

TABLE 10—CECIL COUNTY 2008 RFP MVEBs

VOC (tpd)	NO <sub>x</sub> (tpd)
2.3 .....	7.9

In a March 27, 2009 **Federal Register** notice (74 FR 13433), EPA notified the public that EPA found that the 2008 RFP MVEBs in the Cecil County 8-hour ozone plan are adequate for transportation conformity purposes. In addition to the budgets being adequate for transportation conformity purposes, EPA found the procedures Maryland used to develop the MVEBs to be reasonable. The budgets are identical to the projected 2008 on-road mobile source emission inventories. Because the 2008 RFP MVEBs are adequate for transportation conformity purposes and the methods MDE used to develop them are correct, the 2008 RFP budgets are approvable.

#### V. What Are EPA's Conclusions?

EPA's review of the 2002 base year emissions inventory; the 2008 ozone projected emission inventory; the 2008 RFP plan; RFP contingency measures; Maryland's RACM analysis; and 2008 transportation conformity budgets contained in MDE's June 4, 2007 SIP revision submittal for Cecil County fully addressed the CAA's requirements. Therefore, EPA is proposing approval of those elements of MDE's June 4, 2007 Cecil County 8-hour ozone plan. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule pertaining to Cecil County's 2002 base year emissions inventory; 2008 ozone projected emission inventory; 2008 RFP plan; RFP contingency measures; RACM analysis; and 2008 transportation conformity budgets 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.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 23, 2009.

**William C. Early,**

*Acting Regional Administrator, Region III.*  
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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2009-0957; FRL-9100-9]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Maryland State Implementation Plan (SIP) to meet the 2002 base year emissions inventory, the reasonable further progress (RFP) plan, RFP contingency measure, and reasonably available control measure (RACM) requirements of the Clean Air Act (CAA) for the Baltimore moderate 1997 8-hour ozone nonattainment area. EPA is also proposing to approve the transportation conformity motor vehicle emissions budgets (MVEBs) and associated with this revision. EPA is proposing to approve the SIP revision because it satisfies the emission inventory, RFP, RACM, RFP contingency measures, and transportation conformity requirements for areas classified as moderate nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS) and demonstrates further progress in reducing ozone precursors. EPA is proposing to approve the SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations.

**DATES:** Written comments must be received on or before February 8, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2009-0957 by one of the following methods:

A. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. *E-mail:*  
[fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail:* EPA-R03-OAR-2009-0957, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *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 Docket ID No. EPA-R03-OAR-2009-0957. 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 information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. 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 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.

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

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

The following is provided to aid in locating information in this document.

- I. What Action is EPA Taking?
- II. What is the Background for this Action?
- III. What is EPA's Evaluation of the Revision?
- IV. Statutory and Executive Order Reviews

### **I. What Action is EPA Taking?**

EPA is proposing to approve a revision to the Maryland SIP submitted by the Maryland Department of the Environment (MDE) on June 4, 2007 to meet the emissions inventory and RFP requirements of the CAA for the Baltimore moderate 1997 8-hour ozone nonattainment area (NAA). EPA is proposing to approve the 2002 base year emissions inventory, the 15 percent RFP plan and associated projected 2008 emission inventories, the contingency measures for failure to meet 2008 RFP, the RACM analysis, and the RFP 2008 MVEBs. The RFP plan demonstrates that emissions will be reduced 15 percent for the period of 2002 through 2008. The volatile organic compound (VOC) MVEB is 41.2 tons per day (tpd) and the nitrogen oxides (NO<sub>x</sub>) MVEB is 106.8 tpd. EPA is proposing to approve the SIP revision because it satisfies RFP, contingency measure, RACM, RFP transportation conformity, and emissions inventory requirements for areas classified as moderate nonattainment for the 1997 8-hour ozone NAAQS and demonstrates further progress in reducing ozone precursors. EPA is proposing to approve the SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations.

### **II. What is the Background for this Action?**

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Among those nonattainment areas is the Baltimore moderate NAA. This NAA includes Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties, all in Maryland.

