within one year after that model is issued. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does 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), nor will it 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), because it merely proposes to approve 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 proposed rule also is not subject to Executive Order 13045 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order.

This proposed rule to approve the Delaware Post-1996 ROP plans does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, and Ozone.

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

Dated: August 24, 2001.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 01–21925 Filed 8–29–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY51–225; FRL–7047–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 23, 1999, the New York State Department of Environmental Conservation (NYSDEC) submitted a request to EPA to redesignate the New York portion of the New York-Northern New Jersey-Long Island Carbon Monoxide (CO) nonattainment area from nonattainment to attainment of the National Ambient Quality Standard (NAAQS) for CO. In today's action, EPA is proposing to approve this request from the State of New York because it meets the redesignation requirements set forth in the Clean Air Act. In addition, EPA is proposing to approve the New York CO maintenance plan because it provides for continued maintenance of the CO NAAQS.

EPA is also proposing to approve the New York CO attainment demonstration that was submitted by NYSDEC on November 15, 1992. This would provide for full approval of the New York State Implementation Plan (SIP) for CO.

Finally, EPA is proposing approval of New York's revision of the Downtown Brooklyn Master Plan component of the CO attainment demonstration. This removes several transportation control measures from the SIP that have been demonstrated as no longer necessary to attain and maintain the NAAQS for CO. The intended effect of this action is to approve a plan that demonstrates that the CO standard has been attained and will continue to be attained.

DATES: Comments must be received on or before October 1, 2001.

ADDRESSES: Written comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the State submittal and EPA's Technical support document are available for public inspection during normal business hours, by appointment, at the following addresses:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

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1. What is required by the Clean Air Act and how does it apply to New York?
2. What was included in New York's submittal and does it meet the Clean Air Act requirements?
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1. What Is Required by the Clean Air Act and How Does It Apply to New York?

Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions.

Section 107(d)(3)(E) of the CAA identifies five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

a. The area must have attained the applicable NAAQS.

b. The area must have a fully approved SIP under section 110(k) of the CAA.

c. The air quality improvement must be permanent and enforceable.

d. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA.

e. The area must meet all applicable requirements under section 110 and Part D of the CAA.

The New York portion of the New York-Northern New Jersey-Long Island CO nonattainment area is classified as a moderate 2 area (i.e., the CO design value of 12.8–16.4 parts per million, or ppm). The entire non-attainment area is part of the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Area (CMSA). The New York portion of the non-attainment area consists of the Counties of Bronx, Kings, New York, Queens, Richmond, Nassau, and Westchester (referred to in this document as the New York City metropolitan area, or NYCMA). The remainder of New York State is in attainment for CO.

This area was designated nonattainment for CO under the provisions of sections 186 and 187 of the CAA. Because the area had a design value of 13.5 ppm based on 1988 and 1989 data, the area was classified moderate 2. (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.333.) This design value was based on ambient CO data recorded in Kings County, New York. For moderate 2 CO nonattainment areas, the CAA required that air quality attain the National Ambient Air Quality Standard (NAAQS) by December 31, 1995. On April 24, 1996, the State of New Jersey submitted a request for a one year extension of the attainment date to December 31, 1996 as allowed for in the CAA. On July 31, 1996 and June 27, 1996, the States of New York and Connecticut respectively submitted letters to EPA concurring with New Jersey's request. EPA granted the request for a one year extension to December 31, 1996 in a November 5, 1996 **Federal Register** document. The three States had applied for this extension since there was an exceedance of the CO NAAQS in the CMSA in 1994. This extension was granted pursuant to section 186(a)(4).

2. What Was Included in New York's Submittal and Does It Meet the Clean Air Act Requirements?

In an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on August 30, 1999, the State of New York submitted a CO redesignation request and maintenance plan for the New York portion of the CO nonattainment area.

On March 22, 2000, New York submitted a related SIP revision which requested removal of a number of transportation control Measures (TCMs) from the SIP because these measures have been demonstrated to no longer be necessary to provide for attainment and maintenance of the CO standard. This proposed revision is contained in a document entitled ''Update to the Downtown Brooklyn Master Plan Component of the Carbon Monoxide Attainment Demonstration.''

Public hearings were held on September 7, 1999 for the CO redesignation request and on September 9, 1999 for the Downtown Brooklyn Master Plan SIP revision.

New York is requesting the removal of two sets of transportation control measures (TCMs). Three of these TCMs were identified in the November 15, 1992 CO attainment demonstration and 11 from the Downtown Brooklyn Master Plan (DBMP). NYSDEC has provided demonstration sufficient to warrant their removal from the SIP.

