

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2009-0712; FRL-9103-9]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Delaware State Implementation Plan (SIP) to meet the reasonable further progress (RFP) requirements of the Clean Air Act (CAA) for the Delaware portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area. EPA is also proposing to approve the RFP motor vehicle emissions budgets (MVEBs), the 2002 base year emissions inventory, contingency measures, and the reasonably available control measure (RACM) analysis associated with this revision. EPA is proposing to approve the SIP revision because it satisfies RFP, emissions inventory, contingency measures, RFP transportation conformity, and RACM requirements for the 1997 8-hour ozone national ambient air quality standard (NAAQS) nonattainment areas classified as moderate 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 16, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2009-0712 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-2009-0712, 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-2009-0712. 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 Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 814-2182, or by e-mail at [quinto.rose@epa.gov](mailto:quinto.rose@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 of This Action?
- III. What Is EPA's Evaluation of the Revision?
- IV. What Are EPA's Conclusions?
- V. What Are Statutory and Executive Order Reviews?

#### I. What Action Is EPA Taking?

EPA is proposing to approve a revision to the Delaware SIP submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on June 13, 2007, to meet the emissions inventory and RFP requirements of the CAA for the Delaware portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area. EPA is proposing to approve the 2002 base year emissions inventory, the 15 percent RFP plan, the RFP 2008 MVEBs, contingency measures, and RACM analysis. The RFP plan demonstrates that emissions will be reduced 15 percent for the period of 2002 through 2008. The volatile organic compound (VOC) MVEBs is 21.84 tons per day (tpd) and the nitrogen oxides (NOx) MVEBs is 43.89 tpd. EPA is proposing to approve the SIP revision pursuant to section 110 and part D of the CAA and EPA 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 Philadelphia-Wilmington-Atlantic City (PA-NJ-MD-DE) moderate nonattainment area

(NAA). This NAA includes the three counties in Delaware, five counties in eastern Pennsylvania, one county in Maryland and eight counties in southern New Jersey.

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 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, Delaware, as part of the Philadelphia nonattainment area was classified under subpart 2 as a moderate nonattainment area. On November 29, 2005 (70 FR 71612), as revised on June 7, 2007 (72 FR 31727), EPA published the Phase 2 final rule for implementation of the 8-hour standard (Phase 2 rule) that addressed the RFP control and planning obligations as they apply to areas designated nonattainment for the 1997 8-hour ozone NAAQS. The Phase 1 and 2 rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. For such areas, reasonably available control

technology (RACT) plans were due by September 2006 (40 CFR 51.912(a)(2)). The rules further require that modeling and attainment demonstrations, RFP plans, RACM, 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-2009-0712.

After completing the appropriate public notice and comment procedures, Delaware made several submittals in order to address the CAA's 8-hour ozone attainment requirements. On October 2, 2006, Delaware submitted a RACT SIP revision which certifies that all relevant RACT controls have been implemented in Delaware for attaining the 8-hour ozone standard. EPA approved Delaware's 8-hour RACT SIP revision on July 23, 2008 (73 FR 42681). On May 2,

2007, Delaware submitted a new VOC control from crude oil lightering operations. EPA approved this rule on September 13, 2007 (72 FR 52285). On June 13, 2007, Delaware submitted a comprehensive 8-hour ozone SIP. The SIP submittal included an attainment demonstration plan, RFP plans for 2008 and 2009, RACM analysis, contingency measures, on-road motor vehicle emission budgets, 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. Delaware submitted its 2002 base year emissions inventory on June 13, 2007. A summary of the 2002 base year VOC and NO<sub>x</sub> emissions inventory, in tons per day (tpd), are included in Tables 1 and 2 of this document.

