

## EPA-APPROVED REGULATIONS IN THE MARYLAND SIP—Continued

Code of Maryland Administrative Regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
26.11.33.04	General Standard—VOC Content Limits	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.05	VOC Content Limits	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.06	Most Restrictive VOC Limit	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.07	Painting Restrictions	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.08	Thinning	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.09	Rust Preventive Coatings	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.10	Coatings Not Listed in Regulation .05	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.11	Lacquers	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.12	Container Labeling Requirements	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.13	Reporting Requirements	3/29/04	5/12/05 [Insert page number where the document begins].	
26.11.33.14	Compliance Provisions and Test Methods	3/29/04	5/12/05 [Insert page number where the document begins].	

\* \* \* \* \*

[FR Doc. 05-9314 Filed 5-11-05; 8:45 am]  
BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R03-OAR-2004-MD-0001; R03-OAR-2004-VA-0005; FRL-7909-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland and Virginia; Non-Regulatory Voluntary Emission Reduction Program Measures

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maryland and by the Commonwealth of Virginia. These revisions establish a number of non-regulatory measures for which Maryland and Virginia seek SIP credit

in rate-of-progress and attainment planning for the Metropolitan Washington, DC 1-hour ozone nonattainment area (the Washington area). The intended effect of this action is to approve SIP revisions submitted by Maryland and Virginia which establish certain non-regulatory measures. The non-regulatory measures include use of low-or-no-volatile organic compound (VOC) content paints by certain State and local government agencies; auxiliary power units on locomotives; sale of reformulated consumer products in the Northern Virginia area; accelerated retirement of portable fuel containers by certain State and local government agencies; and, renewable energy measures (wind-power purchases by certain local government agencies).

**DATES:** This final rule is effective on June 13, 2005.

**ADDRESSES:** EPA has established a docket for each of the SIP revisions subject to this action under Regional Material in EDocket (RME) ID Numbers

R03-OAR-2004-MD-0001 and R03-OAR-2004-VA-0005. All documents in the docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Once in the system, select "quick search," then key in the appropriate RME identification number. 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 in RME 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 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:**  
Christopher Cripps, (215) 814-2179, or  
by e-mail at [cripps.christopher@epa.gov](mailto:cripps.christopher@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On December 23, 2004 (69 FR 76889), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland and for the Commonwealth of Virginia. The NPR proposed approval of

non-regulatory measures that include use of low-or-no-VOC content paints by certain State and local government agencies; auxiliary power units on locomotives; sale of reformulated consumer products in the Northern Virginia area; accelerated retirement of portable fuel containers by certain State and local government agencies; and, renewable energy measures (wind-power purchases by certain local government agencies). On February 19, 2004 and February 25, 2004, respectively, the Maryland Department

of the Environment (MDE) and the Virginia Department of Environmental Quality (VA DEQ) each submitted the formal revisions to their SIPs.

**II. Summary of SIP Revision**

The States submitted program descriptions that projected VOC and nitrogen oxides (NO<sub>x</sub>) tons per day (TPD) emission reductions attributable to each specific measure. Those estimates are provided in Table 1.

**TABLE 1.—EMISSION REDUCTIONS CREDITABLE FROM VOLUNTARY EMISSION REDUCTION PROGRAM MEASURES FOR THE METROPOLITAN WASHINGTON DC AREA**

Measure	State	VOC TPD	NO <sub>x</sub> TPD	Implementation date
<b>Gas Can Replacement Program:</b>				
Maryland National Capital Parks & Planning Commission, Prince George's County .....	MD .....	0.0027	.....	4/2005
Montgomery County .....	.....	0.00088	.....	12/2004
Prince George's County .....	.....	0.00231	.....	1/2004
<b>Maryland totals</b> .....	.....	0.00589	0.00	.....
<b>Fairfax County</b> .....	VA .....	0.00277	.....	5/2005
City of Fairfax .....	.....	0.00138	.....	7/2004
City of Fairfax Contractors .....	.....	0.00060	.....	7/2004
Prince William County .....	.....	0.00090	.....	5/2005
Arlington County .....	.....	0.00210	.....	5/2005
<b>Virginia totals</b> .....	.....	0.00565	0.00	.....
<b>Total Maryland and Virginia Area-wide Reductions—Gas Can Replacement Program (Rounded).</b>	.....	0.01	0.00	.....
<b>Sale of Reformulated Consumer Products</b> .....	VA .....	3.00	0.00	1/2005
<b>Low-VOC Paints Program:</b>				
Prince George's County .....	MD .....	0.002	.....	5/2005
Maryland National Capital Parks & Planning Commission, Prince George's County .....	.....	0.006	.....	12/2003
MDOT Traffic Marking Coatings .....	.....	0.149	.....	12/2003
<b>Maryland totals</b> .....	.....	0.157	0.00	.....
<b>Virginia totals—Fairfax County</b> .....	VA .....	0.017	.....	4/2004
<b>Total Maryland and Virginia Area-wide Reduction—Low-VOC Paints Program (Rounded)</b> .....	.....	0.17	0.00	.....
<b>Montgomery County Regional Wind Power Purchase</b> .....	MD .....	0.00	0.05	12/2004
<b>Auxiliary Power Units on Locomotives</b> .....	VA .....	0.01	0.13	3/2004
<b>Arlington County Regional Wind Power Purchase</b> .....	VA .....	0.00	0.00	5/2005

