§ 92.18 Judicial review.

A final Notice of Assessment issued under the procedures in this subpart may be subject to judicial review pursuant to 5 U.S.C. 701 *et seq.*

Dated: January 6, 2005.

Henrietta Holsman Fore,

Director, United States Mint.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME No. R03–OAR–2004–DC–0009; FRL–7861–2]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia; Post 1996 and Post 1999 Rate-of-Progress Plans, Contingency Measures, Transportation Control Measures, VMT Offset, and 1990 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Maryland, Commonwealth of Virginia and the District of Columbia for the Metropolitan Washington, DC severe 1-hour ozone nonattainment area (the Washington area). These revisions include the post 1996–1999 and post 1999–2005 rate-of-progress (ROP) plans, changes to the 1990 base year inventory, a contingency measures plan, certain transportation control measures (TCMs), and a demonstration that each SIP contains sufficient transportation control measures to offset growth in vehicle miles traveled (VMT) as necessary to demonstrate ROP and attainment of the 1-hour national ambient air quality standard (NAAQS) for ozone. The intended effect of this action is to propose approval of revisions submitted to satisfy the SIP requirements of 1-hour ozone nonattainment areas classified as severe. These revisions are being proposed for approval in accordance with the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before February 11, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0009 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov.*

D. Mail: R03–OAR–2004–DC–0009, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. 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 RME ID No. R03–OAR–2004–DC–0009. 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.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are 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 RME or 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 RME index at *http://www.docket.epa.gov/rmepub/.* 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 RME 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 District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230, Baltimore, Maryland 21224; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

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SUPPLEMENTARY INFORMATION: The use of ''we,'' ''us,'' or ''our'' in this document refers to EPA. The use of ''States'' in this document refers to the State of Maryland, the Commonwealth of Virginia and the District of Columbia.

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I. The Action EPA Is Proposing Today

The EPA is proposing approval of the post 1996–1999 ROP plans, the post 1999–2005 ROP plans and the contingency measure plans for both ROP and attainment submitted by the District of Columbia, Maryland and Virginia (''the States'') for the Washington area. In addition, EPA is also proposing approval of the States' revisions to the 1990 base year emissions inventory, TCMs, and a demonstration that the SIP for each State contains sufficient TCMs to offset growth in VMT as necessary to achieve ROP and to attain the ozone NAAQS (commonly referred to as the VMT Offset SIP). Tables 1 and 2 identify the initial submittal dates and the dates on which the States' submitted amendments for these plans and measures:

TABLE 1.—POST 1996–1999 ROP PLANS FROM THE STATES

	DC	MD [1]	VA
Initial submittal dates	November 10, 1997	December 24, 1997	December 19, 1997.
Amended submittal dates	May 25, 1999	May 20, 1999	May 25, 1999.

[1] Maryland SIP revision submittals labeled as 97–04 and 99–12.

The post 1996–1999 ROP Plan SIP revisions also include certain TCMs, specifically those TCMs identified in Appendix H of the States' submittals.

TABLE 2.—1999–2005 ROP PLANS, CONTINGENCY MEASURES PLAN, AMENDMENTS TO THE 1990 BASE YEAR INVENTORY, AND VMT OFFSET PLANS

	DC	MD [2]	VA
Initial submittal dates	September 5, 2003	September 2, 2003	August 19, 2003.
Amended submittal dates	February 25, 2004	February 24, 2004	February 25, 2004.

[2] Maryland SIP revision submittals labeled as 03–05 and 04–01.

Hereafter, the SIP revisions listed in Table 2 of this document will be called the ''2004 SIP revisions.'' The States' 2004 SIP revisions include the post 1999–2005 ROP plans, the VMT Offset SIPs, revisions to the 1990 base year emissions inventory, and the contingency measures plans for ROP and attainment for the Washington area. The 2004 SIP revisions also include certain TCMs, namely those TCMs identified in Appendix J of the SIP revision submittals. The 2004 SIP revisions also include the States' attainment demonstration plans for the Washington area. Those attainment demonstration plans are the subject of a separate rulemaking action.

II. Background

A. What Is the Washington DC 1–Hour Ozone Nonattainment Area?

The Washington area is comprised of the entire District of Columbia (the District), a portion of Maryland (Calvert, Charles, Frederick, Montgomery, and Prince George's Counties), and a portion of Virginia (Alexandria, Arlington County, Fairfax, Fairfax County, Falls Church, Manassas, Manassas Park, Prince William County, and Stafford County).