TABLE 1—DELAWARE 2002 BASE YEAR VOC EMISSIONS

Source sector	Kent	New Castle	Sussex	State total
Point .....	0.49	9.42	13.35	23.26
Stationary Area .....	5.75	20.02	7.31	33.08
Non-Road Mobile .....	5.17	12.24	9.36	26.77
On-Road Mobile .....	5.45	16.98	9.95	32.38
Total Emissions .....	16.86	58.66	39.97	115.49

TABLE 2—DELAWARE 2002 BASE YEAR NO<sub>x</sub> EMISSIONS

Source sector	Kent	New Castle	Sussex	State total
Point .....	5.06	44.09	24.95	74.10
Stationary Area .....	0.45	1.95	0.77	3.17
Non-Road Mobile .....	15.02	24.62	13.15	52.79
On-Road Mobile .....	13.97	36.56	18.50	69.03
Total Emissions .....	34.50	107.22	57.37	199.09

*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 has been determined to be 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 Philadelphia nonattainment area, 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. Also 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 sections 182 and 172 requirements differ in that section 182(b)(1) specifies that it must be a 15 percent VOC reduction, where section 172(c)(2) provides that the 15 percent

reduction can be either a VOC and/or NO<sub>x</sub> reduction.

According to EPA's Phase 2 rule, Delaware must achieve 15 percent VOC emission reduction in Sussex County from its 2002 baseline level, and 15 percent VOC and/or NO<sub>x</sub> emission reduction in Kent and New Castle Counties from their combined 2002 baseline level before the end of 2008.

According to section 182(b)(1)(D) of the CAA, emission reductions that resulted from the FMVCP and 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. The FMVCP/RVP VOC and NO<sub>x</sub> emission reductions that are expected to occur between 2002 and 2008 were determined using EPA's MOBILE6.2 model. The input and output files for MOBILE6.2 runs for the adjustments, the emission factors generated, and the calculations for emission projections are found in Appendix 4–1 of the Delaware SIP submittal. The adjustments, in tpd, are presented in Table 3 for Sussex County and Table 4 for Kent and New Castle Counties.

TABLE 3—MOBILE SOURCE FMVCP/RVP ADJUSTMENTS FOR SUSSEX COUNTY

	VOC	NO <sub>x</sub>	Note
Adjusted On-Road Mobile Source Emissions:			
Adjusted for 2002 .....	16.66	20.24	A
Adjusted for 2008 .....	15.51	18.81	B <sub>2008</sub>
Mobile Source Adjustments for 2002 Baseline:			
2002–2008 .....	1.15	1.42	C <sub>2008</sub> = A – B <sub>2008</sub>

TABLE 4—MOBILE SOURCE FMVCP/RVP ADJUSTMENTS FOR KENT AND NEW CASTLE COUNTIES

	VOC	NO <sub>x</sub>	Note
Adjusted On-Road Mobile Source Emissions:			
Adjusted for 2002 .....	42.16	56.02	a
Adjusted for 2008 .....	39.18	51.64	b <sub>2008</sub>
Mobile Source Adjustments for 2002 Baseline:			
2002–2008 .....	2.98	4.38	c <sub>2008</sub> = a – b <sub>2008</sub>

The mobile source adjustments in Tables 3 and 4 are the non-creditable emission reductions due to the pre-1990 FMVCP and RVP rules. Subtracting

these adjustments from the 2002 base year emissions inventory (*i.e.*, the State total emissions in Tables 1 and 2) will give the 2002 adjusted base year

emissions inventory relative to the subject milestone year, as presented in Table 5 for Sussex County and Table 6 for Kent and New Castle Counties.

TABLE 5—THE 2002 ADJUSTED BASE YEAR EMISSIONS INVENTORY FOR SUSSEX COUNTY

	VOC	NO <sub>x</sub>	Note
2002 Base Year Emissions Inventory .....	39.97	57.37	E
Mobile Source Adjustments for 2002–2008 .....	1.15	1.42	C <sub>2008</sub>
2002 Adjusted Baseline Relative to 2008 .....	38.82	55.95	F <sub>2008</sub> = E – C <sub>2008</sub>

TABLE 6—THE 2002 ADJUSTED BASE YEAR EMISSIONS INVENTORY FOR KENT AND NEW CASTLE COUNTIES

	VOC	NO <sub>x</sub>	Note
2002 Base Year Emissions Inventory .....	75.52	141.72	e
Mobile Source Adjustments for 2002–2008 .....	2.98	4.38	C <sub>2008</sub>
2002 Adjusted Baseline Relative to 2008 .....	72.54	137.34	f <sub>2008</sub> = e – C <sub>2008</sub>