These designations triggered the CAA's section 110(a)(1) requirement that States must submit attainment demonstrations for their nonattainment areas to EPA by no later than three years after the promulgation of a NAAQS. Accordingly, EPA's Phase 1 8-hour ozone implementation rule (Phase 1 rule), published on April 30, 2004 (69 FR 23951), specifies that States must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007.

Pursuant to the Phase 1 rule, an area was classified under subpart 2 of the CAA based on its 8-hour design value if that area had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). Based on this criterion, the Baltimore ozone NAA was classified under subpart 2 as a moderate nonattainment area.

On November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727), EPA published the Phase 2 final rule for implementation of the 8-hour standard (Phase 2 rule). The Phase 2 rule addressed the RFP control and planning obligations as they apply to areas designated nonattainment for the 1997 8-hour ozone NAAQS.

Among other things, the Phase 1 and 2 rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. The rules further require that modeling and attainment demonstrations, reasonable further progress plans, reasonably available control measures, projection year emission inventories, motor vehicle emissions budgets, and contingency measures were all due by June 15, 2007 (40 CFR 51.908(a), (c)).

Section 182(b)(1) of the CAA and EPA's 1997 8-hour ozone implementation rule (40 CFR 51.910) require each 8-hour ozone nonattainment area designated moderate and above to submit an emissions inventory and RFP Plan, for review and approval into its SIP, that describes how the area will achieve actual emissions reductions of VOC and NO<sub>x</sub> from a baseline emissions inventory.

**III. What is EPA's Evaluation of the Revision?**

EPA's analysis and findings are discussed in this proposed rulemaking and a more detailed discussion is contained in the Technical Support Document for this Proposal which is available on line at <http://www.regulations.gov>, Docket number EPA-R03-OAR-2009-0957.

On June 4, 2007, Maryland submitted a comprehensive plan for the Baltimore NAA to address the CAA's 8-hour ozone attainment requirements that were identified earlier (the Baltimore 8-hour ozone plan). The SIP submittal included an attainment demonstration plan, RFP plans for 2008 and 2009, a RACM analysis, contingency measures, on-road VOC and NO<sub>x</sub> MVEBs, and the 2002 base year emissions inventory. These SIP revisions were subject to notice and comment by the public and the State addressed the comments received on the proposed SIPs. All sections of this SIP submittal with the exception of the attainment demonstration plan will be discussed in this rulemaking. The attainment demonstration plan sections of this SIP submittal will be discussed in a separate rulemaking.

**A. Base Year Emissions Inventory**

An emissions inventory is a comprehensive, accurate, current inventory of actual emissions from all sources and is required by section 172(c)(3) of the CAA. For ozone nonattainment areas, the emissions inventory needs to contain VOC and NO<sub>x</sub> emissions because these pollutants are precursors to ozone formation. EPA recommended 2002 as the base year emissions inventory, and is therefore the starting point for calculating RFP. Maryland submitted its 2002 base year emissions inventory on June 4, 2007. A summary of the Baltimore NAA 2002 base year VOC and NO<sub>x</sub> emissions inventories is included in Table 1, below.

**TABLE 1—BALTIMORE NAA 2002 BASE YEAR VOC & NO<sub>x</sub> EMISSIONS IN TONS PER DAY (TPD)**

Emission source category	VOC	NO <sub>x</sub>
Point .....	13.88	111.88
Stationary Area .....	116.81	8.18
Non-Road Mobile .....	70.22	40.96
On-Road Mobile .....	70.57	177.06
Total (excluding Biogenics) .....	271.48	338.08
Biogenics .....	223.20	0

**B. Adjusted Base Year Inventory and 2008 RFP Target Levels**

The process for determining the emissions baseline from which the RFP reductions are calculated is described in section 182(b)(1) of the CAA and 40 CFR 51.910. This baseline value is the 2002 adjusted base year inventory. Sections 182(b)(1)(B) and (D) require the exclusion from the base year inventory of emissions benefits resulting from the Federal Motor Vehicle Control Program (FMVCP) regulations promulgated by January 1, 1990, and the Reid Vapor Pressure (RVP) regulations promulgated June 11, 1990 (55 FR 23666). The FMVCP and RVP emissions reductions are determined by the State using EPA's on-road mobile source emissions modeling software, MOBILE6. The FMVCP and RVP emission reductions are then removed from the base year inventory by the State, resulting in an adjusted base year inventory. The emission reductions needed to satisfy the RFP requirement are then calculated from the adjusted base year inventory. These reductions are then subtracted from the adjusted base year inventory to establish the emissions target for the RFP milestone year (2008).