While EPA's approval of the November 15, 1992 CO attainment demonstration did not include removal of these TCMs, NYSDEC's modeling analysis demonstrates attainment of the NAAQS without relying on the emissions reductions associated with these TCMs. The proposed CO redesignation request demonstrates attainment and maintenance of the CO NAAQS without these TCMs, so their removal from the NYCMA CO SIP is approvable.

NYSDEC presents intersection analyses to determine if there is a continued need for the 11 unimplemented TCMs from the DBMP. The analyses followed the general procedures and methodologies consistent with the 1992 NYCMA CO SIP, with the exception of using EPA receptor guidance rather than New York City Environmental Quality Review (CEQR) and using the CAL3QHCR dispersion model. The Updated DBMP demonstrated attainment and maintenance of the CO NAAQS without these TCMs, so their removal from the NYCMA CO SIP is approvable.

The following is a brief description of how the State has fulfilled each of the CAA redesignation requirements.

a. The Area Must Have Attained the Applicable NAAOS

New York's CO monitoring data shows that from calendar year 1992 through calendar year 1999, no violations of the CO NAAQS have occurred. A violation occurs when more than one exceedance of the standard occurs at the same CO monitor during a calendar year.

In addition, in order to demonstrate attainment of the CO NAAQS, the data must be quality-assured and not show a violation of the standard for the last two consecutive years. New York's CO data has been quality assured and shows no more than one exceedance of the NAAQS per year over the most recent two complete years of data (1999 and 2000).

Therefore, EPA finds that the New York portion of the CMSA has met the first statutory criterion for attainment of the CO NAAQS (40 CFR 50.9 and appendix C).

Furthermore, air quality data for the remainder of the CMSA shows that the entire nonattainment area has met the CO NAAQS from 1995 to the present.

b. The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

New York's August 30, 1999 CO SIP revision is fully approved by EPA as meeting all the requirements of section 110(a)(2)(I) of the CAA, including the requirements of Part D (relating to nonattainment), which were due prior to the date of New York's redesignation request. The 1990 CAA required that nonattainment areas meet specific new requirements depending on the severity of the nonattainment classification. Requirements for New York include an attainment demonstration, forecast of vehicle miles traveled, the preparation of a 1990 emission inventory with periodic updates, the development of contingency measures, implementation of an enhanced inspection and

maintenance (I/M) program, and adherence to the conformity rules.

Previously Approved Requirements

New York's vehicle miles traveled forecast, emissions inventory, and contingency measures were approved on July 25, 1996 (61 FR 38594) as part of the New York CO SIP.

New York's attainment demonstration would have been approved in an earlier notice except that it relied on credit from the New York enhanced motor vehicle inspection and maintenance (I/M) program. New York's analysis demonstrated that all of the modeled intersections attained the 8-hour carbon monoxide standard of 9 ppm. Since air quality values at the most congested intersections was determined to not exceed the standard, New York has demonstrated that the entire area will be in attainment for CO. New York used appropriate modeling techniques and modeling inputs in its demonstration.

New York's enhanced I/M program was implemented in November 1997. After the State successfully demonstrated how much emissions reduction credit the program deserves, EPA published a final approval of the enhanced I/M program on May 7, 2001 (66 FR 22922).

EPA is proposing to approve the attainment demonstration at this time.

Conformity

Section 176 of the CAA contains requirements related to conformity. Although EPA's regulations (see 40 CFR 51.390) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment, or that are subject to an EPA approved maintenance plan, EPA has decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA.

EPA's decision is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation conformity rules even after redesignation and would risk sanctions for failure to do so. Unlike most requirements of section 110 and part D, which are linked to the nonattainment status of the area, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require performance of conformity analyses in the absence of approved state rules. Therefore, a delay in approving State rules does not relieve an area from the obligation to implement conformity requirements. Specifically, New York submitted adopted transportation conformity regulations on August 12, 1998. However, on March 2, 1999 the U.S. Court of Appeals for the D.C. Circuit struck down five provisions of the federal transportation conformity regulation (EDF v. EPA, 167 F.3d 641—D.C. Cir. 1999). Having preceded the court's decision, New York State includes all five of these provisions in its adopted State regulation as presented in Table 1.