By the end of 2008, Delaware is required to reduce 15 percent in its 2002 adjusted base year emissions inventory. According to the Phase 2 rule, Sussex County must achieve this 15 percent reduction in its VOC emission, since it did not have a 15 percent VOC rate-of-progress plan approved by EPA under the 1-hour ozone standard. For Kent and New Castle Counties, their 15 percent emission reductions can be achieved from VOC emissions and/or from NO<sub>x</sub> emissions.

The 15 percent VOC emission reduction and emission target in 2008 in Sussex County are calculated as follows: Sussex 2002 adjusted VOC baseline relative to 2008 is 38.82 tpd. Required 15 percent emission reduction:  $38.82 \times 15 \text{ percent} = 5.82 \text{ tpd}$ . 2008 VOC emission target:  $38.83 - 5.82 = 33.00 \text{ tpd}$ .

The 15 percent VOC emission reduction and emission target in 2008 in Kent and New Castle Counties are calculated as follows:

Kent/New Castle 2002 adjusted VOC baseline relative to 2008 is 72.54 tpd. Required 15 percent emission reduction:  $72.54 \times 15 \text{ percent} = 10.88 \text{ tpd}$ . 2008 VOC emission target:  $72.54 - 10.88 = 61.66 \text{ tpd}$ .

*C. Control Measures and Emission Reductions for RFP*

The only post-2002 point source VOC control in Sussex County is Regulation No. 24, Section 46, Control of Crude Oil Lightering Operations. Since there will be no new VOC controls for point sources, non-point source sector, and non-road mobile source sector for VOC emissions between 2008 and 2009, Delaware's 2008 emission reductions and projections are estimated by interpolating the 2002 base year emissions and the 2009 projections. Kent and New Castle Counties applied for and obtained total VOC and NO<sub>x</sub> emission reductions from facility/unit shutdown or modification. The 2008 on-road mobile source VOC emissions were projected using EPA's MOBILE6.2 for obtaining factors and the Peninsula Travel Demand Model (PTDM) for predicting future vehicle miles traveled (VMT). Tables 7 and 8 summarize the total 2008 VOC emission projections, in tpd, for the RFP requirements for Sussex

County and Kent/New Castle Counties, respectively.

TABLE 7—SUSSEX COUNTY TOTAL VOC EMISSION PROJECTION [tpd]

Point Source Sector .....	10.71
Area Source Sector .....	6.32
Non-Road Mobile Sector .....	8.01
On-Road Mobile Sector .....	7.09
<b>Total 2008 Emission Projection</b>	<b>32.13</b>

The total VOC emission projection meets the 2008 emission target under the 15 percent RFP requirements (33.00 tpd). Therefore, the 2008 RFP in Sussex County is demonstrated.

TABLE 8—KENT AND NEW CASTLE COUNTIES TOTAL VOC EMISSION PROJECTION [tpd]

Point Source Sector .....	10.51
Area Source Sector .....	21.64
Non-Road Mobile Sector .....	13.81
On-Road Mobile Sector .....	14.75
<b>Total 2008 Emission Projection</b>	<b>60.71</b>

The total VOC emission projection meets the 2008 emission target under the 15 percent RFP requirements (61.66 tpd). Therefore, the 2008 RFP in Kent and New Castle Counties is demonstrated.

*D. Contingency Measures*

The CAA requires States with nonattainment areas to implement specific control measures if the area fails to make reasonable further progress. This CAA provision is a requirement for States with moderate and above ozone nonattainment areas to include sufficient contingency measures in their RFP so that, upon implementation of such measures, additional emission reductions of at least 3 percent of the adjusted 2002 baseline emissions would be achieved. Under the same provision of the CAA, EPA also requires that the contingency measures must be fully adopted control measures or rules, so that upon failure to meet milestone requirements, the contingency measures can be implemented without any further

rulemaking activities by the States and/or EPA. 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. The condition set forth by EPA for NO<sub>x</sub> substitution is that States must achieve a minimum of 0.3 VOC reductions of the total 3 percent contingency reduction, and the remaining 2.7 percent reduction can be achieved through NO<sub>x</sub> emission controls. Delaware included both VOC and NO<sub>x</sub> emission controls as contingency measures in this 8-hour ozone RFP.

