

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:
Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In §52.2020, the table in paragraph (c)(1) is amended by:
 ■ a. Revising entry for Section 121.1.
 ■ b. Adding entry for Section 123.14 after the existing entry for Section 123.13(a) through (c).

The amendments read as follows:

§52.2020 Identification of plan.

* * * * *
 (c) * * *
 (1) * * *

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Title 25—Environmental Protection Article III—Air Resources Chapter 121 General Provisions				
Section 121.1	Definitions	12/18/10	9/20/11 [Insert page number where the document begins].	Added new definitions and terms. The State effective date is 10/2/10.
*	*	*	*	*
Chapter 123—Standard for Contaminants				
*	*	*	*	*
Particulate Matter Emissions				
Section 123.14	Outdoor wood-fired boilers.	10/2/10	9/20/11 [Insert page number where the document begins].	New section.
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 [FR Doc. 2011–24099 Filed 9–19–11; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0475; FRL- 9466–6]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; 2002 Base Year Emission Inventory, Reasonable Further Progress Plan, Contingency Measures, Reasonably Available Control Measures, and Transportation Conformity Budgets for the Washington, DC 1997 8-Hour Moderate Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the District of Columbia, the State of Maryland, and the Commonwealth of Virginia (the States). These revisions pertain to the 2002 base year emissions inventory, the reasonable further progress (RFP) plan, RFP contingency measure, and reasonably

available control measure (RACM) requirements of the Clean Air Act (CAA) for the Washington, DC–MD–VA moderate 1997 8-hour ozone nonattainment area (the Washington Area). EPA is also approving the 2008 transportation conformity motor vehicle emissions budgets (MVEBs) associated with this revision. EPA is approving the SIP revisions because they satisfy the emission inventory, RFP, RACM, RFP contingency measures, and transportation conformity requirements for areas classified as moderate nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS) and demonstrate further progress in reducing ozone precursors. This action is being taken under the CAA.

DATES: *Effective Date:* This final rule is effective on October 20, 2011.
ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0475. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, 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 either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia, Department of the Environment, Air Quality Division, 1200 1st Street, NE., 5th floor, Washington, DC 20002; the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by e-mail at pino.maria@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 30, 2011 (76 FR 38334), EPA published a notice of proposed rulemaking (NPR) for the District of Columbia, the State of Maryland, and the Commonwealth of Virginia. The NPR proposed approval of the 2002 base year emissions inventory, the RFP plan, RFP contingency measure, and RACM analysis for the Washington, DC–MD–VA moderate 1997 8-hour ozone

nonattainment area. These SIP elements were part of the “Plan to Improve Air Quality in the Washington, DC–MD–VA Region, State Implementation Plan (SIP) for 8–Hour Ozone Standard, Moderate Area SIP” (the Washington Area 8-hour ozone plan), which the District of Columbia Department of the Environment (DDOE), the Maryland Department of the Environment (MDE), and the Virginia Department of Environmental Quality (VADEQ) developed jointly. The Washington Area 8-hour ozone plan was formally submitted to EPA as a SIP revision by DDOE on June 12, 2007, by MDE on June 4, 2007, and by VADEQ on June 12, 2007. The NPR also proposed approval of the transportation conformity 2008 MVEBs associated with this revision.

II. Summary of SIP Revision

The SIP revision addresses emissions inventory, RACM, RFP, and RFP contingency measures requirements for the 1997 8-hour ozone NAAQS for the Washington, DC–MD–VA 1997 8-hour moderate ozone nonattainment area. The SIP revision also establishes MVEBs for 2008. Other specific requirements of the Washington Area 8-hour ozone plan and the rationale for EPA’s proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. 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. 10.1–1198, 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 Law does not extend to documents or information (1) That are 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 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. 10.1–1199, 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.

III. Final Action

EPA is approving the 2002 base year emissions inventory; the 2008 ozone projected emission inventory; the 2008 RFP plan; RFP contingency measures; RACM analysis; and 2008 transportation conformity budgets for the Washington, DC–MD–VA 1997 8-hour moderate ozone nonattainment area, and the Washington Area 8-hour ozone plan, which were submitted to EPA as a SIP revision by DDOE on June 12, 2007, by MDE on June 4, 2007, and by VADEQ on June 12, 2007. The SIP revision satisfies the requirements for 1997 8-hour ozone NAAQS nonattainment areas classified as moderate and demonstrates further progress in reducing ozone precursors.