For moderate areas like the Baltimore NAA, the CAA specifies a 15 percent reduction in ozone precursor emissions over an initial six year period. In the Phase 2 Rule, EPA interpreted this requirement for areas that were also designated nonattainment and classified as moderate or higher for the 1-hour ozone standard. In the Phase 2 Rule, EPA provided that an area classified as moderate or higher that has the same boundaries as an area, or is entirely composed of several areas or portions of areas, for which EPA fully approved a 15 percent plan for the 1-hour NAAQS, is considered to have met the requirements of section 182(b)(1) of the CAA for the 8-hour NAAQS. In this situation, a moderate nonattainment area is subject to RFP under section 172(c)(2) of the CAA and shall submit, no later than 3 years after designation for the 8-hour NAAQS, a SIP revision that meets the requirements of 40 CFR 51.910(b)(2). The RFP SIP revision must provide for a 15 percent emission reduction (either NO<sub>x</sub> and/or VOC) accounting for any growth that occurs during the six year period following the baseline emissions inventory year, that is, 2002–2008.

The Baltimore ozone NAA under the 1-hour ozone standard had the same boundary as the Baltimore NAA under the 1997 8-hour ozone standard. The Baltimore nonattainment area under the 1-hour ozone standard was classified as

severe. EPA approved Maryland's 15% plan for the Baltimore severe ozone nonattainment area on February 2, 2000 (65 FR 5252). Therefore, according to the Phase 2 Rule, the RFP plan for the Baltimore NAA may use either NO<sub>x</sub> or VOC emissions reductions (or both) to achieve the 15 percent emission reduction requirement.

According to section 182(b)(1)(D) of the CAA, emission reductions that resulted from the FMVCP and Reid Vapor Pressure RVP rules promulgated prior to 1990 are not creditable for achieving RFP emission reductions. Therefore, the 2002 base year inventory is adjusted by subtracting the VOC and NO<sub>x</sub> emission reductions that are expected to occur between 2002 and the future milestone years due to the FMVCP and RVP rules.

Maryland sets out its calculations for the adjusted base year inventory and 2008 RFP target levels in Section 5 of the Baltimore 8-hour ozone plan.

*Step 1.* Calculate the Baltimore NAA 2002 anthropogenic base year inventory. This is found in Table 5–1 of the Baltimore 8-hour ozone plan, and shown in Table 2, below.

**TABLE 2—BALTIMORE NAA 2002 ANTHROPOGENIC BASE YEAR INVENTORY**

[Ozone season tpd]		
Source category	VOC	NO <sub>x</sub>
Point .....	13.88	111.88
Area .....	116.81	8.18
Non-Road .....	70.22	40.96
On-Road .....	70.57	177.06
Total .....	271.48	338.08

*Step 2.* Maryland calculated the non-creditable emission reductions between 2002 and 2008 by modeling its 2002 and 2008 motor vehicle emissions with all post-1990 CAA measures turned off, and calculating the difference. See, Table 3, below.

**TABLE 3—BALTIMORE NAA NON-CREDITABLE EMISSION REDUCTIONS**  
[Ozone season tpd]

Source category	VOC	NO <sub>x</sub>
(i) 2002 On-Road .....	101.876	211.145
(ii) 2008 On-Road .....	92.778	188.541
Non-creditable Reductions (i)–(ii) .....	9.10	22.60

*Step 3.* Maryland's calculations of the Baltimore NAA 2002 VOC and NO<sub>x</sub> inventories adjusted relative to 2008 and VOC and NO<sub>x</sub> target levels for 2008 are found in Table 5–4 and Appendix C

of the Baltimore 8-hour ozone plan, and are summarized in Table 4, below.

