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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[RME Docket Number; R03-OAR-2005-DC-0001, R03-OAR-2005-MD-0001, R03-OAR-2005-PA-0010; FRL-7894-4]****Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia and Pennsylvania; Revised Carbon Monoxide Maintenance Plans for Washington Metropolitan, Baltimore and Philadelphia Areas****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the District of Columbia, the State of Maryland, the Commonwealth of Virginia, and the Commonwealth of Pennsylvania that provide revised carbon monoxide (CO) maintenance plans and transportation conformity budgets for the Washington Metropolitan area, the Baltimore area, and the Philadelphia area. These plans provide for continued maintenance of the National Ambient Air Quality Standard (NAAQS) for CO. For the Washington Metropolitan area, the District of Columbia formally submitted its maintenance plan revision on March 9, 2004; the Maryland Department of the Environment formally submitted its revision on March 3, 2004, and the Commonwealth of Virginia submitted its revision on March 22, 2004. The Maryland Department of the Environment formally submitted its revision for the Baltimore area on July 15, 2004, previously having submitted a parallel processing request of the same name on December 18, 2003. The Pennsylvania Department of Environmental Protection formally submitted its revision for the Philadelphia area on September 3, 2004. In this action, EPA is approving the revised maintenance plans and revised transportation conformity budgets for each respective CO maintenance area. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** This rule is effective on June 3, 2005 without further notice, unless EPA receives adverse written comment by May 4, 2005. If EPA receives such comments, it will publish a timely

withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2005-DC-0001 for the Washington Metropolitan area plan, R03-OAR-2005-MD-0001 for the Baltimore area plan, and/or R03-OAR-2005-PA-0010 for the Philadelphia area plan by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. \*COM028\* Follow the on-line instructions for submitting comments.

B. Agency Web site: <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).

D. Mail: R03-OAR-2005-DC-0001, R03-OAR-2005-MD-0001, and/or R03-OAR-2005-PA-0010 Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to RME ID No. R03-OAR-2005-DC-0001, R03-OAR-2005-MD-0001, and/or R03-OAR-2005-PA-0010. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://www.regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://www.regulations.gov) Web sites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit

an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, 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 in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of material to be incorporated by reference are available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW, Room B108, Washington, DC 20460. Copies of the respective State submittals are available at: District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219; Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104.

**FOR FURTHER INFORMATION CONTACT:** Catherine L. Magliocchetti, (215) 814-2174, or by e-mail at [magliocchetti.catherine@epa.gov](mailto:magliocchetti.catherine@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us," and "our" refer to EPA. This supplementary information is organized as follows.

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**I. EPA Analysis of the Washington Metropolitan Carbon Monoxide Maintenance/Attainment Area Using Limited Maintenance Area Criteria**

**A. Statutory Requirements and Previous Redesignation of the Area to Attainment**

The Federal Clean Air Act, 42 U.S.C. 7401 *et seq.*, as amended by the Clean Air Act Amendments of 1990 (CAAA), requires all areas of the nation to attain and maintain compliance with the national ambient air quality standards (NAAQS), including the 8-hour carbon monoxide (CO) standard.

In accordance with CAAA section 175A(a), the District of Columbia, the State of Maryland and the Commonwealth of Virginia submitted a CO maintenance plan for the Washington Metropolitan area in 1995, covering the period 1996–2007. EPA approved that maintenance plan, effective March 16, 1996 (61 FR 2931, 1/30/96). In accordance with section 175A(b), the region is required to submit a revised maintenance plan within eight years of its redesignation as an attainment area. The revised maintenance plan must provide for maintenance of the carbon monoxide standard for an additional ten years. This maintenance plan is submitted to fulfill that requirement, and provides for continued attainment of the CO standard in the Washington Metropolitan attainment area through March 16, 2016. Emissions projections

to the year 2016, from this maintenance plan, are consistent with ambient CO levels below the NAAQS.

The maintenance plan approved in 1996 established a motor vehicle emissions budget of 1671.5 tons per day (tpd) of CO, apportioned among the three jurisdiction as follows: 369.3tpd for the District of Columbia, 1045.2 tpd for Maryland and 257.0 tpd for Virginia. The revised maintenance plan does not change the CO emissions budget for conformity purposes, as is discussed below.