IV. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 November 21, 2011. 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, pertaining to the 2002 base year emissions inventory, the 2008 ozone projected emission inventory, the 2008 RFP plan; RFP contingency measures, RACM analysis, and 2008 transportation conformity budgets for the Washington, DC–MD–VA 1997 8-hour moderate ozone nonattainment area, 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.

Dated: August 31, 2011.

W.C. Early,

Acting, Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (e) is amended by adding at the end of the table, the entries for Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures and Contingency Measures; 2002 Base Year Inventory for VOC, NO_x and CO; and 2008 RFP Transportation Conformity Budgets for the Washington DC–MD–VA 1997 8-hour Ozone Moderate Nonattainment Area. The amendments read as follows:

§ 52.470 Identification of plan.

* * * * *
(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures, and Contingency Measures.	* Washington DC–MD–VA 1997 8-hour ozone moderate nonattainment area.	* 6/12/07	* 9/20/11 [Insert page number where the document begins].	*
* 2002 Base Year Inventory for VOC, NO _x , and CO.	* Washington DC–MD–VA 1997 8-hour ozone moderate nonattainment area.	* 6/12/07	* 9/20/11 [Insert page number where the document begins].	*
* 2008 RFP Transportation Conformity Budgets.	* Washington DC–MD–VA 1997 8-hour ozone moderate nonattainment area.	* 6/12/07	* 9/20/11 [Insert page number where the document begins].	*

■ 3. Section 52.474 is amended by revising the section heading and by adding paragraph (d) to read as follows:

§ 52.474 Base Year Emissions Inventory.

* * * * *

(d) EPA approves as a revision to the District of Columbia State Implementation Plan the 2002 base year emissions inventories for the Washington DC–MD–VA 1997 8-hour ozone moderate nonattainment area submitted by the Acting Director of the District of Columbia Department of the

Environment on June 12, 2007. This submittal consists of the 2002 base year point, area, non-road mobile, and on-road mobile source inventories in area for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxides (NO_x).

■ 4. Section 52.476 is amended by adding paragraphs (e) and (f) to read as follows:

§ 52.476 Control strategy: ozone.

* * * * *

(e) EPA approves revisions to the District of Columbia State Implementation Plan consisting of the 2008 reasonable further progress (RFP) plan, reasonably available control measures, and contingency measures for the Washington DC–MD–VA 1997 8-hour ozone moderate nonattainment area submitted by the Acting Director of the District of Columbia Department of the Environment on June 12, 2007.

(f) EPA approves the following 2008 RFP motor vehicle emissions budgets (MVEBs) for the Washington, DC–MD–

VA 1997 8-hour ozone moderate nonattainment area submitted by the Director of the Virginia Department of Environment Quality on June 12, 2007:

TRANSPORTATION CONFORMITY EMISSIONS BUDGETS FOR THE WASHINGTON, DC-MD-VA AREA

Type of control strategy SIP	Year	VOC (TPD)	NO _x (TPD)	Effective date of adequacy determination or SIP approval
Rate of Progress Plan	2008	70.8	159.8	September 21, 2009 (74 FR 45853), published September 4, 2009.

Subpart V—Maryland

■ 5. In § 52.1070, the table in paragraph (e) is amended by adding at the end of the table, the entries for Reasonable Further Progress Plan (RFP), Reasonably

Available Control Measures and Contingency Measures; 2002 Base Year Inventory for VOC, NO_x and CO; and 2008 RFP Transportation Conformity Budgets for the Washington DC–MD–VA 1997 8-hour Ozone Moderate

Nonattainment Area. The amendments read as follows:

§ 52.1070 Identification of plan.
* * * * *
(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures, and Contingency Measures.	Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11 [Insert page number where the document begins].	
2002 Base Year Inventory for VOC, NO _x , and CO.	Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11 [Insert page number where the document begins].	
2008 RFP Transportation Conformity Budgets.	Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11 [Insert page number where the document begins].	

■ 6. Section 52.1075 is amended by adding paragraph (k) to read as follows:

§ 52.1075 Base Year Emissions Inventory.
* * * * *

(k) EPA approves as a revision to the Maryland State Implementation Plan the 2002 base year emissions inventories for the Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Secretary of the Maryland Department of the Environment on June 4, 2007. This submittal consists of the 2002 base year point, area, non-road mobile, and on-

road mobile source inventories in area for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxides (NO_x).