TABLE 4—BALTIMORE NAA 2008 RFP TARGET LEVEL CALCULATIONS  
[Ozone season tpd]

Description	Formula	VOC	NO <sub>x</sub>
A. 2002 Rate-Of Progress Base Year Inventory .....	.....	271.48	338.08
B. FMVCP/RVP Reductions Between 2002 And 2008 .....	.....	9.10	22.60
C. 2002 Adjusted Base Year Inventory Relative To 2008 .....	A – B .....	262.38	315.48
D. RFP Reductions Totaling 15% .....	.....	8	7
E. Emissions Reductions Required Between 2002 & 2008 .....	C * D .....	20.99	22.08
F. Target Level for 2008 .....	C – E .....	241.39	293.40

C. Projected Inventories and Determination of RFP

Maryland describes its methods used for developing its 2008 projected VOC and NO<sub>x</sub> inventories in Section 4.0 and Appendix B of the Baltimore 8-hour ozone plan. Projected uncontrolled and controlled 2008 VOC and NO<sub>x</sub> emissions are found in Appendix C of the Baltimore 8-hour ozone plan. EPA reviewed the procedures Maryland used to develop its projected inventories and found them to be reasonable.

Projected controlled 2008 emissions for the Baltimore NAA are summarized in Table 4–3 of the Baltimore 8-hour ozone plan. The data from Table 4–3 is presented below, in Table 5, below.

TABLE 5—BALTIMORE NAA 2008 PROJECTED CONTROLLED VOC & NO<sub>x</sub> EMISSIONS (TPD)

Emission source category	VOC emissions (tpd)	NO <sub>x</sub> emissions (tpd)
Point .....	15.63	122.64
Area .....	108.17	8.43
Non-road .....	54.21	39.60
Mobile .....	41.23	106.84
Total .....	219.25	277.50

To determine if 2008 RFP is met in the Baltimore NAA, the total projected controlled emissions must be compared to the target levels calculated in the previous section of this document. As shown below in Table 6, the total VOC and NO<sub>x</sub> emission projections meet the 2008 emission targets. Therefore, the 2008 RFP in the Baltimore NAA is demonstrated.

TABLE 6—DETERMINATION OF WHETHER RFP IS MET IN 2008 IN THE BALTIMORE NAA

Description	VOC emissions (tpd)	NO <sub>x</sub> emissions (tpd)
A. Total 2008 Projected Controlled Emissions .....	219.25	277.50
B. Target Level for 2008 .....	241.39	293.40
RFP met if A < B .....	( <sup>1</sup> )	( <sup>1</sup> )

<sup>1</sup> Yes.

D. Control Measures and Emission Reductions for RFP

The control measure Maryland took credit for in order to meet the RFP requirement in the Baltimore NAA are described in Section 6.0 of the Baltimore 8-hour ozone plan. Maryland used a combination of on-road mobile, non-road mobile, and area source control measures to meet the RFP requirement for the Baltimore NAA.

The on-road mobile measures Maryland used to meet 2008 RFP in the Baltimore NAA include enhanced vehicle inspection and maintenance (enhanced I/M), Tier I vehicle emission standards and new Federal evaporative test procedures (Tier I), reformulated gasoline, the national low emission vehicle (NLEV) program, and the Federal heavy-duty diesel engine (HDDE) rule. Maryland calculated the emission reductions for 2008 RFP using the MOBILE model for these on-road mobile measures. EPA reviewed the procedures that MDE used to develop its projected inventories, including the use of the MOBILE model, and found them to be reasonable. Maryland calculated the on-road mobile 2008 emission reductions to be 42.45 tpd VOC and 59.10 tpd NO<sub>x</sub>.

The non-road measures Maryland used to meet 2008 RFP in the Baltimore NAA include non-road small gasoline engines, non-road diesel engines (Tier I and Tier II), marine engine standards, emission standards for large spark

engines, and reformulated gasoline used in non-road motor vehicles and equipment. Maryland used the NONROAD model to calculate emission reductions from these non-road measures. EPA reviewed the procedures that MDE used to develop its projected inventories, including the use of the NONROAD model, and found them to be reasonable. Maryland calculated the non-road mobile 2008 emission reductions to be 17.89 tpd VOC and 6.74 tpd NO<sub>x</sub>.