B. What Previous Action Has EPA Taken on the Post 1996–1999 ROP Plans?

On January 3, 2001 (66 FR 586), the EPA approved the States' post 1996–1999 ROP plans, attainment demonstration plans (those submitted during 1998 and 2000) and an attainment date extension for the Washington area. A petition for review of that final rule was filed. On July 2, 2002, the United States Courts of Appeals for the District of Columbia Circuit (the court) ruled on the petition and vacated our January 3, 2001 approval of the States' attainment demonstrations, their 1996–1999 ROP plans and the attainment date extension. (*See Sierra Club* v. *Whitman,* 294 F.3d 155, 163 (D.C. Cir. 2002) (''*Sierra Club I*''). Among other things, the court said that the EPA was without authority to extend the Washington area's attainment deadline unless it also ordered the area to be reclassified as a ''severe'' area. The court also found that the attainment demonstration and ROP plans were deficient because neither contained approved contingency measures as required by sections 172(c)(9) and 182(c)(9) of the Clean Air Act (CAA or the Act). *Id.* at 164. Furthermore, the court determined that in addition to a 9 percent reduction in baseline emissions from 1996 to 1999, an area with an attainment date in 2005 must have an approved ROP plan that demonstrates ROP to 2005. *Id.* at 163. The Washington area's post 1996–1999 ROP plan, that had been submitted by each of the States, demonstrated ROP only through 1999.

On January 24, 2003 (68 FR 3410), EPA published a final rule determining that the Washington area failed to attain the November 15, 1999 ozone attainment deadline for serious areas and reclassifying the Washington area from serious to severe ozone nonattainment. That final rule also specified the additional SIP elements mandated by the CAA for that severe area, that would have to be adopted and submitted as SIP revisions by the States for the Washington area as a result of its reclassification to severe.

On April 17, 2003 (68 FR 19106), EPA conditionally approved the States' post 1996–1999 ROP plans and those versions of the attainment demonstration plans submitted during 1998 and 2000, contingent upon the States fulfilling commitments they made to submit the additional elements required of SIPs for a severe area within one year. The Sierra Club filed a petition for review of that final rule alleging, among other things, that EPA could not lawfully conditionally approve these SIP revisions due to a lack of specificity in the States' commitment letters, and that EPA should require the post 1996–1999 ROP plans be revised to use the latest mobile sources emission factor model.

On February 3, 2004, the court ruled on that petition and issued its opinion vacating our April 17, 2003 rule. The court granted the petition solely on the issue that use of a conditional approval was not appropriate nor available to EPA on these SIPs. The court denied the petition for review in all other respects. (*See Sierra Club* v. *EPA,* 356 F.3d at 301–04 (D.C. Cir. 2004) (''*Sierra Club II*'').[3] On April 23, 2004, the court issued its mandate, thereby relinquishing jurisdiction over the post 1996–1999 ROP plans and the attainment demonstration SIP revisions and remanding them back to EPA.

C. What Is the Purpose of the Action EPA Is Taking Today?

Given that the States have now adopted and submitted contingency measures plans and ROP plans through to the 2005 attainment year, EPA is proposing to approve the post 1996–1999 ROP plans that applied to the Washington area pursuant to the area's initial classification as a serious ozone nonattainment area. In addition, EPA is proposing approval of the States' revisions to the 1990 base year emissions inventory. EPA is also proposing to approve the 2004 SIP revisions listed in Table 2 of this document, namely the post 1999–2005 ROP plans, contingency measures plans, and VMT offset plans that apply to the Washington area as a result of its reclassification to severe 1-hour ozone nonattainment. The contingency measure plans identify those measures that were implemented as a consequence of the failure of the Washington area to meet its original November 15, 1999 serious area attainment date, and also identify those adopted measures that will be implemented should the now reclassified Washington area fail to attain the1-hour ozone NAAQS by the severe area deadline date of November 15, 2005 or if the area fails to make reasonable further progress (RFP) or meet a ROP milestone. In addition, EPA is proposing to approve certain TCMs which were made part of the States' post 1996–1999 ROP plans as well as part of the 2004 SIP revisions. These SIP revisions and our rationale for proposing to approve them are discussed in more detail in the subsequent sections of this document.