■ 7. Section 52.1076 is amended by adding paragraphs (u) and (v) to read as follows:

§ 52.1076 Control strategy plans for attainment and rate-of-progress: Ozone.
* * * * *

(u) EPA approves revisions to the Maryland State Implementation Plan consisting of the 2008 reasonable further

progress (RFP) plan, reasonably available control measures, and contingency measures for the Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Secretary of the Maryland Department of the Environment on June 4, 2007.

(v) EPA approves the following 2008 RFP motor vehicle emissions budgets (MVEBs) for the Washington, DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Director of the Virginia Department of Environment Quality on June 12, 2007:

TRANSPORTATION CONFORMITY EMISSIONS BUDGETS FOR THE WASHINGTON, DC-MD-VA AREA

Type of control strategy SIP	Year	VOC (TPD)	NO _x (TPD)	Effective date of adequacy determination or SIP approval
Rate of Progress Plan	2008	70.8	159.8	September 21, 2009 (74 FR 45853), published September 4, 2009.

Subpart VV—Virginia

■ 8. In § 52.2420, the table in paragraph (e) is amended by adding at the end of the table, the entries for Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures and

Contingency Measures; 2002 Base Year Inventory for VOC, NO_x and CO; and 2008 RFP Transportation Conformity Budgets for the Washington DC-MD-VA 1997 8-hour Ozone Moderate Nonattainment Area. The amendments read as follows:

§ 52.2420 Identification of plan.
* * * * *
(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures, and Contingency Measures.	Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11 [Insert page number where the document begins].	
2002 Base Year Inventory for VOC, NOx, and CO.	Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11 [Insert page number where the document begins].	
2008 RFP Transportation Conformity Budgets.	Washington DC-MD-VA 1997 8-hour ozone moderate nonattainment area.	6/12/07	9/20/11 [Insert page number where the document begins].	

■ 9. Section 52.2425 is amended by revising the section heading and by adding paragraph (e) to read as follows:

§ 52.2425 Base Year Emissions Inventory.

(e) EPA approves as a revision to the Virginia State Implementation Plan the 2002 base year emissions inventories for the Washington, DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Director of the Virginia Department of Environment Quality on June 12, 2007. This submittal consists of the 2002 base year point,

area, non-road mobile, and on-road mobile source inventories in area for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxides (NO_x).

■ 10. Section 52.2428 is amended by adding paragraphs (f) and (g) to read as follows:

§ 52.2428 Control Strategy: Carbon monoxide and ozone.

(f) EPA approves revisions to the Virginia State Implementation Plan consisting of the 2008 reasonable further

progress (RFP) plan, reasonably available control measures, and contingency measures for the Washington, DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Director of the Virginia Department of Environment Quality on June 12, 2007.

(g) EPA approves the following 2008 RFP motor vehicle emissions budgets (MVEBs) for the Washington, DC-MD-VA 1997 8-hour ozone moderate nonattainment area submitted by the Director of the Virginia Department of Environment Quality on June 12, 2007:

TRANSPORTATION CONFORMITY EMISSIONS BUDGETS FOR THE WASHINGTON, DC-MD-VA AREA

Type of control strategy SIP	Year	VOC (TPD)	NO _x (TPD)	Effective date of adequacy determination or SIP approval
Rate of Progress Plan	2008	70.8	159.8	September 21, 2009 (74 FR 45853), published September 4, 2009.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2010-0770; FRL-9466-5]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Requirements for Preconstruction Review, Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. The revision establishes and requires the addition of nitrogen oxides (NO_x) as a precursor to ozone in the Delaware SIP. EPA is approving this revision to

include NO_x as a precursor to ozone in the requirements for preconstruction review for prevention of significant deterioration (PSD) areas in Delaware in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on October 20, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2010-0770. All documents in the docket are listed in the <http://www.regulations.gov> website. Although listed in the electronic docket, some information is not publicly available, *i.e.*, 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 either electronically through <http://www.regulations.gov> or in hard copy for public inspection during

normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Sharon McCauley, (215) 814-3376, or by e-mail at mccauley.sharon@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On May 9, 2011 (76 FR 26679), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of NO_x as a precursor to ozone in the requirements for preconstruction review for PSD areas in Delaware. The formal SIP revision was submitted by Delaware on April 1, 2010.