The other measures that Maryland used to meet RFP in the Baltimore NAA are railroad engine standards (Tier 2), the consumer and commercial products rule (Phase I), the architectural and industrial (AIM) coatings rule, and the portable fuel containers rule (Phase I). In the Technical Support Document (TSD) for this action, EPA evaluates each of these measures and calculated the projected 2008 emission for each measure. For details, please refer to EPA's TSD.

The tier 2 railroad engine standards for newly manufactured and remanufactured diesel-powered locomotives and locomotive engines took effect in 2000. EPA calculated 2008 emission reductions from railroad engine to be 1.37 tpd NO<sub>x</sub>.

A Federal measure requires reformulation of AIM coatings, which are field-applied coatings used by industry, contractors, and homeowners to coat houses, buildings, highway surfaces, and industrial equipment for decorative or protective purposes. Maryland's AIM rule was effective on March 29, 2004. EPA calculated 2008 emission reductions from Maryland's AIM rule to be 6.02 tpd VOC.

The phase I commercial and consumer products rule requires the reformulation of certain consumer products to reduce their VOC content. Maryland's consumer products rule was effective on August 18, 2003. EPA calculated 2008 emission reductions from Maryland's consumer and

commercial products rule to be 3.70 tpd VOC.

The phase I portable fuel containers rule introduces performance standards for portable fuel containers and spouts, and is intended to reduce emissions from storage, transport and refueling activities. Maryland's portable fuel container rule was effective on January 21, 2002. EPA calculated 2008 emission reductions from Maryland's portable fuel containers rule to be 8.13 tpd VOC.

Table 7 summarizes the emission reductions that Maryland claimed in the Baltimore 8-hour ozone plan to meet RFP in the Baltimore NAA. For certain control measures, the 2008 projected emission reductions calculated by EPA differ from the 2008 projected emission reductions that MDE is taking credit for in the Baltimore 8-hour ozone plan. The total 2008 projected emission reductions calculated by EPA are greater than the emission reductions claimed by MDE in the Baltimore 8-hour ozone plan. Therefore, the emission reductions claimed in the Baltimore 8-hour ozone plan are approvable.

TABLE 7—CONTROL MEASURES AND 2008 EMISSION REDUCTIONS IN THE BALTIMORE

Control measure	VOC (tpd)	NO <sub>x</sub> (tpd)
On-road Mobile Measures .....	42.45	59.10
Non-road Model .....	17.89	6.74
Railroads (Tier 2) .....	0.00	1.18
OTC—Consumer Products Phase 1	3.70	0.00
OTC—AIM Coatings	6.03	0.00
OTC—Portable Fuel Containers Phase 1 .....	6.71	0.00
<b>Total .....</b>	<b>76.78</b>	<b>67.02</b>

E. Contingency Measures

Section 172(c)(9) of the CAA requires a State with a moderate or above ozone nonattainment area to include sufficient additional contingency measures in its RFP plan in case the area fails to meet RFP. The same provision of the CAA also requires that the contingency measures must be fully adopted control measures or rules. Upon failure to meet an RFP milestone requirement, the State must be able to implement the contingency measures without any further rulemaking activities. Upon

implementation of such measures, additional emission reductions of at least 3 percent of the adjusted 2002 baseline emissions must be achieved. For more information on contingency measures, see the April 16, 1992 General Preamble (57 FR 13512) and the November 29, 2005 Phase 2 8-hour ozone implementation rule (70 FR 71612).