III. Amendments to the 1990 Base Year Emissions Inventory

EPA mandated the use of the MOBILE6 model for the post-1999 ROP plan development and also required associated revisions to the 1990 base year inventory. (*See* 68 FR at 3418, January 24, 2003; and the joint memorandum issued by EPA's Office of Air Quality Planning & Standards and Office of Transportation & Air Quality, January 18, 2002)[4] As we explained in our January 24, 2003 final rule, requiring the use of MOBILE6 to calculate the 2002 and 2005 ROP target levels will ''necessitate a revision to the 1990 base year inventory which is, among other things, the planning base line from which the 2002 and 2005 ROP targets are calculated.'' In their 2004 SIP revisions, the States updated the 1990 base year inventory to reflect the use of MOBILE6. This affected the base year on-road mobile source inventory as well as the emissions resulting from vehicle refueling and the benefits of stage II vapor recovery and of reformulated gasoline (RFG). The States also made other changes as a result of new inventory methods and information.

The States added several new sources to the point source inventory, that is, large stationary sources of VOC and nitrogen oxides (NO_X) emissions, as result of the area's January 24, 2003 reclassification to severe ozone nonattainment. This reclassification lowered the threshold of what is considered a major stationary source to 25 tons per year (TPY) from 50 TPY. This resulted in additional sources being added to the point source inventory for NO_X emissions. The threshold for inclusion in the point source inventory for VOC emissions had already been 10 TPY of VOC emissions and remains at this level.

The States also updated the area and nonroad portion of the inventory for aircraft emissions and ground support equipment at commercial airports using the Emissions Dispersion Modeling System (EDMS) to recompute the 1990 base year emissions. The Federal Aviation Administration requires EDMS as the methodology for performing air quality emissions and air quality analyses modeling for aviation sources. It further requires airport sponsors to use the most recent EDMS model to calculate all emissions at airports to satisfy the National Environmental Policy Act (NEPA), the CAA's general conformity requirements, and other statutorily mandated analyses. EPA has endorsed the use of EDMS.

The prior methodology used by the States for the 1990 inventory, as compared to EDMS, resulted in higher base year NO_X emissions and provided for higher allowable levels of NO_X emissions for these source categories. Therefore, the prior methodology would have set a higher NO_X emissions budget against which general conformity would be determined in future years' analyses. However, as previously noted, EDMS is the required methodology for performing the future years' general conformity analyses, themselves. The States' revisions to update and recompute the SIPs' 1990 base year area and nonroad inventory for aircraft emissions and ground support equipment at commercial airports using EDMS provide for consistency between the methodologies used to establish the SIPs' allowable NO_X growth budget and for performing future year's general conformity analyses. The States have also based the 2002 and 2005 year area aircraft emissions and ground support equipment at commercial airports portions of the area and nonroad portion of the inventory upon EDMS projections. EPA is proposing to approve the changes to the 1990 base year inventories.

IV. Post 1996–1999 and Post 1999–2005 ROP Plans

A. What Agencies and Organizations Developed the Post 1996–1999 and Post 1999–2005 ROP Plans for the Washington Area?

The District, Virginia and Maryland must demonstrate reasonable further progress (RFP) for the Washington area. These jurisdictions, under the auspices of the Metropolitan Washington Air Quality Committee (MWAQC), with the assistance of the Metropolitan

[3] On April 16, 2004, the court issued an order revising the February 3, 2004 opinion to address a petition for rehearing and leaving its decision to vacate and remand the conditional approval to EPA intact. *Sierra Club* v. *EPA,* 356 F.3d 296, 301–304 (D.C. Cir.) 2004), *amended by* No. 03–1084, 2004 WL 877850 (D.C. Cir. Apr. 16, 2004).

[4] Joint Memorandum dated January 18, 2002, From John S. Seitz, Director, Office of Air Quality Planning & Standards, and Margo Tsirigotis Oge, Director of Office of Transportation and Air Quality, ''Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity''.

