

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.2565
*	*	*	*	*
<b>[45CSR] Series 6 Control of Air Pollution From Combustion of Refuse</b>				
Section 45–6–1 .....	General .....	6/1/08	3/25/09[Insert page number where the document begins].	Added subsection 1.1.a.
Section 45–6–2 .....	Definitions .....	6/1/08	3/25/09[Insert page number where the document begins].	Terms added: “Agency Administrator,” “CFR,” “Prescribed Burning,” and “Secretary.” Terms removed: “Clean Lumber,” “Director,” “Wood Waste,” and “Yard Waste.” Terms amended: “Incinerator,” “Incinerator Capacity,” “Opacity,” “Open Burning,” “Pathological Waste,” and “Refuse.”
Section 45–6–3 .....	Open Burning Prohibited.	6/1/08	3/25/09[Insert page number where the document begins].	Added subsection 3.1.e. (3.1.e.1 through 3.1.e.6). Revised subsections 3.1, 3.1.b, 3.1.c.3, and 3.2.a.
Section 45–6–4 .....	Emission Standards for Incinerators.	6/1/08	3/25/09[Insert page number where the document begins].	Deleted subsections 4.8, and 4.8.a through 4.8.d.  Revised subsections 4.1, 4.2, 4.3, 4.5, 4.7 and 4.8.e. Added subsections 4.9 and 4.10.
Section 45–6–5 .....	Registration .....	6/1/08	3/25/09[Insert page number where the document begins].	Revised subsection 5.1.
Section 45–6–6 .....	Permits .....	6/1/08	3/25/09[Insert page number where the document begins].	Revised subsections 6.1, 6.1.a.3, 6.1.a.4, 6.1.b.3, 6.1.b.5, 6.1.b.6, and 6.1.b.7. Added subsection 6.2.
Section 45–6–7 .....	Reports and Testing.	6/1/08	3/25/09[Insert page number where the document begins].	Revised subsections 7.1 and 7.2.
Section 45–6–8 .....	Variances .....	6/1/08	3/25/09[Insert page number where the document begins].	Revised subsections 8.1 and 8.2.
Section 45–6–9 .....	Emergencies and Natural Disasters.	6/1/08	3/25/09[Insert page number where the document begins].	Revised subsection 9.1.  Added subsections 9.1.c, 9.2, and 9.2.a through 9.2.c.
Section 45–6–10 .....	Exemptions .....	6/1/08	3/25/09[Insert page number where the document begins].	New Section.
Section 45–6–11 .....	Effect of the Rule.	6/1/08	3/25/09[Insert page number where the document begins].	Recodified—formerly section 45–6–10.
Section 45–6–12 .....	Inconsistency Between Rules.	6/1/08	3/25/09[Insert page number where the document begins].	Recodified—formerly section 45–6–11.  Revised subsection 12.1.
*	*	*	*	*

[FR Doc. E9–6615 Filed 3–24–09; 8:45 am]  
BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R01–OAR–2008–0796 ; A–1–FRL–8785–6]

**Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Carbon Monoxide Limited Maintenance Plan for Providence, RI**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island. This revision establishes a limited maintenance plan for the Providence Rhode Island carbon monoxide attainment area and addresses the remaining portion of the ten-year update to the carbon monoxide maintenance plan. This action is being taken in accordance with the Clean Air Act.

**DATES:** This direct final rule will be effective May 26, 2009, unless EPA receives adverse comments by April 24, 2009. If adverse comments are received, EPA will publish a timely withdrawal of

the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R01–OAR–2008–0796 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *E-mail:* [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov).
3. *Mail:* “Docket Identification Number EPA–R01–OAR–2008–0796”, Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

4. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R01-OAR-2008-0796. 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.regulations.gov>, 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 through <http://www.regulations.gov>, or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> Web site is 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 <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 <http://www.regulations.gov> index. 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 <http://www.regulations.gov> or in hard copy at

Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency; Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908-5767.