To meet the requirements for contingency emission reductions, EPA allows States to use NO<sub>x</sub> emission reductions to substitute for VOC emission reductions in their contingency plans. However, MDE chose to use only VOC reductions to meet the contingency measure requirement in the Baltimore NAA. MDE discusses its Baltimore NAA contingency measures for failure to meet RFP in Section 10.2 of the Baltimore 8-hour ozone plan. MDE calculated the contingency VOC reduction for the Baltimore NAA as shown in Table 8, below. The RFP contingency requirement may be met by including in the RFP plan a demonstration of 18 percent VOC & NO<sub>x</sub> RFP. The additional 3 percent reduction above the 15 percent requirement must be attributed to specific measures.

TABLE 8—BALTIMORE NAA 2008 RFP CONTINGENCY MEASURE TARGET LEVEL CALCULATIONS

Description	Formula	VOC	NO <sub>x</sub>
A. 2002 Rate-Of Progress Base Year Inventory .....	.....	271.48	338.08
B. FMVCP/RVP Reductions Between 2002 And 2008 .....	.....	9.10	22.60
C. 2002 Adjusted Base Year Inventory Relative To 2008 .....	A - B .....	262.38	315.48
D. RFP Reductions Totaling 15% .....	.....	8	7
E. RFP Emissions Reductions Required Between 2002 & 2008 .....	C * D .....	20.99	22.08
F. Contingency Percentage .....	.....	3.00	0.00
G. Contingency Emission Reduction Requirements .....	C * F .....	7.87	0.00
H. Contingency Measure Target Level for 2008 .....	C - E - G ..	233.52	293.40

To determine if Maryland met the three percent contingency measure requirement for the Baltimore NAA, the total projected controlled emissions must be compared to the contingency measure target levels calculated above. As shown below in Table 9, the total VOC and NO<sub>x</sub> emission projections meet the 2008 contingency measure targets. Therefore, MDE has met the contingency measure requirement for the Baltimore NAA.

TABLE 9—EVALUATION OF THE BALTIMORE NAA 2008 RFP CONTINGENCY MEASURE REQUIREMENT

Description	VOC (tpd)	NO <sub>x</sub> (tpd)
A. Total 2008 Projected Controlled Emissions .....	219.25	277.50
B. Contingency Measure Target Level for 2008 .....	233.52	293.40
Contingency measure requirement met if A < B .....	(1)	(1)

<sup>1</sup> Yes.

F. RACM Analysis

Pursuant to section 172(c)(1) of the CAA, States are required to implement all RACM as expeditiously as

practicable for each nonattainment area. Specifically, section 172(c)(1) states the following: "In general—Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards." Furthermore, in EPA's Phase 2 Rule, EPA describes how States must include a RACM analysis with their attainment demonstration (70 FR 71659). The purpose of the RACM analysis is to determine whether or not reasonably available control measures exist that

would advance the attainment date for nonattainment areas. Control measures that would advance the attainment date are considered RACM and must be included in the SIP. RACM are necessary to ensure that the attainment date is achieved “as expeditious as practicable.” RACM is defined by the EPA as any potential control measure for application to point, area, on-road and non-road emission source categories that meets the following criteria:

- The control measure is technologically feasible.
- The control measure is economically feasible.
- The control measure does not cause “substantial widespread and long-term adverse impacts.”

• The control measure is not “absurd, unenforceable, or impracticable.”

• The control measure can advance the attainment date by at least one year.

MDE addresses the RACM requirement in Section 7.0 and Appendix E of the Baltimore 8-hour ozone plan. To meet the RACM requirement, Maryland must demonstrate that it has adopted all RACM necessary to move the Baltimore NAA toward attainment as expeditiously as practicable and to meet all RFP requirements. As demonstrated above in Sections C and D of this document, Maryland has met the RFP requirements for the Baltimore NAA.

MDE used two independently developed lists of potential control measures for its RACM analysis. The first list consists of the RACM analysis performed for the Washington, DC NAA’s 8-hour ozone plan. The second list of measures was developed by the Baltimore Metropolitan Council (BMC) with MDE in 2006. These measures are evaluated in Appendices E–1 and E–2 of the Baltimore 8-hour ozone plan.

