, while in the fall it is warmer. In the fall, air rises as it is warmed by the lake, drawing cooler air in from the lakeshore and creating offshore breezes. As a result, the site selection publication states, “the air now above the lake is warmed, rises and flows back over the land, creating a circular heat-pump effect.” In addition, the publication notes, “the pattern airflow is altered by the slope of the land. With steep slopes, cold air drainage is rapid. Flat areas or depressions tend to accumulate cold air and become ‘frost pockets.’” For areas between the lake and the escarpment, this airflow pattern minimizes frost conditions and increases heat accumulation, thereby extending the proposed viticultural area’s growing season, according to the petition. Areas south of the escarpment, the petition notes, do not benefit from this effect and are more prone to frost damage.

On the other hand, the lake’s airflow pattern cools the adjacent land in the spring and early summer. Areas within two miles of the lakeshore can have a two-week delay in bud break due to the cooling effect of the lake. Also, daytime temperatures are often cooler because of the lake’s air currents. The site selection publication notes that “most grape cultivars require a long, warm season and fruit quality is sometimes poor close to the lake because of lower day temperatures.” The proposed viticultural area, however, is between 6 and 8 miles from Lake Ontario. The proposed area therefore experiences little or no delay in bud break or cooler daytime temperatures due to the lake’s influence, according to the petitioner.

In sum, the petitioner states that this climate evidence shows that the

proposed Niagara Escarpment viticultural area has an extended ripening season when compared to grapes grown outside its boundary. In contrast, the petitioner notes that areas north of the escarpment experience cooling spring temperatures that retard growth, while areas south of the escarpment are more prone to fall frost damage.

##### *Boundary Description*

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

##### *Maps*

The petitioner provided the required maps, and we list them below in the proposed regulatory text.

##### **Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine’s true place of origin. If we establish this proposed viticultural area, its name, “Niagara Escarpment,” will be recognized as a name of viticultural significance. Consequently, wine bottlers using “Niagara Escarpment” in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area’s name as an appellation of origin. On the other hand, we do not believe that any single part of the proposed viticultural name standing alone, such as “Niagara,” would have viticultural significance if the new area is established. Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full “Niagara Escarpment” name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new

label. Accordingly, if a new label or a previously approved label uses the name "Niagara Escarpment" for a wine that does not meet the 85 percent standard, the new label will not be approved, and the previously approved label will be subject to revocation, upon the effective date of the approval of the Niagara Escarpment viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

## Public Participation

### Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We are also interested in receiving comments on the sufficiency and accuracy of the name, climatic, boundary and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Niagara Escarpment viticultural area on brand labels that include the words "Niagara Escarpment" as discussed above under Impact on Current Wine Labels, we are particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid any conflicts, for example by adopting a modified or different name for the viticultural area.

Although TTB believes that only the full name "Niagara Escarpment" should be considered to have viticultural significance upon establishment of the proposed new viticultural area, we also invite comments from those who believe that "Niagara" standing alone would have viticultural significance upon establishment of the area. Comments in this regard should include documentation or other information supporting the conclusion that use of "Niagara" on a wine label could cause consumers and vintners to attribute to the wine in question the quality, reputation, or other characteristic of wine made from grapes grown in the proposed Niagara Escarpment viticultural area.

### Submitting Comments

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *Facsimile:* You may submit comments by facsimile transmission to (202) 927-8525. Faxed comments must—

- (1) Be on 8.5 by 11-inch paper;
- (2) Contain a legible, written signature; and
- (3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *E-mail:* You may e-mail comments to [nprm@ttb.gov](mailto:nprm@ttb.gov). Comments transmitted by electronic mail must—

- (1) Contain your e-mail address;
- (2) Reference this notice number on the subject line; and
- (3) Be legible when printed on 8.5 by 11-inch paper.

- *Online form:* We provide a comment form with the online copy of this notice on our Web site at <http://www.ttb.gov/alcohol/rules/index.htm>. Select the "Send comments via e-mail" link under this notice number.

- *Federal e-rulemaking portal:* To submit comments to us via the Federal e-rulemaking portal, visit <http://www.regulations.gov> and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether to hold a public hearing.

### Confidentiality

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

### Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5 x 11-inch page. Contact our

librarian at the above address or by telephone at (202) 927-2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and any comments we receive on this proposal on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online copy of this notice and any posted comments, visit <http://www.ttb.gov/alcohol/rules/index.htm>. Select the "View Comments" link under this notice number to view the posted comments.

## Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

## Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

## Drafting Information

Jennifer Berry of the Regulations and Procedures Division drafted this notice.

## List of Subjects in 27 CFR Part 9

Wine.

## Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

### PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

*Authority:* 27 U.S.C. 205.

2. Amend subpart C by adding § 9. \_\_\_\_\_ to read as follows:

#### Subpart C—Approved American Viticultural Areas

##### § 9. \_\_\_\_\_ Niagara Escarpment.

(a) *Name.* The name of the viticultural area described in this section is

“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](mailto:morris.makeba@epa.gov).