Washington Council of Governments (COG), collaborated on a coordinated post 1996–1999 ROP plan and later a coordinated post 1999–2005 ROP plan for the Washington area. The MWAQC includes state and local elected officials and representatives of the District's Department of Health (DoH), the Maryland Department of the Environment (MDE), the Virginia Department of Environmental Quality (VADEQ) and the National Capital Region Transportation Planning Board (TPB). The CAA provides for such interstate coordination for multi-state nonattainment areas. Because control strategy SIPs, such as the ROP plans, must establish and identify motor vehicle emissions budgets (MVEBs) for use in conformity determinations of transportation improvement plans, municipal planning organizations have historically been involved in air quality planning in the Washington area. The MWAQC ensures consultation with the TPB during the development of the Washington area ROP plans and their associated MVEBs. The post 1996–1999 ROP plan and the post 1999–2005 ROP plan each include the emission target levels that demonstrate ROP for the milestone year(s), the projections of growth and the total amount of creditable reductions required for the entire Washington area. The District, Maryland and Virginia agreed to apportion this total amount of required creditable reductions among themselves. Although both the ROP plans were developed on an area-wide basis, each State met the CAA requirements by submitting the post 1996–1999 ROP plan and the post 1999–2005 ROP plan to the EPA as revisions to its SIP.

B. What ROP Requirements Are Applicable to the Washington Area After 1996?

The CAA requires that serious and above ozone nonattainment areas develop plans to reduce area-wide VOC base line emissions after 1996 by 3 percent per year (averaged over consecutive 3-year periods) until the year of the attainment date required for that classification of nonattainment area. The Washington area was initially classified as a serious ozone nonattainment area with an attainment date of November 15, 1999. As such, the Washington area States had and continue to have a requirement that a post 1996–1999 ROP plan be SIP-approved which demonstrates a 9 percent reduction in baseline emissions by 1999.

As previously noted, EPA published a final rule reclassifying the Washington area to severe ozone nonattainment on January 24, 2003, effective March 25, 2003. The statutory attainment date for severe areas is November 15, 2005. The final rule reclassifying the Washington area to severe ozone nonattainment imposed additional requirements on the Washington area including, among other things, a post 1999–2005 ROP plan to achieve an additional 9 percent reduction in base line emissions between 1999 and 2002, and, a further 9 percent reduction between 2002 and 2005. This 9 percent reduction requirement is a continuation of the ROP requirement for a 15 percent reduction in VOC post 1990–1996. For post 1996 and post 1999 ROP plans, the Act allows the substitution of NO_X emissions reductions for VOC emission reductions where equivalent air quality benefits are achieved as determined using the applicable EPA guidance.

C. What Are the Basic Components of a ROP Plan?

1. *An Overview*—A ROP plan consists of a plan to achieve a target level of emissions by each of the milestone years covered by the plan. There are several important emission inventories and calculations associated with the plan including the base year emissions inventory, future year projection inventories, and target level calculations. After accounting for growth in emissions after 1990, the plan must also demonstrate that future year emissions with be held to levels by the creditable control programs' emissions reductions to an amount that is less than or equal to the applicable target level. One method for demonstrating this is to determine how many emission reductions are required by subtracting the target level from the future year uncontrolled emissions.

2. *How is the Target Level Determined?*—EPA has issued guidance on how to calculate the target levels. This guidance outlines a process for calculating a target level. In summary, the State first calculates the 1996 VOC target level that corresponds to the 15 percent reduction in VOC baseline emissions (the 15 percent plan) required under section 182(b)(1) of the Act. The target level starts with the 1990 ROP VOC inventory of VOC. The 1996 VOC target level equals the 1990 ROP VOC inventory minus:

(a) The ''noncreditable reductions'' due to the Federal Motor Vehicle Control Program (FMVCP) promulgated by January 1, 1990, (''FMVCP Tier 0'') and Reid Vapor Pressure (RVP) regulations required under section 211(h) of the Act (Phase 2 RVP),

(b) Any noncreditable reasonably available control technology (RACT) rule correction reductions required by section 182(a)(2)(A) of the Act,[5] and,

(c) An amount equal to the required 15 percent reduction in baseline VOC emissions.

The required 15 percent reduction in baseline VOC emissions is not computed as 15 percent of the 1990 ROP VOC emissions inventory. Because section 182(b)(1)(C) defines ''base line emissions'' as the 1990 ROP inventory less those 1990 calendar year emissions that would be eliminated by the FMVCP Tier 0 and Phase 2 RVP programs by the milestone year, an ''adjusted'' 1990 base year inventory must be computed to reduce the 1990 ROP inventory by the amount of emissions that would be eliminated by implementation of the FMVCP Tier 0 and Phase 2 RVP programs. The required 15 percent reduction in baseline VOC emissions is, therefore, 15 percent of the ''adjusted'' 1990 base year inventory for 1996.