EPA has reviewed MDE’s RACM analysis in the TSD for this action. MDE evaluated all source categories that could contribute meaningful emission reductions, and evaluated an extensive list of potential control measures. MDE considered the time needed to develop and adopt regulations and the time it would take to see the benefit from these measures. EPA concurs with MDE’s conclusion that there are no RACM that would have advanced the moderate area attainment date of 2010 for the Baltimore NAA. Therefore, MDE’s RACM analysis in the Baltimore 8-hour ozone plan is approvable.

*G. Transportation Conformity Budgets*

Transportation conformity is required by CAA section 176(c). EPA’s conformity rule requires that transportation plans, programs and

projects conform to State air quality implementation plans and establishes the criteria and procedure for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

States must establish VOC and NOx MVEBs for each of the milestone years up to the attainment year and submit the mobile budgets to EPA for approval. Upon adequacy determination or approval by EPA, States must conduct transportation conformity analysis for their Transportation Improvement Programs (TIPs) and long range transportation plans to ensure highway vehicle emissions will not exceed relevant MVEBs.

MDE discusses transportation conformity in Section 8.0 of the Baltimore 8-hour ozone plan. MDE describes the methods it used to calculate the 2008 mobile emissions inventory in Appendix F of the Baltimore 8-hour ozone plan. The Baltimore NAA MVEB for the 2008 RFP is based on the projected 2008 mobile source emissions accounting for all mobile control measures. The MVEBs for the 2008 RFP are shown in Table 10, below.

TABLE 10—BALTIMORE NAA 2008 RFP MVEBs

VOC (tpd)	NO <sub>x</sub> (tpd)
41.2 .....	106.8

In a March 27, 2009 **Federal Register** notice (74 FR 13433), EPA notified the public that EPA found that the 2008 RFP MVEBs in the Baltimore 8-hour ozone plan are adequate for transportation conformity purposes. In addition to the budgets being adequate for transportation conformity purposes, EPA found the procedures Maryland used to develop the MVEBs to be reasonable. The budgets are identical to the projected 2008 on-road mobile source emission inventories. Because the 2008 RFP MVEBs are adequate for transportation conformity purposes and the methods MDE used to develop them are correct, the 2008 RFP budgets are approvable.

**V. What are EPA’s Conclusions?**

EPA’s review of the 2002 base year emissions inventory; the 2008 ozone projected emission inventory; the 2008 RFP plan; RFP contingency measures; Maryland’s RACM analysis; and 2008 transportation conformity budgets

contained in MDE’s June 4, 2007 SIP revision submittal for the Baltimore NAA fully addressed the CAA’s requirements. Therefore, EPA is proposing approval of those following elements of MDE’s June 4, 2007 Baltimore 8-hour ozone plan. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

**VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule pertaining to the Baltimore NAA's 2002 base year emissions inventory; 2008 ozone projected emission inventory; 2008 RFP plan; RFP contingency measures; RACM analysis; and 2008 transportation conformity budgets 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.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 23, 2009.

**William C. Early,**

*Acting Regional Administrator, Region III.*  
[FR Doc. 2010-17 Filed 1-6-10; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF ENERGY

**48 CFR Parts 928, 931, 932, 933, 935, 936, 937, 941, 942, 949, 950, 951, and 952**

**RIN 1991-AB88**

### **Acquisition Regulation: Subchapter E—General Contracting Requirements, Subchapter F—Special Categories of Contracting, and Subchapter G—Contract Management**

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy (DOE) is proposing to amend the Department of Energy Acquisition Regulation (DEAR) Subchapters E—General Contracting Requirements, F—Special Categories of Contracting, and G—Contract Management to make changes to conform to the FAR, remove out-of-date coverage, and to update references. DOE will separately propose rules for changes to parts 927 and 945, respectively. Today's proposed rule does not alter substantive rights or obligations under current law.

**DATES:** Written comments on the proposed rulemaking must be received on or before close of business February 8, 2010.

**ADDRESSES:** This proposed rule is available and you may submit comments, identified by DEAR: Subchapters E, F, and G and RIN 1991-AB88, by any of the following methods:

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

- *E-mail to:* [DEARrulemaking@hq.doe.gov](mailto:DEARrulemaking@hq.doe.gov). Include: DEAR: Subchapters E, F and G and RIN 1991-AB88 in the subject line of the message.