**B. Maintenance Plan Review—Subsequent Maintenance Plan Revisions**

The Clean Air Act requires the State to submit a revision of the SIP 8 years after the original redesignation request is approved to provide for maintenance of the NAAQS for an additional 10 years following the first 10-year period [see section 175A(b)].

In addition, the maintenance plan shall contain such contingency measures as the Administrator deems necessary to ensure prompt correction of any violation of the NAAQS [see section 175A(d)]. Failure to maintain the NAAQS and triggering of the contingency plan will not necessitate a revision of the SIP unless required by the Administrator, as stated in section 175A(d). Under the limited maintenance plan option, the following criteria must be met by the state:

i. *Attainment Inventory*—EPA guidance recommends that the CO attainment inventory be based upon actual “typical CO season day” emissions for the attainment year. This generally corresponds to one of the periodic inventories required for nonattainment areas.

The maintenance plan for the first 10-year maintenance period contained a base-year inventory of 1990. The anticipated change in emissions levels from the attainment year was used to estimate the future air quality levels. The analysis for the Washington Metropolitan area in this second 10-year maintenance plan documents a revised base-year inventory. Use of a revised 1990 base-year inventory for this purpose is acceptable, since the area was monitoring attainment during this time period. The base-year inventory is based upon actual “typical CO season days.” As part of the revised maintenance plan, the revised base-year emissions inventory will be updated and approved as part of this rulemaking for maintenance plan purposes.

Conformity budgets will remain at the original level, as discussed below, and per the request of each jurisdiction.

ii. *Maintenance Demonstration*—This maintenance demonstration for CO calculates future emissions of the pollutant out to the year 2016, and projects that the level of emissions will not exceed the level emitted in the attainment inventory. Since the Washington DC–MD–VA CO nonattainment area was classified as a moderate CO area, with a design value less than 12.7 ppm, the areas were not required to do further modeling to demonstrate attainment of the CO standard. The use of 2016 as the projected year allows ample time for EPA to process the request. The maintenance plan assumed the following emission control programs, which are or will be permanent and enforceable measures: Enhanced Vehicle Emissions I/M programs in each jurisdiction, Reformulated Gasoline (on-road), Federal Tailpipe Standards and Regulations (including on-road and off-road sources and small engines), and reductions in stationary sources from implementation of BACT (Best Available Control Technology), and other combustion improvements.

iii. *Monitoring Network*—The monitoring data is quality assured in accordance with 40 CFR 58, and EPA has repeatedly verified the integrity of the Washington DC–MD–VA area's air monitoring network. In addition, EPA approved the site selection of each CO monitor, and EPA agrees that the air monitoring network serves as a reliable indicator of ambient concentrations of air pollutants.

iv. *Verification of Continued Attainment*—CO inventories will be included as part of the Consolidated Emission Reporting Rule (CERR) during the maintenance period to ensure that the Washington Metropolitan attainment area remains in compliance with the CO NAAQS. The Metropolitan Washington region has remained in attainment for the federal 8-hour standard for carbon monoxide since its redesignation in 1996. Monitor data for the nonattainment area continue to show downward trends in the ambient levels of CO. Current and projected inventories also remain below the attainment inventory.

v. *Contingency Plan*—Each of the three jurisdictions continues to designate the oxygenated fuel program as a contingency measure for the region's maintenance plan. The states propose to re-implement the oxygenated fuels program if a monitor in the network were to detect two exceedances in one calendar year. Implementation of an oxygenated fuels program would increase the percentage oxygenate requirement to 2.7% from the 2.0%

currently mandated under the region's reformulated gasoline program.

### *C. Impact of This Revised Maintenance Plan on Conformity and the Mobile Emissions Budget*

Under 40 CFR Parts 51 and 93, as part of the SIP process, the three jurisdictions, in consultation with the Transportation Planning Board, establish a mobile source emissions budget, under the interagency consultation process, to be used for transportation conformity purposes. The motor vehicle emissions budget establishes a cap on emissions, which cannot be exceeded by predicted highway and transit vehicle emissions.