TABLE 1

Description of the provision	Relevant section of the Federal Transportation Conformity Regulation (40 CFR Part 93)	Relevant section of the New York State Transportation Conformity Regulation (6NYCRR Part 240)
Allowed emission budgets in submitted SIPs to become adequate for conformity purposes either by a letter from EPA making such a finding or automatically 45 days after the SIP was submitted.	93.118(e)(1)	240.19(e)(1).
Allowed areas 120 days after disapproval of a submitted control strategy SIP before the start of a conformity freeze.	93.120(a)(2)	240.21(a)(2).
Allowed states to quantify a safety margin based on excess emission reduction from stationary or area sources and to incorporate this safety margin into the transportation conformity budget.	93.124(b)	240.25(b).
Allowed projects that had completed the NEPA process and had been subject to a conformity determination to continue during a lapse.	93.102(c)(1)	240.3(c)(1).
Allowed non-federally funded projects to continue during a conformity lapse.	93.121(a)(1)	240.22(a)(1).

Because New York State's transportation conformity regulation contains these five provisions, EPA cannot proceed with an approval of the State's regulation at this time.

Nevertheless, areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules, if State rules are not yet approved. Accordingly, EPA believes it is appropriate to evaluate New York's redesignation request independent of the status of the State's conformity regulation.

Part D New Source Review Requirements

Consistent with the October 14, 1994 EPA guidance from Mary D. Nichols, entitled ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' EPA is not requiring full approval of a Part D NSR program by New York as a prerequisite to redesignation to attainment. Under this guidance, nonattainment areas may be redesignated to attainment notwithstanding the lack of a fully approved Part D NSR program so long as the program is not relied upon for maintenance. New York has not relied on a NSR program to maintain air quality within the CO standard. Moreover, because the New York portion of the CO nonattainment area is being redesignated to attainment by this action, New York's Prevention of Significant Deterioration (PSD) requirements will be applicable to new or modified sources of CO.

c. The Air Quality Improvement Must Be Permanent and Enforceable

New York has implemented a number of measures to control motor vehicle CO emissions. Emission reductions achieved through the implementation of these control measures are enforceable. These measures include the Federal

Motor Vehicle Control Program, Federal reformulated gasoline regulation, and New York's pre-1990 modifications to its inspection and maintenance (I/M) program.

The State of New York has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of existing EPA-approved SIP and federal measures contribute to the permanence and enforceability of reduction in ambient CO levels that have allowed New York to attain the NAAQS since 1992.

d. The Area Must Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. In this notice, EPA is approving the State of New York's maintenance plan because EPA finds that New York's submittal meets the requirements of section 175A.

1996 Attainment Year Inventory

Section 172(c)(3) and 187(a)(1) of the CAA requires that CO plan provisions include a comprehensive, accurate, and current emission inventory from all sources of relevant pollutants in the nonattainment area. In addition, page 8, section 5a of the September 4, 1992 memorandum from John Calcagni, former Director, Air Quality Management Division, to EPA Regional Air Division Directors entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' requires States to ''develop an attainment inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS. This inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the time and should include emissions during the time period associated with the monitoring data showing attainment.''

On November 23, 1999, New York submitted its CO redesignation request and maintenance plan to EPA. On March 22, 2000, New York submitted its update to the New York State Implementation Plan for Carbon Monoxide, entitled ''Update to the Downtown Brooklyn Master Plan Component of the Carbon Monoxide Attainment Demonstration.'' Finally, on May 25, 2001, New York submitted its Final Proposed Revision for redesignating the New York CO nonattainment area to attainment of the CO standard.

New York included the requisite inventory in the CO SIP. The base year for the inventory was 1996, using a three-month CO season of December 1996 through February 1997. The inventory covers the seven counties in the NYCMA.

The 1996 emissions inventory is also classified as the attainment year inventory for the CO redesignation plan. The calendar year 1996 inventory can be considered representative of attainment conditions because the NAAQS were not violated during 1996. The inventory included peak average wintertime daily emissions from stationary point, stationary area, off-highway mobile, and highway mobile sources of CO. These emission estimates were prepared in accordance with EPA guidance. EPA is approving the CO emissions inventory for the entire NYCMA CO nonattainment area.

Demonstration of Maintenance-Projected Inventories

New York estimates that total CO emissions will decrease from 4,510.7 tons per day in the 1996 base year to 3,539 tons per day in 2012. Such a reduction in CO emissions clearly supports the State's contention that the CO NAAQS will be maintained into the foreseeable future. These projected inventories were prepared in accordance with EPA guidance. The projections in Table 2 show that future CO emissions are expected to be below the level of emissions in the base year after the benefits of the Federal Motor Vehicle Control Program, reformulated gasoline and pre-1996 basic I/M program are taken into consideration. These improvements are expected to occur despite the fact that New York took into account the effects of growth due to economic activities and population changes on stationary and off-highway sources.