**FOR FURTHER INFORMATION CONTACT:** Donald O. Cooke, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114-2023, telephone number (617) 918-1668, fax number (617) 918-0668, e-mail [cooke.donald@epa.gov](mailto:cooke.donald@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Criteria for Limited Maintenance Plan Designation
  - A. EPA Guidance
  - B. Demonstration of Maintenance
  - C. Emission Inventory
  - D. Monitoring Network and Verification of Continued Attainment
- III. Contingency
- IV. State Commitments
- V. Conformity
- VI. Final Action
- VII. Statutory and Executive Order Reviews

#### **I. Background and Purpose**

In 1989, Rhode Island submitted a request to EPA to redesignate Providence to attainment status for carbon monoxide (CO). Since the EPA had not yet approved that request when the Clean Air Act Amendments of 1990 (CAAA) were enacted, Rhode Island submitted a revised redesignation request to EPA in 1991 that addressed additional requirements in the CAAA. The initial ten-year maintenance plan relied on emissions reductions from the Federal Motor Vehicle Emission Control Program (FMVECP) and from the Prevention of Significant Deterioration (PSD) program, which replaced the New Source Review (NSR) program when the redesignation became effective. The maintenance plan also stated that, if the

carbon monoxide National Ambient Air Quality Standard (NAAQS) was violated in the ten year period covered by the plan, the State would submit a plan to correct the violation within 18 months of the violation. On September 5, 1991, the EPA published a Final Rule in the **Federal Register** that redesignated Providence to attainment status for CO (56 FR 43872).

Section 175A of the CAAA requires redesignated areas to submit a second ten-year maintenance plan to the EPA eight years after the first plan is approved. The second plan must demonstrate that compliance with the NAAQS will continue during the ten year period following the expiration of the first maintenance plan. In the case of Rhode Island, the second ten-year maintenance plan was scheduled to be submitted in 1999 and would cover the years 2001 through 2011. Rhode Island did not submit a second ten-year maintenance plan at that time; however the emissions control programs established in the first ten-year maintenance plan continued to be in effect. Monitored levels of carbon monoxide in the Providence attainment area continued to be well below the 8-hour NAAQS standard of 9.0 parts per million (ppm), and have stayed on a downward trend. The 1-hour CO NAAQS of 32 parts per million was never exceeded in the State of Rhode Island.

In June 2007, Rhode Island Department of Environmental Management (RI DEM) requested permission to discontinue monitoring for CO at the Dorrance Street site in Providence. This request was prompted by amendments to EPA's monitoring requirements (*Final Rule: Revisions to Ambient Air Monitoring Regulations*; October 17, 2006; 71 FR 61236), which removed minimum requirements for CO monitoring for determining compliance with NAAQS. The amended EPA regulation continued to require the operation of CO monitors at Type II stations in the Photochemical Assessment Monitoring Sites (PAMS) network. Rhode Island has operated a year round CO monitor at its Type II PAMS site in East Providence since 1998.

In its request to remove the Dorrance Street CO monitor, RI DEM stated that the monitor no longer served a useful purpose because the CO NAAQS had not been exceeded for 20 years and was extremely unlikely to be exceeded in the future, since monitored levels were considerably below the NAAQS and continued to trend downward and the emissions control programs that had resulted in this decrease remained in

place. Moreover, this site was no longer useful for predicting the State's daily Air Quality Index (AQI), which serves to warn the public about impending poor air quality, because all CO measurements recorded since 2001 had been in the "good" category of the AQI.

In an October 24, 2007 letter from Michael Kenyon, Director of the Office of Environmental Measurement and Evaluation, EPA Region I approved the termination of the Dorrance Street site "subject to the revision of the Providence carbon monoxide maintenance plan being approved by EPA." At issue was the fact that the original maintenance plan relied on the levels measured by the Dorrance Street monitor to track continued attainment of the CO NAAQS. EPA advised that, if CO monitoring at that site were discontinued, Rhode Island would need to revise its CO maintenance plan to provide another mechanism to track continued attainment until the end of the second ten-year maintenance period (September 2011) and to identify levels that would trigger the need for additional action. RI DEM agreed to revise its plan and discontinued CO monitoring at the Dorrance Street site at the end of June 2007.

On September 22, 2008, the State of Rhode Island submitted a formal revision to its State Implementation Plan (SIP) for a Limited Maintenance Plan for the Providence Rhode Island Carbon Monoxide Maintenance Area. The SIP revision consists of a second follow-on ten-year carbon monoxide maintenance plan for the Providence carbon monoxide attainment area to address the remainder of the maintenance plan period (period 2001 to 2011), and a request for a limited carbon monoxide maintenance plan designation. The SIP revision also includes the State's commitment to year round carbon monoxide monitoring at the East Providence Photochemical Assessment Monitoring Station (PAMS) site.