Since mobile source estimates were updated during the development of this SIP revision, using updated planning assumptions and the MOBILE6 model, a revised estimate of the 1990 attainment year inventory has been calculated. This revised estimate of 2589.5 tpd for the area is higher than the estimate of 1671.5 tpd included in the 1995 plan as the attainment year inventory. Despite the revised inventory, the emissions budget will remain at 1671.5 tpd (which is equal to 90% of the 1990 attainment year inventory, as projected in the 1995 plan). The CO budget for the Washington DC-MD-VA maintenance area is ascribed as follows: 369.3 tpd for the District of Columbia, 1045.1 tpd for the Maryland area, and 257.0 tpd for the Virginia area, totaling 1671.5 tpd for the entire maintenance area, which remains acceptable to EPA.

### *D. Special Section Addressing Virginia Law*

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 section 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 Clean Air Act, 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 Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

## **II. EPA Analysis of the Baltimore Carbon Monoxide Maintenance/Attainment Area Using Limited Maintenance Area Criteria**

### *A. Statutory Requirements and Previous Redesignation of the Area to Attainment*

The Federal Clean Air Act, 42 U.S.C. 7401 *et seq.*, as amended by the Clean Air Act Amendments of 1990 (CAAA), requires all areas of the nation to attain and maintain compliance with the national ambient air quality standards (NAAQS), including the 8-hour carbon monoxide (CO) standard.

In accordance with CAAA section 175A(a), the State of Maryland submitted a CO maintenance plan for the Baltimore area in 1995, covering the period 1995-2007. EPA approved that maintenance plan effective December 15, 1995 (60 FR 55325, 10/31/95). In accordance with section 175A(b), the region is required to submit a revised maintenance plan within eight years of its redesignation as an attainment area. This maintenance plan is submitted to fulfill that requirement, and provides for continued attainment of the CO standard in the Baltimore attainment area through 2015. Emissions projections to the year 2015, from this maintenance plan, are consistent with ambient CO levels below the NAAQS.

The maintenance plan that became effective in 1996 established a motor vehicle emissions budget of 1689.8 tons per day of CO. The revised maintenance plan does not change the CO emissions budget for conformity purposes, as is discussed below.

### *B. Maintenance Plan Review—Subsequent Maintenance Plan Revisions*

The Clean Air Act requires the State to submit a revision of the SIP 8 years after the original redesignation request is approved to provide for maintenance of the NAAQS for an additional 10 years following the first 10-year period [see section 175A(b)].

In addition, the maintenance plan shall contain such contingency measures as the Administrator deems necessary to ensure prompt correction of any violation of the NAAQS [see section 175A(d)]. Failure to maintain the NAAQS and triggering of the contingency plan will not necessitate a revision of the SIP unless required by

the Administrator, as stated in section 175A(d). Under the limited maintenance plan option, the following criteria must be met by the state:

i. *Attainment Inventory*—EPA guidance recommends that the CO attainment inventory be based upon actual “typical CO season day” emissions for the attainment year. This generally corresponds to one of the periodic inventories required for nonattainment areas. The maintenance plan for the first 10-year maintenance period contained a base-year inventory of 1990. The anticipated change in emissions levels from the attainment year was used to estimate the future air quality levels. Maryland’s analysis for Baltimore in this second 10-year maintenance plan documents a revised base-year inventory. Maryland’s use of a revised 1990 base-year inventory for this purpose is acceptable, since the area was monitoring attainment during this time period. Maryland’s base-year inventory for Baltimore is based upon actual “typical CO season days.” As part of the revised maintenance plan, the revised base-year emissions inventory will be updated and approved as part of this rulemaking for maintenance plan purposes.