A more detailed analysis of all these voluntary emission reduction program measures can be found in the Technical Support Document (TSD) for this action. That TSD is included in both the hard copy and E-docket for this rulemaking.

**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 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.

Other specific requirements of the bundle of voluntary emission reduction program measures and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

#### IV. Public Comment

We received four sets of comments via letter and/or electronically during the public comment period. None of the comments were adverse to our proposed approval.

Three of the letters strongly supported the proposed approval of the nonregulatory measures in the Maryland and Virginia SIP revisions. Two of these letters observed that there is nothing voluntary about the State commitments in these SIP revisions even though these measures are titled "voluntary measures" by EPA. EPA agrees that the observation made in the comments is correct and reiterates EPA's policy regarding such measures. EPA's "voluntary measures" policies are to cover those emissions reduction strategies that are undertaken but are not made enforceable against the source through a traditional regulatory process or those strategies which are new or innovative. However, EPA ensures that the measures are enforceable against the state by requiring the state to commit to monitor the implementation and effectiveness of the measure and, where a reduction credit is sought by the SIP, to make-up any shortfall in emissions reductions.

The fourth letter was not opposed or adverse to the proposed action but rather asserted that there was a typographical error with regards to the emission reduction credit claimed by the Commonwealth of Virginia for the Arlington County wind power purchase measure. The comment letter asserts that the SIP sought no reduction credit from the measure. EPA has reexamined the SIP revision submitted by Virginia and agrees that EPA mistakenly proposed to credit the Arlington County wind power purchase measure with emission reduction credit. On page 7-78 of section 7.6 entitled "Voluntary Bundle" of the document entitled "Plan to Improve Air Quality in the Washington, DC-MD-VA Region, State Implementation Plan (SIP) "Severe Area SIP" Demonstrating Rate of Progress for 2002 and 2005; Revision to 1990 Base Year Emissions; and Severe Area Attainment Demonstration for the Washington DC-MD-VA Nonattainment Area" (dated February 19, 2004) in Virginia's February 25, 2004 SIP revision plainly states that "credits will not be awarded for purchases in Virginia jurisdictions."

Table 1 of this document reflects this change from Table 2 of the NPR.

#### V. Final Action

##### A. State of Maryland

EPA's review of this material indicates that Maryland's February 19, 2004 SIP submittal of non-regulatory voluntary emission reduction program measures for the Washington area meet the applicable requirements of EPA guidance and policy for approval. EPA is approving the following voluntary emission reduction program measures into the Maryland SIP: Montgomery County Regional Wind Power Purchase, Low-VOC Paints Program, and Gas Can Replacement Program. Specifically, EPA is approving those measures found in section 7.6 entitled "Voluntary Bundle" of the document entitled "Plan to Improve Air Quality in the Washington, DC-MD-VA Region, State Implementation Plan (SIP) "Severe Area SIP" Demonstrating Rate of Progress for 2002 and 2005; Revision to 1990 Base Year Emissions; and Severe Area Attainment Demonstration for the Washington DC-MD-VA Nonattainment Area" (dated February 19, 2004) and Appendix J to this plan. This February 19, 2004 document and its Appendix J were submitted to EPA by Maryland on February 19, 2004. EPA is crediting the Maryland SIP with the emission reductions for these measures shown in Table 2 of this document for the Washington area.

##### B. Commonwealth of Virginia

EPA's review of this material indicates that Virginia's February 25, 2004 SIP submittal of non-regulatory voluntary emission reduction program measures for the Washington area meet the applicable requirements of EPA guidance and policy for approval. EPA is approving the following voluntary emission reduction program measures into the Virginia SIP: Low-VOC Paints Program, Sale of Reformulated Consumer Products, Gas Can Replacement Program, Remote Sensing Device Program, Arlington County Regional Wind Power Purchase, Auxiliary Power Units on Locomotives, Alternative Fueled Vehicle (AFV) Purchase Program, and Diesel Bus Retrofit Program. Specifically, EPA is approving those measures found in section 7.6 entitled "Voluntary Bundle" of the document entitled "Plan to Improve Air Quality in the Washington, DC-MD-VA Region, State Implementation Plan (SIP) "Severe Area SIP" Demonstrating Rate of Progress for 2002 and 2005; Revision to 1990 Base Year Emissions; and Severe Area

Attainment Demonstration for the Washington DC-MD-VA Nonattainment Area" (dated February 19, 2004) and Appendix J to this plan. This February 19, 2004 document and its Appendix J were submitted to EPA by Virginia on February 25, 2004. EPA is crediting the Virginia SIP with the emission reductions shown in Table 2 of this document for the Washington area.