**II. Criteria for Limited Maintenance Plan Designation**

**A. EPA Guidance**

In November 1994, EPA issued guidance regarding a limited maintenance plan option for nonclassifiable ozone nonattainment

areas.<sup>1</sup> In October 1995, EPA issued further guidance that extended that option to nonclassifiable carbon monoxide nonattainment areas.<sup>2</sup> To qualify for the limited maintenance option, an area's 8-hour average CO design value at the time of redesignation must be at or below 7.65 ppm (85% of the NAAQS).

Unlike full maintenance plans, limited maintenance plans are not required to include a projection of emissions over the maintenance period, because, according to EPA's 1995 guidance, "the continued applicability of prevention of significant deterioration (PSD) requirements, any control measures already in the SIP, and Federal measures (such as the Federal Motor Vehicle Emission Control Program) should provide adequate assurance of maintenance for those areas."

Moreover, the establishment of emissions budgets for conformity purposes is not required as part of limited maintenance plans. According to the 1995 guidance, "it is unreasonable to expect that such an area will experience so much growth \* \* \* that a violation of the CO NAAQS would result." Therefore, budgets for transportation and general conformity determinations are not required for areas with approved limited maintenance plans.

**B. Demonstration of Maintenance**

For areas such as Providence Rhode Island that utilize EPA's limited maintenance plan approach, the maintenance demonstration is considered to be satisfied for "not classified" areas if the monitoring data show the design value is at or below 7.65 ppm, or 85 percent of the level of the 8-hour carbon monoxide CO NAAQS. The design value must be based on the 8 consecutive quarters of data. For such areas, there is no requirement to project emissions of air

<sup>1</sup> Memorandum "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas" from Sally L. Shaver, Director, EPA Air Quality Strategies and Standards Division, to Regional Air Directors, November 16, 1994.

<sup>2</sup> Memorandum "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph W. Paisie, Group Leader, EPA Integrated Policy and Strategies Group, to Air Branch Chiefs, October 6, 1995.

quality over the maintenance period. EPA believes if the area begins the maintenance period at, or below, 85% of the CO 8 hour NAAQS, the applicability of Prevention of Significant Deterioration (PSD) requirements, the control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period. In addition, the design value for the area must continue to be at or below 7.65 ppm until the time of final EPA action on the redesignation. At the time of redesignation, in 1991, Providence's 8-hour CO design value was 7.4 ppm, and had been below 7.65 since 1989. The design value has continued to decline as shown in Table 1. The design value for 2006, the last full year that the Providence monitor operated, was 2.5 ppm (as compared to the NAAQS of 9.0 ppm). Therefore, Providence demonstrates maintenance and is clearly eligible for the limited maintenance plan option.

**TABLE 1—8-HOUR CARBON MONOXIDE DESIGN VALUES FOR PROVIDENCE RHODE ISLAND**

[8-Hour carbon monoxide design values for Providence Rhode Island]

Year	Design value (ppm)
1991	7.4
1998	4.7
1999	3.9
2000	3.5
2001	3.8
2002	2.7
2003	2.3
2004	2.5
2005	2.5
2006	2.5
2007	2.5

**C. Emission Inventory**

An annual carbon monoxide emission inventory was prepared for both Rhode Island Statewide and Providence County for the year 2002, a year in which attainment was monitored in the Providence Rhode Island carbon monoxide attainment area, and the 8-hour carbon monoxide design value was 2.7 parts per million. Please see Table 2. below:

TABLE 2—STATEWIDE AND PROVIDENCE COUNTY RHODE ISLAND 2002 ANNUAL CARBON MONOXIDE EMISSIONS  
[2002 carbon monoxide annual emissions (tons per year)]

Source	Rhode Island statewide carbon monoxide emissions	Providence county carbon monoxide emissions
Stationary point .....	1,742	1,663
Stationary nonpoint .....	10,535	4,875
Non-road mobile .....	68,804	30,501
On-road mobile .....	188,312	109,794
Total Anthropogenic (man-made) .....	269,393	146,833
Biogenic .....	1,925	554
Total .....	271,318	147,387

#### D. Monitoring Network and Verification of Continued Attainment

In the limited maintenance plan, Rhode Island Department of Environmental Management commits to maintain a continuous CO monitor at the East Providence PAMS site and re-establish a CO monitoring site meeting EPA specifications in downtown Providence should (1) the East Providence 8-hour CO design value increase to five parts per million; or (2) total calendar year CO emissions in Providence County from all anthropogenic sources exceed 190,883 tons per year (a value 30% higher than the total anthropogenic emissions in the 2002 inventory); or (3) average motor vehicle CO emissions measured by the remote sensing program in any year between 2008 and 2011 exceed 0.39%, which is three times the 2006 value.