For subsequent milestone years, a similar process is used to compute the target level of emissions. For each three year period after 1996, the ''fleet turnover correction'' (FTC) (that amount of base line emission eliminated by FMVCP Tier 0 and Phase 2 RVP programs during that three year period) is computed and the ''adjusted'' 1990 base year inventory is computed (which is the ''adjusted'' 1990 base year inventory for the prior milestone year minus the relevant FTC). The target level for a milestone year is the target level for the prior milestone year minus the FTC for the three-year period minus the required ROP reductions.[6] In the absence of NO_X substitution, the required post-1996 ROP reduction is 9 percent of the adjusted 1990 VOC base year inventory for the milestone year in question. With NO_X substitution, the required post-1996 ROP VOC reductions can be an amount less than 9 percent as long as the percentage of NO_X substituted plus the VOC ROP percentage equals or exceeds 9 and as long as the amount of NO_X substituted

[5] Any reductions in 1990 baseline emissions due to the corrections in vehicle inspection and maintenance programs under section 182(a)(2)(B) are also treated excluded from counting towards the required 15 percent reduction (*see* CAA section 182(b)(1)(D)(iv)). There were no required corrections in vehicle inspection and maintenance programs in the Washington area and this provision will not be discussed further in this document.

[6] With the exception of 1999 when NO_X substitution is used. In that case, for the 1999 VOC target level, the starting point is the 1996 VOC target level from the 15 percent plan, but for the 1999 NO_X target level the 1990 ROP NO_X inventory is used in lieu of a 1996 target level because the 15 percent plan does not set a NO_X target level for 1996.

meets EPA's December 1993 NO_X Substitution Guidance. With NO_X substitution, a NO_X target is also calculated along the same lines as for a VOC target.

Table 3 summarizes the process for computing ROP target levels continued through the 2005 milestone year:

TABLE 3.—GENERAL PROCESS FOR COMPUTING ROP TARGET LEVELS

Row	Description	How computed
1	1990 ROP Inventory	1990 base year inventory less biogenic emissions and sources outside the nonattainment area.
2	Adjusted 1990 Base Year Inventory for 1996	1990 ROP inventory less emissions eliminated through 1996 by Tier 0 FMVCP/Phase 2 RVP.
3	Emissions eliminated through 1996 by Tier 0 FMVCP/Phase 2 RVP Programs.	Row 1 minus Row 2 (*see Note 1*).
4	Reductions from RACT Rule Corrections	Amount 1990 base year emissions reduced by required RACT rule corrections (*see Note 1*).
5	Required 15 Percent Reduction	0.15 times Row 2.
6	1996 Target Level	Row 1 minus Rows 3, 4 and 5.
7	Adjusted 1990 Base Year Inventory for 1999	1990 ROP inventory less emissions eliminated through 1999 by Tier 0 FMVCP/Phase 2 RVP.
8	Fleet Turnover Correction (FTC) for 1999	Row 2 minus Row 7 (*see Note 2*).
9	Required ROP Reduction for 1999	ROP Percentage (0.0 to 0.09) times Row 7 (*see Note 3*).
10	1999 Target Level	Row 6 minus Rows 8 and 9 (*See Note 4*).
11	Adjusted 1990 Base Year Inventory for 2002	1990 ROP inventory less emissions eliminated through 2002 by Tier 0 FMVCP/Phase 2 RVP.
12	FTC for 2002	Row 7 minus Row 11.
13	Required ROP Reduction for 2002	ROP Percentage (0.0 to 0.09) times Row 11 (*see Note 2*).
14	2002 Target Level	Row 10 minus Rows 12 and 13.
15	Adjusted 1990 Base Year Inventory for 2005	1990 ROP inventory less emissions eliminated through 2005 by Tier 0 FMVCP/Phase 2 RVP.
16	FTC for 2005	Row 15 minus Row 11.
17	Required ROP Reduction for 2005	ROP Percentage (0.0 to 0.09) times Row 15 (*see Note 2*).
18	2005 Target Level	Row 14 minus Rows 16 and 17 (*see Note 3*).

Note 1. With NO_X substitution this need not be computed for any 1999 or later NO_X target levels. Also, because RACT was not required on sources of NO_X prior to 1990, there were no RACT rule corrections that might reduce 1990 base line NO_X emissions and thus this need not be computed for any 1999 or later NO_X target levels.

Note 2. Formula shown for 1999 applies to VOC. When using NO_X substitution the FTC for 1999 is Row 1 minus Row 7.