ii. *Maintenance Demonstration*—Maryland’s maintenance demonstration for the Baltimore area for CO calculates future emissions of the pollutant out to the year 2015, and projects that the level of emissions will not exceed the level emitted in the attainment inventory. Since the Baltimore CO nonattainment area was classified as a moderate CO area, with a design value less than 12.7 ppm, the state was not required to do further modeling to demonstrate attainment of the CO standard. Maryland’s use of 2015 as the projected year allows ample time for EPA to process the request. Maryland’s maintenance plan for Baltimore assumed the following emission control programs, which are or will be permanent and enforceable measures: FMVCP (Federal Motor Vehicle Control Program), the 1992 Reid Vapor Pressure Programs, Tier I and Tier II controls, Evaporative Emission Control Program, Federal Reformulated Gasoline Program Phase I and Phase II, Enhanced Inspection and Maintenance, Low Emission Vehicles, and On-Board Controls.

iii. *Monitoring Network*—The monitoring data is quality assured in accordance with 40 CFR 58, and EPA has repeatedly verified the integrity of Maryland’s air monitoring network. In addition, EPA approved the site selection of each CO monitor, and EPA agrees that the air monitoring network

serves as a reliable indicator of ambient concentrations of air pollutants.

iv. *Verification of Continued Attainment*—Maryland will periodically conduct a comprehensive review of the factors that were used to develop the attainment inventory and project the CO emissions levels for 2015. If there are significant differences between the actual and projected growth, then Maryland has committed to creating updated emissions inventories to compare with the projections.

v. *Contingency Plan*—Through COMAR 03.03.06, Maryland adopted the oxygenated fuel program as a contingency measure. If a monitor in the Central Business District experiences a violation of the CO standard—two exceedances of the standard within one year, then the oxygenated fuel program will automatically resume the following CO season.

### C. Impact of This Revised Maintenance Plan on Conformity and the Mobile Emissions Budget

Under 40 CFR Parts 51 and 93, as part of the SIP process, Maryland establishes an emissions budget, under the interagency consultation process, to be used for transportation conformity purposes. The motor vehicle emissions budget establishes a cap on emissions, which cannot be exceeded by predicted highway and transit vehicle emissions.

Since mobile source estimates were updated during the development of this SIP revision, using updated planning assumptions and the MOBILE6 model, Maryland now estimates that 2452.1 tons of CO per day were emitted in 1990 from on-road mobile sources, when the original attainment budget was established. This differs with the redesignation request and maintenance plan submitted in 1995, which estimated 1789.80 tons of CO per day, and which led to setting the conformity budget at 1689.9 tons per day (the base year emissions level minus a cushion of 100 tons per day.) For conformity purposes, Maryland has stated in this revised maintenance plan that it will retain the mobile budget of 1689.8 tons per day of CO, which remains acceptable to EPA.

### III. EPA Analysis of the Philadelphia Carbon Monoxide Maintenance/Attainment Area Using Limited Maintenance Plan Criteria

#### A. Statutory Requirements and Previous Redesignation of the Area to Attainment

The Federal Clean Air Act, 42 U.S.C. 7401 et seq., as amended by the Clean Air Act Amendments of 1990 (CAAA), requires all areas of the nation to attain

and maintain compliance with the national ambient air quality standards (NAAQS), including the 8-hour carbon monoxide (CO) standard.

In accordance with CAAA section 175A(a), the Commonwealth of Pennsylvania submitted a CO maintenance plan in 1995, covering the period 1997–2007. EPA approved this maintenance plan effective March 15, 1996 (61 FR 2926, 1/30/96). In accordance with section 175A(b), the region is required to submit a revised maintenance plan within eight years of its redesignation as an attainment area. The revised maintenance plan must provide for maintenance of the carbon monoxide standard for an additional ten years. This maintenance plan is submitted to fulfill that requirement, and provides for continued attainment of the CO standard in the Philadelphia attainment area through 2017. Emissions projections to the year 2017, from this maintenance plan, are consistent with ambient CO levels below the NAAQS.

The maintenance plan that became effective in 1996 established a motor vehicle emissions budget of 334.33 tons per day of CO, which is revised in this action as discussed below.

#### B. Maintenance Plan Review—Subsequent Maintenance Plan Revisions

The Clean Air Act requires the State to submit a revision of the SIP 8 years after the original redesignation request is approved to provide for maintenance of the NAAQS for an additional 10 years following the first 10-year period [see section 175(b)].