#### III. Contingency

EPA concurs with RI DEM that specific contingency measures are not needed at the present, since current CO levels are so far below the NAAQS and emissions from mobile sources, the dominant source of CO in the State and in Providence County, are decreasing as the percentage of vehicles subject to tighter Federal Motor Vehicle Emission Control Program (FMVECP) standards increase in the State. However, if monitoring for CO in downtown Providence is triggered, based on the criteria specified below, in "State Commitments," RI DEM will develop contingency measures that will go into effect if a violation of the NAAQS occurs without further action by the State.

#### IV. State Commitments

EPA's guidance for limited maintenance plans also requires states to include several commitments as part of the SIP revision. To fulfill those requirements, Rhode Island's September

22, 2008 SIP submittal includes the following commitments:

- RI DEM will maintain a continuous CO monitor at the East Providence PAMS site to verify continued compliance with the CO NAAQS in the CO maintenance area;
- Should the East Providence 8-hour CO design value increase to five parts per million, RI DEM will re-establish a CO Monitoring site meeting EPA specifications in downtown Providence within six months;
- Should total calendar year CO emissions in Providence County from all anthropogenic sources exceed 190,883 tons per year (a value 30% higher than the total anthropogenic emissions in the 2002 inventory) RI DEM will re-establish a CO Monitoring site meeting EPA specifications in downtown Providence within six months;
- Should average motor vehicle CO emissions measured by the remote sensing program in any year between 2008 and 2011 exceed 0.39%, which is three times the 2006 value, RI DEM will re-establish a CO Monitoring site meeting EPA specifications in downtown Providence within six months;
- Should the design value in the Providence maintenance area exceed 7.65 ppm, RI DEM will coordinate with EPA to: Verify the validity of the data; evaluate whether the data should be excluded based on an "exceptional event"; and, if warranted based on the data review, develop a full maintenance plan for the affected maintenance areas; and,
- RI DEM will continue to ensure that project-level CO evaluations of transportation projects (*i.e.*, project-level conformity, as described in 40 CFR 93.116) in the Providence CO attainment area are conducted through the end of the second ten-year maintenance period.

#### V. Conformity

Section 176(c) of the Clean Air Act (CAA) defines transportation conformity as conformity to the state implementation plan's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. The CAA further defines transportation conformity to mean that no Federal transportation activity will: (1) Cause or contribute to any new violation of any standard in any area; (2) increase the frequency or severity of any existing violation of any standard in any area; or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The Federal Transportation Conformity Rule, 40 CFR part 93, subpart A, sets forth the criteria and procedures for demonstrating and assuring conformity of transportation plans, programs and projects which are developed, funded or approved by the U.S. Department of Transportation, and by metropolitan planning organizations or other recipients of funds under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. 53). The transportation conformity rule applies within all nonattainment and maintenance areas. As prescribed by the transportation conformity rule, once an area has an applicable state implementation plan with motor vehicle emissions budgets, the expected emissions from planned transportation activities must be consistent with ("conform to") such established budgets for that area.

In the case of the Providence Rhode Island CO limited maintenance plan area, however, the emissions budgets may be treated as essentially not constraining for the length of the second maintenance period as long as the area continues to meet the limited maintenance criteria, because there is

no reason to expect that these areas will experience so much growth in that period that a violation of the CO NAAQS would result. In other words, emissions from on-road transportation sources need not be capped for the remainder of the maintenance period because it is unreasonable to believe that emissions from such sources would increase to a level that would threaten the air quality in this area for the duration of this maintenance period. Therefore, for the limited maintenance plan CO maintenance area, all Federal actions that require conformity determinations under the transportation conformity rule are considered to satisfy the regional emissions analysis and "budget test" requirements in 40 CFR 93.118 of the rule.