Note 3. For any three-year, post-1999 period, States are free to choose the amount of NO_X substituted as long as the percentage of VOC plus the percentage of NO_X reduction equals 9 percent (0.09), and, as long as the plan adheres to the other restraints on the amount of NO_X substituted found in EPA's December 1993 NO_X Substitution Guidance.

Note 4. When NO_X substitution is used, the 1999 target level starts with the 1990 ROP inventory, not a 1996 target level, and hence would be Row 1 minus Rows 8 and 9. Row 4 is not relevant when computing NO_X targets.

D. EPA's Evaluation of the Post 1996–1999 ROP Plans for the Washington Area

1. How Were the 3 Percent per Year Reduction Needs for the Post-1996–1999 ROP Plans Calculated?

A post 1996–1999 ROP plan consists of a plan to achieve a target level of emissions by November 15, 1999. As previously stated, there are emission inventories and calculations associated with the plan including the base year emission inventory, future year projection inventories, and target level calculations. The post 1996–1999 ROP plan also identifies the amount of creditable emission reductions that each state must achieve for the nonattainment area-wide plan to get a 9 percent reduction accounting for any growth in emissions from 1990 to 1999. The EPA addressed the sufficiency of the Washington area's post 1996–1999 ROP plan base year emission inventory, future year projection inventories, and target level calculations in its previous notices regarding the Washington area attainment demonstration. (*See* 65 FR 58243 September 28, 2000, 65 FR 62658, October 19, 2000, 68 FR 5246, February 3, 2004, and 68 FR 19106, April 17, 2004.)

Although EPA requires that states use the latest mobile source emissions factor model available at the time a plan is developed, our policy is not to require states that have already submitted SIPs or that submitted SIPs shortly after MOBILE6's release to revise these SIPs simply because the new motor vehicle emissions model becomes available. (*See* 68 FR at 19120, April 17, 2003 and Memorandum from EPA Office of Air Quality Planning & Standards, January 18, 2002.[7]) In the case of the Washington area's post 1996–1999 ROP plans, the States' SIP revisions were submitted in 1999 more than 3 years prior to the release of the MOBILE6 model.

[7] Joint Memorandum dated January 18, 2002, from John S. Seitz, Director, Office of Air Quality Planning & Standards, and Margo Tsirigotis Oge, Director of Office of Transportation and Air Quality, "Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity".

As stated previously, EPA promulgated a final action on January 3, 2001 (66 FR 586) fully approving and a final action on April 17, 2003 (68 FR 19106) conditionally approving these 1996–1999 ROP plan SIP revisions which the court vacated. It is important to note that although the Sierra Club's petition for review of our April 17, 2003 final rule claimed, among other things, that the approval of the States' 1996–1999 ROP plans was arbitrary and capricious because those plans relied on an outdated emissions model and that EPA should require that the post 1996–1999 ROP plans be revised using MOBILE6, in its February 3, 2004 ruling on the petition, the court denied the petition for review on this claim. (*See Sierra Club II,* 356 F.3d 296, 307–308 (D.C. Cir. 2004). The court upheld EPA's decision not to require the Washington area States to revise their post 1996–1999 ROP plans to reflect MOBILE6. Therefore, EPA believes that the ROP target levels of the post 1996–1999 ROP plans are approvable.

2. What Control Strategies Are the District, Maryland and Virginia Including in the Post 1996–1999 ROP Plan?

The post 1996–1999 ROP plan describes the emission reduction credits that the Washington area jurisdictions are claiming toward their 9 percent reduction requirement. We can credit reductions for the ROP requirement for rules promulgated by EPA and for state measures we have approved as SIP revisions. The post 1996–1999 ROP plan control measures for the Washington area are listed in Tables 4 and 5 of this document and described in more detail in the Technical Support Document (TSD) for this rulemaking.

3. What Are the Total Reductions in the 1996–1999 ROP Plan?

Table 6 summarizes the VOC and NO_X creditable measures in Maryland's, Virginia's and the District's 1996–1999 ROP plan for the Washington area.