- *Mail to:* U.S. Department of Energy, Office of Procurement and Assistance Management, MA-611, 1000 Independence Avenue, SW., Washington, DC 20585. Comments by e-mail are encouraged.

**FOR FURTHER INFORMATION CONTACT:** Barbara Binney at (202) 287-1340 or by e-mail, [barbara.binney@hq.doe.gov](mailto:barbara.binney@hq.doe.gov).

#### **SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Section-by-Section Analysis
- III. Procedural Requirements
  - A. Review Under Executive Order 12866
  - B. Review Under Executive Order 12988
  - C. Review Under the Regulatory Flexibility Act
  - D. Review Under the Paperwork Reduction Act
  - E. Review Under the National Environmental Policy Act
  - F. Review Under Executive Order 13132
  - G. Review Under the Unfunded Mandates Reform Act of 1995
  - H. Review Under the Treasury and General Government Appropriations Act, 1999
  - I. Review Under Executive Order 13211
  - J. Review Under the Treasury and General Government Appropriations Act, 2001
  - K. Approval by the Office of the Secretary of Energy

#### **I. Background**

The objective of this action is to update the existing Department of Energy Acquisition Regulation (DEAR), Subchapters E, F, and G have sections that need to be updated to conform to the FAR. None of the proposed changes are substantive or of a nature to cause any significant expense for DOE or its contractors.

#### **II. Section-by-Section Analysis**

Changes are proposed to DEAR parts 928, 931, 932, 933, 935, 936, 937, 941, 942, 949, 950, 951, and 952. No changes are proposed for DEAR parts 927, 929, 930, 934, 938, 939, 940, 943, 944, 945, 946, 947, and 948.

DOE proposes to amend the DEAR as follows:

1. Section 932.501-2 is amended in paragraph (a)(3) to reflect current procedures to state that all requests for unusual progress payments shall be sent to the DOE or the NNSA Senior

Procurement Executive to approve or deny.

2. Subpart 932.6 is amended to update the DEAR to conform with FAR subpart 32.6 which was revised by Federal Acquisition Circular 2005-027 effective October 18, 2008.

3. Section 935.010 is amended by revising paragraphs (c) and (d). The report process has been changed to an electronic submission using the DOE Energy Link System (E-Link) at <http://www.osti.gov/mlink>. The contracting officer shall require the contractors to use E-Link to submit an announcement record with each report.

4. Part 936 redesignates 936.202 to 936.202-70.

5. Part 937 is revised to add a new subpart, Subpart 937.2—Advisory and Assistance Services and section 937.204 Guidelines for determining availability of personnel. Sections 937.204(a), (b), (d) and (e) are added to conform to FAR 37.204 to provide the DOE guidelines for determining availability of sufficient personnel with the requisite training and capabilities to perform the evaluation or analysis of proposals. It also clarifies the DOE officials responsible for making the determinations prescribed at FAR 37.204 (a), (b), (d) and (e).

6. Section 941.201-70 is amended to update the DOE Order reference by removing the remainder of the sentence after the second "FAR" and adding in its place "part 41 and the Department of Energy (DOE) Order 430.2B, Departmental Energy, Renewable Energy and Transportation Management, or its successor."

7. Section 942.803 is amended at paragraph (c) by removing "as discussed in 942.70 Audit Services" which is no longer a subpart.

8. Section 949.101 is revised to add "Senior" before "Procurement Executive." to conform the use of the Procurement Executive title with the FAR.

9. Subpart 949.5 is removed and reserved. There is no longer a need for a DEAR termination clause for Architect-Engineer contracts.

10. Section 951.102 paragraph (e)(4) is amended to remove the "(iii)" in the paragraph numbering.

11. Section 952.247-70 is amended to remove repetitive language.

12. The rule text is amended as noted in the table at paragraph 16, by removing "FAR" or "FAR part" and adding "48 CFR" or "48 CFR part" or by updating other CFR citations. Section 931.205-47(h)(1) is amended by changing the capitalization of the word "part" in two places. Section 952 has