Since limited maintenance plan areas are still maintenance areas, however, transportation conformity determinations are still required for transportation plans, programs and projects. Specifically, for such determinations, transportation plans, transportation improvement programs, and projects must still demonstrate that they are fiscally constrained (40 CFR part 108) and must meet the criteria for consultation and Transportation Control Measure (TCM) implementation in the conformity rule (40 CFR 93.112 and 40 CFR 93.113, respectively). In addition, projects in limited maintenance areas will still be required to meet the criteria for CO hot spot analyses to satisfy "project level" conformity determinations (40 CFR 93.116 and 40 CFR 93.123) which must incorporate the latest planning assumptions and models that are available. All aspects of transportation conformity (with the exception of satisfying the emission budget test) will still be required.

If the carbon monoxide attainment area monitors carbon monoxide concentrations at or above the limited maintenance eligibility criteria, or 7.65 parts per million, then that maintenance area would no longer qualify for a limited maintenance plan and would revert to a full maintenance plan. In this event, the limited maintenance plan would remain applicable for conformity purposes only until the full maintenance plan is submitted and EPA has found its motor vehicle emissions budgets adequate for conformity purposes or EPA approves the full maintenance plan SIP revision. At that time regional emissions analyses would resume as a transportation conformity criteria.

## VI. Final Action

EPA is approving Rhode Island's September 22, 2008 State

Implementation Plan (SIP) revision establishing a limited maintenance plan for the Providence Rhode Island carbon monoxide attainment area.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective May 26, 2009 without further notice unless the Agency receives relevant adverse comments by April 24, 2009.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 26, 2009 and no further action will be taken on the proposed rule. 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.

## VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act. 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 Clean Air Act; 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.

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).

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 May 26, 2009. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 12, 2009.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

■ Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 OO—Rhode Island

■ 2. Section 52.2089 is added to read as follows:

##### § 52.2089 Control strategy: carbon monoxide.

(a) Approval—On September 22, 2008, the Rhode Island Department of Environmental Management submitted a request to establish a limited maintenance plan for the Providence Rhode Island carbon monoxide attainment area for the remainder of the second ten-year maintenance plan. The State of Rhode Island has committed to year round carbon monoxide monitoring at the East Providence Photochemical Assessment Monitoring Station (PAMS) site; re-establishing downtown Providence CO monitoring if criteria specified in the Limited Maintenance

Plan are triggered; and, ensuring that project-level carbon monoxide evaluations of transportation projects in the maintenance area are conducted. The limited maintenance plan satisfies all applicable requirements of section 175A of the Clean Air Act. Approval of a limited maintenance plan is conditioned on maintaining levels of ambient carbon monoxide levels below the required limited maintenance plan 8-hour carbon monoxide design value criterion of 7.65 parts per million. If the Limited Maintenance Plan criterion is no longer satisfied, Rhode Island must develop a full maintenance plan to meet Clean Air Act requirements.

(b) [Reserved]

[FR Doc. E9-6643 Filed 3-24-09; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 52

[EPA-R04-OAR-2007-1186-200821(a); FRL-8781-5]

#### Approval and Promulgation of Air Quality Implementation Plans: Kentucky; Approval Section 110(a)(1) Maintenance Plans for the 1997 8-Hour Ozone Standard for the Huntington-Ashland Area, Lexington Area and Edmonson County

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Kentucky State Implementation Plan (SIP) concerning the maintenance plans addressing the 1997 8-hour ozone standard for the following areas: the Kentucky portion of the Huntington—Ashland Area (a portion of Greenup County); Lexington Area (Fayette and Scott Counties); and Edmonson County. These maintenance plans were submitted to EPA on May 27, 2008, by the Commonwealth of Kentucky and ensure the continued attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) through the year 2020. These plans meet the statutory and regulatory requirements, and are consistent with EPA's guidance. EPA is approving the revisions pursuant to section 110 of the Clean Air Act ("CAA" or "Act"). On March 12, 2008, EPA issued a revised ozone standard. The current action, however, is being taken to address requirements under the 1997 ozone standard. Requirements for the Huntington-Ashland, Lexington, and Edmonson County Areas under the 2008 standard will be addressed in the future.

**DATES:** This rule is effective on *May 26, 2009* without further notice, unless EPA receives adverse comment by *April 24, 2009*. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2007-1186, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

2. *E-mail:* Jane Spann at [spann.jane@epa.gov](mailto:spann.jane@epa.gov).

3. *Fax:* (404) 562-9019.

4. *Mail:* "EPA-R04-OAR-2007-1186," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

5. *Hand Delivery or Courier:* Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. "EPA-R04-OAR-2007-1186." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), 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 through [www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) website is 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 [www.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