TABLE 2.—1996 BASE YEAR AND PROJECTED 2000, 2007 AND 2012 CARBON MONOXIDE EMISSION INVENTORIES WITH POST-1996 CONTROLS

[Tons/Peak Winter Season Day]

NYCMA nonattainment area by source category	1996 CO emission inventory (tons per day)	2000 projected CO emission inventory (tons per day)	2007 projected CO emission inventory (tons per day)	2012 projected CO emission inventory (tons per day)
Point	86.20	91	99	106
Area	699.50	708	720	735
Off-Highway Mobile	219	232	254	267
Highway Mobile	3506	2860	2381	2431
Total	4510.70	3891	3454	3539

Transportation Conformity Budgets

The submittal included transportation conformity budgets based on the control strategies, growth projections and assumptions used in the attainment demonstration and maintenance plans for the CO nonattainment area. Table 3 presents the 2000, 2007 and 2012 carbon monoxide transportation conformity budgets in tons of CO per winter day. These budgets are consistent with the State's emission baseline and projected inventories for highway mobile sources. EPA announced its findings that the budgets are adequate for transportation conformity purposes on March 27, 2000 (65 FR 16196). EPA is now proposing to approve these budgets.

TABLE 3.—CARBON MONOXIDE TRANSPORTATION CONFORMITY BUDGETS

[Tons of CO/winter day]

Year	CO (tons/winter day)
2000	2860
2007	2381
2012	2431

Monitoring Network

New York has committed to continue to operate its existing air monitoring network and quality assurance program in accordance with 40 CFR part 58 to ensure the development of complete and accurate emission inventory and air monitoring data.

Verification of Continued Attainment

Continued attainment of the CO NAAQS in New York depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State has projected CO emissions out to 2012 with interim years of 2000 and 2007. The State has also committed to track actual vehicle miles traveled (VMT) on an annual basis as part of the demonstration that growth above and beyond that predicted will not result in a change of attainment determination. This tracking process will be used along with the latest EPA emission model to ensure that the 1996 baseline attainment emissions are not exceeded.

In addition to tracking changes in VMT, New York will use a process based on planned development to identify areas at risk of exceeding the CO standard. This process will rely on information collected by the New York City Departments of City Planning, the New York City Department of Transportation, the New York State Department of Transportation, or other agencies that undertake major investment studies associated with transportation projects. Additionally, the New York State Department of Environmental Conservation is to be informed by New York City of any planned commercial developments larger than 300,000 square feet. Any project(s) that meets the State's criteria will be considered an area at potential risk for violating the CO standard and would be required to mitigate any projected violations of the NAAQS.

Finally, the State previously identified the Long Island City and Downtown Brooklyn Business Districts as areas at risk of violating the CO standard because in the 1992 attainment demonstration these areas showed the potential for future exceedance of the CO standard. However, that attainment demonstration did not take credit for the benefits of the now implemented enhanced motor vehicle I/M program. With these credits, the State has demonstrated that these areas would not exceed the CO standard in the future. Accordingly, New York's request to remove the DBMP TCMs from the SIP is approved.

EPA is proposing to approve New York State's plans for verifying continued attainment of the CO standard and for identifying areas at risk of exceeding the CO standard.

Contingency Plan

The level of CO emissions in New York will largely determine its ability to stay in compliance with the CO NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, it is possible that the ambient air pollutant concentrations exceed or violate the NAAQS based upon some unforeseeable condition. In order to meet this challenge, the CAA requires states to develop contingency measures to offset these conditions. New York has committed to use its winter-time Reid Vapor Pressure (RVP) regulation as its contingency measure. New York State's Subpart 225–3 ''Fuel Composition and Use—Volatile Motor Fuel'' permits the commissioner to set a winter RVP level for gasoline if such a level is necessary for air quality purposes. This regulation was adopted on June 30, 1993 and was approved by EPA in 61 FR 38594 as part of New York's 1992 CO SIP.

e. The Area Must Meet All Applicable Requirements Under Section 110 and Part D of the CAA

In section 2.b. of this document EPA sets forth the basis for its conclusion that New York has a fully approved SIP which meets the applicable requirements of section 110 and Part D of the CAA. EPA notes that section 110 also requires that states include in their SIPs, where applicable, oxygenated gasoline programs. The oxygenated fuels program was removed from the New York SIP because the entire CMSA, including the New York portion, was attaining the CO NAAQS. (See 65 FR 20909 (April 19, 2000)). Since oxygenated fuel was removed from the SIP because it was no longer required, its removal does not pose a problem for the redesignation of the New York portion of the CMSA from nonattainment to attainment for the CO NAAQS.