**VI. 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 (Pub. L. 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 July 11, 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 to approve Maryland and Virginia voluntary emission reduction program measures 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 2, 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 V—Maryland**

■ 2. In §52.1070, the table in paragraph (e) is amended by adding the entry for the Non-Regulatory Voluntary Emission Reduction Program at the end of the table 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
Non-Regulatory Voluntary Emission Reduction Program.	Washington, DC severe 1-hour ozone nonattainment area.	2/19/04	5/12/05 [Insert page number where the document begins].	The nonregulatory measures found in section 7.6 and Appendix J of the plan.

**Subpart VV—Virginia**

■ 3. In §52.2420, the table in paragraph (e) is amended by adding the entry for

the Non-Regulatory Voluntary Emission Reduction Program at the end of the table to read as follows:

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Non-Regulatory Voluntary Emission Reduction Program.	Washington, DC severe 1-hour ozone nonattainment area.	2/25/2004	5/12/05 [Insert page number where the document begins].	The nonregulatory measures found in section 7.6 and Appendix J of the plan.

[FR Doc. 05-9315 Filed 5-11-05; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[WA-01-003; FRL-7906-3]

#### Approval and Promulgation of State Implementation Plans; State of Washington; Spokane Carbon Monoxide Attainment Plan

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is approving State Implementation Plan (SIP) revisions submitted to EPA by the State of Washington that consist of A Plan for Attaining Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) in the Spokane Serious CO Nonattainment Area and changes to the Washington State Inspection and Maintenance Program.

The EPA is also approving certain source-specific SIP revisions relating to Kaiser Aluminum and Chemical Corporation of Spokane.

**DATES:** This final rule is effective on June 13, 2005.

**ADDRESSES:** EPA has established a docket for this action under Docket I.D. No. WA-01-003. Publicly available docket materials are available in hard copy at the Office of Air, Waste, and Toxics, Environmental Protection Agency, 1200 Sixth Ave., Seattle, Washington 98101. This Docket Facility is open from 8:30 a.m.—4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (206) 553-4273.

**FOR FURTHER INFORMATION CONTACT:** Connie Robinson, Office of Air, Waste and Toxics (OAWT-107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101; telephone number: (206) 553-1086; fax number: 206-553-

0110; e-mail address: [robinson.connie@epa.gov](mailto:robinson.connie@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, wherever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

#### I. Background Information

On March 8, 2005, EPA published in the *Federal Register*, a proposal to approve the Spokane, Washington CO serious Attainment Plan, revisions to the Washington State Inspection and Maintenance (I/M) Program, and certain source-specific SIP revisions relating to Kaiser Aluminum and Chemical Corporation. See 70 FR 11179.

#### II. Public Comments on the Proposed Action

EPA provided a 30-day review and comment period and solicited comments on our proposal published in the March 8, 2005, *Federal Register*. No comments were received on the proposed rulemaking. EPA is now taking final action on the SIP revisions consistent with the published proposal.

#### III. Final Action

In this action, the EPA is approving revisions to the Washington State Implementation Plan. Specifically, we are approving the following elements of the Spokane CO Attainment Plan, submitted on September 20, 2001 and November 22, 2004:

A. Procedural requirements, under section 110(a)(2) of the Act;

B. Base year emission inventory, under sections 172(c)(3) and 187(a)(1) and periodic inventories under 187(a)(5) of the Act;

C. Attainment demonstration, under section 187(a)(7) of the Act;

D. The TCM program under 187(b)(2)182(d)(1) and 108(f)(1)(A) of the Act;

E. VMT forecasts under section 187(a)(2)(A) of the Act;

F. Contingency measures under section 187(a)(3) of the Act;

G. The conformity budget under section 176(c)(2)(A) of the Act and § 93.118 of the transportation conformity rule (40 CFR part 93, subpart A).

H. Administrative Order No. DE 01AQIS-3285 and Order No. DE 01AQIS-3285, Amendment #1 relating to Kaiser Aluminum and Chemical Corporation, Mead Works.

We are also approving a SIP revision submitted on September 26, 2001, to two sections of Washington Administrative Code (WAC) 173-422, Motor Vehicle Emission Inspection, to provide an inspection schedule for motor vehicles between 5 and 25 years old.

A Technical Support Document on file at the EPA Region 10 office contains a detailed analysis and rationale in support of the Spokane Serious Area Carbon Monoxide Plan and the WAC revisions.

#### IV. Statutory and Executive Order Reviews

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