TABLE 4.—CREDITABLE VOC EMISSION REDUCTIONS IN THE POST 1996–1999 ROP PLAN FOR THE WASHINGTON AREA

[Tons/day]

Measure	DC	MD	VA
Tier 1 FMVCP	1.4	5.5	5.9
RFG Refueling Benefits	0.0	0.9	0.7
National low emission vehicle (NLEV)	0.2	0.6	1.3
Reformulated Gasoline (on/off road)	2.2	7.9	8.0
Surface Cleaning/Degreasing	0.0	2.9	0.0
Autobody Refinishing	0.5	3.8	2.7
AIM	1.6	6.6	5.6
Consumer Products	0.6	2.2	1.9
Seasonal Open Burning Ban	0.0	3.7	2.6
Graphic Arts	0.9	1.0	1.5
Landfill Regulations	0.0	0.0	0.3
Non-CTG RACT to 50 TPY	0.0	0.4	0.4
RACT on Additional Sources >25 TPY and <50 TPY	N/A	0.3	0.0
Stage II Vapor Recovery	0.0	8.9	7.9
Stage I Enhancement (excluding Loudoun County, VA)	0.0	0.9	0.3
Federal Non-road Gasoline Engine Standards	0.9	6.3	6.8
TCMs	0.0	0.1	0.1
Enhanced I/M	3.9	18.0	17.9
Total Creditable Reductions	11.8	70.0	63.9

TABLE 5.—CREDITABLE NO_X EMISSION REDUCTIONS IN THE POST 1996–1999 ROP PLAN FOR THE WASHINGTON AREA

[Tons/day]

Measure	DC	MD	VA
Enhanced I/M	2.4	14.8	16.9
Tier 1	2.5	13.7	14.7
NLEV	.2	0.3	1.5
Reformulated Gasoline (on-road)	0.0	0.1	0.1
Federal Non-road Gasoline Engine Standards	−0.1	−0.4	−0.5
Federal Non-road Diesel Engine Standards	0.4	3.7	3.2
State NO_X RACT/beyond NO_X RACT rules	2.1	67.9	12.0
Open Burning Ban	0	0.8	0.6
TCMs	0	0.2	0.2
Total Creditable Reductions	7.5	101.1	48.7

TABLE 6.—CREDITABLE EMISSION REDUCTIONS COMPARED TO THE EMISSIONS REDUCTIONS NEEDED FOR THE POST 1996–1999 ROP PLAN FOR THE WASHINGTON AREA

[Tons/day]

	DC	MD	VA	Area-wide total
VOC Reductions in Plan	11.8	70.0	63.9	145.7
Area-wide Reduction Needs	.....	.....	.....	131.5
Surplus	.....	.....	.....	14.2
NO_X Reductions in Plan	7.5	101.1	48.7	157.3
Area-wide Reduction Needs	.....	.....	.....	150.6
Surplus	.....	.....	.....	6.7

E. EPA's Evaluation of the of the Post 1999–2005 ROP Plans for the Washington Area

1. What Effect Do the Amendments to the 1990 Base Year Have on the Post 1999–2005 ROP Plans

Unlike the post 1996–1999 ROP plan, EPA explicitly requires that the States develop the post 1999–2005 ROP plan using the updated MOBILE6 emission factor model because the requirement for such a plan came due for the Washington area after the release of MOBILE6. (*See* 68 FR 3410 at 3420, January 24, 2003.) The 1990 ROP and ''adjusted'' 1990 base year inventories, as discussed in section IV. C. this document, are significantly dependent upon the mobile source emission factor model. The mobile source emission factor model is the tool used to determine the amount of 1990 baseline emissions that would be eliminated by the pertinent milestone year due to the Tier 0 FMVCP and Phase 2 RVP programs, and, thus, is a fundamental aspect of the development of the FTC and ''adjusted'' 1990 base year inventories. In the guidance that we provided for the post 1999–2005 ROP plan under the reclassification of the Washington area to severe, we recognized that the 1990 ROP and adjusted 1990 base year inventories and the 1996 and 1999 target levels would have to be re-computed in order to determine the target levels for the post 1999 ROP requirements. We had identified that in addition to motor vehicle emissions budgets for the 2002 and 2005 milestone years, development of the required post 1999 ROP plan would also require the development of revisions to the 1990 base year emissions inventories and development of up to seven 1990 adjusted inventories (VOC for 1996, VOC and NO_X for 1999, VOC and NO_X for 2002, plus VOC and NO_X for 2005). *See* 67 FR 68805 at 68811, November 13, 2003.