In addition, the maintenance plan shall contain such contingency measures as the Administrator deems necessary to ensure prompt correction of any violation of the NAAQS [see section 175A(d)]. Failure to maintain the NAAQS and triggering of the contingency plan will not necessitate a revision of the SIP unless required by the Administrator, as stated in section 175A(d). Under the limited maintenance plan option, the following criteria must be met by the state:

i. *Attainment Inventory*—EPA guidance recommends that the CO attainment inventory be based upon actual “typical CO season day” emissions for the attainment year. This generally corresponds to one of the periodic inventories required for nonattainment areas. The maintenance plan for the first 10-year maintenance period contained a base-year inventory of 1990. The anticipated change in emissions levels from the attainment year was used to estimate the future air quality levels. Pennsylvania’s analysis

in this second 10-year maintenance plan documents a base-year inventory of 2002. The 2002 emission inventory was selected because it is current and representative of the emissions in Philadelphia County during the period air quality data has shown maintenance of the CO NAAQS. The inventory contains emission estimates of point, area, highway and nonroad sources of CO in Philadelphia County for the year, and for a typical CO season workday. The CO season is defined as the months of December, January and February. The 2002 inventory will be used to project point and area emissions to future years.

As part of the revised maintenance plan, the revised attainment year emissions inventory will be updated and approved as part of this rulemaking for maintenance plan purposes. Conformity budgets will be amended, as discussed below.

ii. *Maintenance Demonstration*—Pennsylvania's maintenance demonstration for CO calculates future emissions of the pollutant out to the year 2017, and projects that the level of emissions will not exceed the level emitted in the attainment inventory. Since the Philadelphia CO nonattainment area was classified as a moderate CO area, with a design value less than 12.7 ppm, the Commonwealth was not required to do further modeling to demonstrate attainment of the CO standard. Philadelphia's use of 2017 as the projected year allows ample time for EPA to process the request.

Pennsylvania's maintenance plan assumed the following emission control programs, which are or will be permanent and enforceable measures: FMVCP (Federal Motor Vehicle Control Program), reformulated gasoline, and the state inspection and maintenance (I/M) program. The impact of these programs provides for emission to remain well below those that brought about the attainment of the NAAQS for the area.

iii. *Monitoring Network*—The monitoring data is quality assured in accordance with 40 CFR 58, and EPA has repeatedly verified the integrity of the Philadelphia area's air monitoring network. In addition, EPA approved the site selection of each CO monitor, and EPA agrees that the air monitoring network serves as a reliable indicator of ambient concentrations of air pollutants.

iv. *Verification of Continued Attainment*—Pennsylvania will continue to operate an air quality monitoring network, and the Department has committed to investigate should ambient levels of CO rise and threaten to exceed the NAAQS.

v. *Contingency Plan*—The Commonwealth has revised its existing oxygenated fuel program rule, at Chapter 126.1 of Title 25 of the Pennsylvania Code, to permit the use of oxygenated fuel as a contingency measure in the Philadelphia region, if required. If triggered, implementation would commence at the beginning of the following control season. The trigger for such a measure would be a measured violation of the NAAQS for CO.

#### C. *Impact of This Revised Maintenance Plan on Conformity and the Mobile Emissions Budget*

Under 40 CFR Parts 51 and 93, as part of the SIP process, Pennsylvania establishes an emissions budget, under the interagency consultation process, to be used for transportation conformity purposes. The motor vehicle emissions budget establishes a cap on emissions, which cannot be exceeded by predicted highway and transit vehicle emissions.

As part of the SIP revision, Pennsylvania has submitted new transportation conformity budgets that will supercede the previous allowances. Highway CO emissions will now be capped for conformity purposes as follows: 331.25 tpd in 2007, 278.23 tpd in 2013, and 260.97 tpd in 2017.