3. What Are EPA's Findings?

EPA has determined that the information received from the NYSDEC constitutes complete redesignation requests under the general completeness criteria of 40 CFR part 51, appendix V, sections 2.1 and 2.2.

Additionally, the New York redesignation request meets the five requirements of section 107(d)(3)(E), noted earlier.

4. What Are EPA's Conclusions?

EPA is proposing to approve New York's request for redesignating the New York portion of the New York Northern New Jersey-Long Island CO nonattainment area to attainment, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA is also proposing to approve the New York CO maintenance plan because it meets the requirements set forth in section 175A of the CAA. In addition, EPA is proposing to approve the New York CO attainment demonstration that was submitted on November 15, 1992. Finally, EPA is proposing to approve the removal from the SIP of the 3 TCMs identified in the November 15, 1992 CO attainment demonstration and the 11 TCMs from the DBMP.

5. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does 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), nor will it 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), because it merely proposes to approve 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 proposed rule also is not subject to Executive Order 13045 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

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

Dated: August 20, 2001.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 01–21933 Filed 8–29–01; 8:45 am]

BILLING CODE 6560–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–7045–6]

RIN 2040–AD08

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Ambient Water; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed regulation would amend the ''Guidelines Establishing Test Procedures for the Analysis of Pollutants'' under section 304(h) of the Clean Water Act (CWA), by adding several analytical test procedures for enumerating the bacteria, Escherichia coli (E. coli) and enterococci, and the protozoans, Cryptosporidium and Giardia, in ambient water to the list of Agency-approved methods.

This proposal would make available a suite of Most Probable Number (MPN) (i.e. multiple-tube, multiple-well) and membrane filter (MF) methods for enumerating E. coli and enteroccoci bacteria in ambient water. Both culture-based and enzyme-substrate techniques are included. Some test methods are also applicable to total coliform determinations when these are the preliminary or concurrent steps for E. coli enumeration. Similarly, this document proposes new methods for detecting Cryptosporidium and Giardia in ambient water. Regulators may use these test procedures to assess Cryptosporidium and Giardia concentrations in ambient waters.

DATES: Comments must be postmarked, delivered by hand, or electronically mailed on or before October 29, 2001. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. Eastern Time (ET) on October 29, 2001.

ADDRESSES: Send written comments on the proposed rule to ''Part 136 Biological Methods'' Comment Clerk (W–99–14); Water Docket (4101); U. S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries should be delivered to: EPA's Water Docket at 401 M Street, SW., East Tower Basement (Room EB 57), Washington, DC 20460. If you wish to hand-deliver your comments, please call (202) 260–3027 between 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays, to obtain the room location for the Docket. Comments also may be submitted electronically to: *OW-Docket@epa.gov.*

FOR FURTHER INFORMATION CONTACT: For regulatory information regarding this proposal, contact Maria Gomez-Taylor, Ph.D.; Engineering and Analysis Division (4303); Office of Science and Technology; Office of Water; U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460, or call (202) 260–1639.

For technical information regarding analytical methods proposed in today's rule, contact Robin Oshiro; Office of Science and Technology (4304); Office of Water; U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460, or call (202) 260–7278.

SUPPLEMENTARY INFORMATION:

Potentially Affected/Regulated Entities

EPA Regions, as well as States, Territories, and Tribes are authorized to implement the water quality standards program and the National Pollutant Discharge Elimination System (NPDES) program, and to issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act (CWA). In doing so, permitting authorities, including authorized States, Territories, and Tribes, make discretionary choices when writing permits, including the selection of pollutants to be measured and monitoring requirements. If EPA has ''approved'' (i.e., promulgated through rulemaking) standardized testing procedures for a given pollutant, the permit must specify one of the approved testing procedures or an approved alternate test procedure. Although EPA proposes to include test methods for four biological pollutants in section 136.3, it recommends their use only for ambient water quality monitoring. EPA does not propose to approve these test methods for effluent matrices.

EPA has developed ambient water quality criteria for E. coli and enteroccoci bacteria and is considering criteria for Cryptosporidium and Giardia. The States, Territories, and Tribes may adopt these criteria into their water quality standards and may issue water quality-based permits that require monitoring for these pollutants in ambient waters. Therefore, discharges with water quality-based permits could be affected by the standardization of testing procedures in this rulemaking in instances where the permitting