Based on the CAA and EPA requirements on contingency measures, the contingency VOC reduction for Delaware for the 2008 milestone year is as follows: the 2002 VOC baseline (statewide) adjusted to 2008 (see Tables 6 and 7 in this document) is 111.36 tpd, therefore, contingency VOC emission reduction in 2008 is 111.36 multiplied by 3 percent = 3.34 tpd.

Analysis in Chapter 5.5, page 29 of the Delaware SIP, indicates that the three counties in Delaware will have a VOC emission reduction surplus of 1.82 tpd in 2008 [i.e.,  $(33.00 + 61.66) - (32.13 + 60.71) = (94.66 - 92.84) = 1.82$ ]. Therefore there is  $3.34 - 1.82 = 1.52 \text{ tpd}$  contingency VOC reduction shortfall in 2008.

Delaware's 2002 VOC-to-NO<sub>x</sub> baseline (with respect to 2008) ratio is  $(38.82 + 72.54) : (55.95 + 137.34) = 111.36 : 193.29 = 1 : 1.74$  (Section 4, Tables 4–3 and 4–4 in the Delaware SIP). Therefore, the contingency VOC reduction shortfall is equivalent to  $1.52 \times 1.74 = 2.64 \text{ tpd}$  NO<sub>x</sub> reduction shortfall.

Delaware has implemented numerous controls leading to NO<sub>x</sub> reductions in 2008 that are greater than the identified 2.64 contingency shortfall (see subsections 5.4 and 6.4 of the Delaware SIP). Therefore, there is no need to specify additional contingency measures for the 2008 milestone year.

*E. RACM Analysis*

Pursuant to section 172(c)(1) of the CAA, States are required to implement all RACM as expeditiously as practicable. 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 with their attainment demonstration a RACM analysis (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.”

Control measures under RACT constitute a major group of RACM control measures for stationary sources.

To meet the CAA’s RACT requirements under the 8-hour ozone standard, Delaware submitted a RACT SIP revision on October 2, 2006, which certifies that all relevant RACT controls have been implemented in Delaware for attaining the 8-hour ozone standard. EPA approved Delaware’s 8-hour RACT SIP revision on July 23, 2008 (73 FR 42681). On May 2, 2007, Delaware submitted a new VOC control from crude oil lightering operations. EPA approved this rule on September 13, 2007 (72 FR 52285). In addition to those RACT control measures, Delaware adopted a number of other VOC and NO<sub>x</sub> RACM measures. These measures include the tightening of Delaware’s Open Burning Regulation, Control of Stationary Generator Emissions, restrictions on Excessive Idling of Heavy Duty Vehicles, Control of Stationary Combustion Turbine Emissions, and the Brandywine School Districts Clean School Bus USA grant, and voluntary and mandatory Ozone Action Day initiatives. There are no additional RACM measures or group of RACM measures that Delaware could adopt to advance the attainment date from 2009 to 2008, therefore Delaware has met the RACM requirements of the CAA.

*F. Transportation Conformity Budgets*

Section 176 of the CAA requires that highway transportation activities in

ozone nonattainment areas must: (1) Establish in their SIP, mobile source VOC and NO<sub>x</sub> emission budgets for each of the milestone years up to the attainment year and submit the mobile budgets to EPA for approval; (2) upon adequacy determination or approval of 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 mobile budgets; and (3) failure of demonstrating such transportation conformity lapses resulting in freezing of Federal highway funds and all Federal highway projects in the lapsed area.