#### IV. Final Action

In this action, EPA is approving the revised CO maintenance plans for the Washington Metropolitan area, submitted by District of Columbia on March 9, 2004; the Maryland Department of the Environment on March 3, 2004, and the Commonwealth of Virginia on March 22, 2004; for the Baltimore area, submitted by the Maryland Department of the Environment on July 15, 2004, previously having submitted a parallel processing request of the same name on December 18, 2003; and for the Philadelphia area, submitted by the Pennsylvania Department of Environmental Protection on September 3, 2004. We are also approving the revised transportation conformity motor vehicle emission budgets for CO for each respective area.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and we anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective June 3, 2005 without further notice unless the Agency receives adverse comments by May 4,

2005. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### V. Statutory and Executive Order Reviews

##### A. *General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*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 rule 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**. This rule 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 3, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving State Implementation Plan (SIP) revisions to the carbon monoxide (CO) maintenance plans and transportation conformity budgets for the Washington Metropolitan area, the Baltimore area, and the Philadelphia 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, Carbon monoxide, Intergovernmental relations.

Dated: March 18, 2005.

**Donald S. Welsh**,  
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 section 52.470, the table in paragraph (e) is amended by revising the existing entry for Carbon Monoxide Maintenance Plan to read as follows:

**§ 52.470 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

Name of nonregulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
* * * Carbon Monoxide Maintenance Plan.	* * * Washington, DC .....	* * * 10/12/95 3/9/04	* * * 1/30/96, 61 FR 2931 .....	* * * 52.515(c)(36) Revised Carbon Monoxide Maintenance Plan Base Year Emissions Inventory using MOBILE6.

**Subpart V—Maryland**

■ 3. In Section 52.1070, the table in paragraph (e) is amended by revising the

two existing entries for Carbon Monoxide Maintenance Plan to 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
* * * Carbon Monoxide Maintenance Plan.	* * * City of Baltimore-Regional Planning District 118.	* * * 9/20/95 7/15/04	* * * 10/31/95, 60 FR 55321 .....	* * * 52.1100(c)(117) Revised Carbon Monoxide Maintenance Plan Base Year Emissions Inventory using MOBILE6.
* * * Carbon Monoxide Maintenance Plan.	* * * Montgomery County Election Districts 4, 7, and 13; Prince Georges County Election Districts 2, 6, 16, 17 and 18.	* * * 10/12/95 3/3/04	* * * 1/30/96, 61 FR 2931 .....	* * * 52.1100(c)(118) Revised Carbon Monoxide Maintenance Plan Base Year Emissions Inventory using MOBILE6.

**Subpart NN—Pennsylvania**

the existing entry for Carbon Monoxide Maintenance Plan (Philadelphia County) to read as follows:

**§ 52.2020 Identification of plan.**  
 \* \* \* \* \*  
 (e) \* \* \*  
 (1) \* \* \*

■ 4. In Section 52.2020, the table in paragraph (e)(1) is amended by revising

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Carbon Monoxide Maintenance Plan.	Philadelphia County .....	9/8/95, 10/30/95 9/3/04	1/30/96, 61 FR 2982 ..... [Insert <i>Federal Register</i> publication date] [Insert page number where the document begins].	52.2063(c)(105) Revised Carbon Monoxide Maintenance Plan Base Year Emissions Inventory using MOBILE6.

\* \* \* \* \*

existing entry for Carbon Monoxide Maintenance Plan to read as follows:

(e) \* \* \*

**Subpart VV—Virginia**

**§ 52.2420 Identification of plan**  
 \* \* \* \* \*

■ 5. In Section 52.2420, the table in paragraph (e) is amended by revising the

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
Carbon Monoxide Maintenance Plan.	Arlington County and Alexandria City.	10/4/95 3/22/04	1/30/96, 61 FR 2931 ..... [Insert <i>Federal Register</i> publication date] [Insert page number where the document begins].	52.2465(c)(107) Revised Carbon Monoxide Maintenance Plan Base Year Emissions Inventory using MOBILE6.

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 BILLING CODE 6560-50-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 64**

[Docket No. FEMA-7873]

**Suspension of Community Eligibility**

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency

Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**EFFECTIVE DATES:** The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Grimm, Mitigation Division, 500 C Street, SW., Room 412, Washington, DC 20472, (202) 646-2878.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new

construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.