The mobile emission budgets for 2008 RFP milestone are based on the projected 2008 mobile source emissions, accounting for all relevant mobile source controls including all Federal controls and Delaware specific controls. The 2008 mobile emissions are projected using EPA’s MOBILE6.2 for obtaining emission factors and the “Peninsula Travel Demand Model” for predicting future VMT. Table 9 is a summary of the 2008 VOC and NO<sub>x</sub> motor vehicle emissions budgets for the three counties in Delaware.

TABLE 9—MOTOR VEHICLE EMISSION BUDGETS FOR 2008

County	FIPS	2008 Emissions (tpd)	
		VOC	NO <sub>x</sub>
Kent .....	10001	4.14	9.68
New Castle .....	10003	10.61	21.35
Sussex .....	10005	7.09	12.86
State Total .....	.....	21.84	43.89

On March 21, 2008, EPA posted the availability of these budgets for Delaware on EPA’s conformity Web site for the purpose of soliciting public comments. The public comment period closed on April 21, 2008 and no comments were received. On December 19, 2008 (73 FR 77682), EPA published a notice of adequacy for the Delaware 2008 RFP MVEBs. In this notice, EPA found that Delaware’s RFP MVEBs are adequate for transportation conformity purposes. As a result of EPA’s finding, Delaware shall use the MVEBs from the June 13, 2007 RFP plan for future conformity determinations for the 8-hour standard.

**IV. What Are EPA’s Conclusions?**

EPA is proposing approval of the Delaware’s SIP revision to meet the RFP requirements of the CAA for the Delaware portion of the Philadelphia 1997 8-hour ozone moderate nonattainment area. EPA is also proposing approval of the RFP MVEBs, the 2002 base year emissions inventory, contingency measures, and RACM analysis associated with this revision. EPA is proposing approval of the SIP revision because it satisfies RFP, emissions inventory, RFP transportation conformity, contingency measures, and RACM requirements for the 1997 8-hour ozone nonattainment areas classified as moderate and demonstrates further progress in reducing ozone precursors.

**V. What Are 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 Delaware's RFP Plan, 2002 base year emissions inventory, contingency measures, RACM analysis, and 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, Carbon monoxide, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: January 6, 2010.

**William C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2010-745 Filed 1-14-10; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 215, 234, 242, 244, and 252

**RIN 0750-AG58**

#### Defense Federal Acquisition Regulation Supplement; Business Systems—Definition and Administration (DFARS Case 2009-D038)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to improve the effectiveness of DoD oversight of contractor business systems.

**DATES:** Interested parties should submit comments in writing to the address shown below on or before March 16, 2010.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2009-D038, using any of the following methods:

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

*E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2009-D038 in the subject line of the message.

*Fax:* 703-602-0350.

*Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

*Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall, 703-602-0302.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Contractor business systems and internal controls are the first line of defense against waste, fraud, and abuse. Weak control systems increase the risk of unallowable and unreasonable costs on Government contracts. To improve the effectiveness of Defense Contract Management Agency (DCMA) and Defense Contract Audit Agency (DCAA) oversight of contractor business systems, DoD is considering a rule to clarify the definition and administration of contractor business systems as follows:

1. DoD is proposing to define contractor business systems as accounting systems, estimating systems, purchasing systems, earned value management systems (EVMS), material management and accounting systems (MMAS), and property management systems.

2. DoD is proposing to implement compliance enforcement mechanisms in the form of a business systems clause which includes payment withholding that allows administrative contracting officers to withhold a percentage of payments, under certain conditions, when a contractor's business system contains deficiencies. Under such circumstances, payments could be withheld on—

- Interim payments under—
  - Cost reimbursement contracts;
  - Incentive type contracts;
  - Time-and-materials contracts;
  - Labor-hour contracts;
- Progress payments; and
- Performance-based payments.

This is not a significant regulatory action and therefore was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to establish a definition for contractor business systems and implement compliance mechanisms to improve DoD oversight of those contractor business systems. The requirements of the rule will apply to entities contractually required to maintain one or more of the defined contractor business systems.

At this time DoD is unable to estimate the number of small entities to which this rule will apply. Therefore, DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009-D038) in correspondence.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies because the