As shown in Table 3 of this document, the 1999 target level is the 1996 target level minus a percentage of the adjusted 1990 Base Year Inventory for 1999 and the FTC for 1999; and the 1996 target level is the 1990 ROP Inventory minus the following three amounts:

(a) 15 percent of the ''adjusted'' 1990 base year inventory for 1996;

(b) Reductions from RACT rule corrections; and

(c) Emissions eliminated through 1996 by Tier 0 FMVCP/Phase 2 RVP programs.

Therefore, the 1999 target level is just the 1990 ROP inventory minus the following five amounts:

(1) 15 percent of the ''adjusted'' 1990 base year inventory for 1996;

(2) Reductions from RACT rule corrections;

(3) Emissions eliminated through 1996 by Tier 0 FMVCP/Phase 2 RVP programs;

(4) A percentage of the ''adjusted'' 1990 Base Year Inventory for 1999; and

(5) The FTC for 1999.

To continue this process for 2002 and 2005, the steps outlined in Table 3 of this document entitled, ''General Process for Computing ROP Target Levels'' are used for the 2002 and 2005 milestone targets as shown in Tables 7a and 7b.[8]

TABLE 7A.—GENERAL PROCESS FOR COMPUTING 2002 AND 2005 ROP VOC TARGET LEVELS

Row	Description	How computed
1	1990 VOC ROP Inventory	1990 base year inventory less biogenic emissions and sources outside the nonattainment area.
2	Adjusted 1990 Base Year VOC Inventory for 1996	1990 ROP inventory less emissions eliminated through 1996 by Tier 0 FMVCP/Phase 2 RVP.
3	VOC Emissions eliminated through 1996 by Tier 0 FMVCP/Phase 2 RVP Programs.	Row 1 minus Row 2.
4	VOC Reductions from RACT Rule Corrections	Amount 1990 base year emissions reduced by required RACT rule corrections.
5	Required 15 Percent VOC Reduction	0.15 times Row 2.
7	Adjusted 1990 Base Year VOC Inventory for 1999	1990 ROP inventory less emissions eliminated through 1999 by Tier 0 FMVCP/Phase 2 RVP.
8	Fleet Turnover Correction (FTC) for 1999	Row 2 minus Row 7.
9	Required ROP VOC Reduction for 1999	ROP Percentage (0.0 to 0.09) times Row 7.
11	Adjusted 1990 Base Year Inventory for 2002	1990 ROP inventory less emissions eliminated through 2002 by Tier 0 FM VCP/Phase 2 RVP.
12	FTC for 2002	Row 7 minus Row 11.
13	Required ROP Reduction for 2002	ROP Percentage (0.0 to 0.09) times Row 11.
14	2002 VOC Target Level	Row 1 minus Rows 3, 4, 5, 8, 9, 12 and 13.
15	Adjusted 1990 Base Year VOC Inventory for 2005	1990 ROP inventory less emissions eliminated through 2005 by Tier 0 FMVCP/Phase 2 RVP.
16	FTC for 2005	Row 15 minus Row 11.
17	Required ROP VOC Reduction for 2005	ROP Percentage (0.0 to 0.09) times Row 15.
18	2005 VOC Target Level	Row 14 minus Rows 16 and 17.

TABLE 7B.—GENERAL PROCESS FOR COMPUTING 2002 AND 2005 TOP NO_X TARGET LEVELS

Row	Description	How computed
1	1990 NO_X ROP Inventory	1990 base year inventory less biogenic emissions and sources outside the nonattainment area.
7	Adjusted 1990 Base Year NO_X Inventory for 1999	1990 ROP inventory less emissions eliminated through 1999 by Tier 0 FMCVP/Phase 2 RVP.
8	Fleet Turnover Correction (FTC) for 1999	Row 1 minus Row 7.
9	Required ROP NO_X Reduction for 1999	ROP Percentage (0.0 to 0.09) times Tow 7.

[8] To facilitate comparison by the reader of Tables 7a and 7b with Table 3, the rows identifiers in the following two tables remain the same as those for the corresponding item in Table 3.

TABLE 7B.—GENERAL PROCESS FOR COMPUTING 2002 AND 2005 TOP NO_X TARGET LEVELS—Continued

Row	Description	How computed
11	Adjusted 1990 Base Year NO_X Inventory for 2002	1990 ROP inventory less emissions eliminated through 2002 by Tier 0 FMCVP/Phase 2 RVP.
12	FTC for 2002	Row 7 minus Row 11.
13	Required ROP Reduction for 2002	ROP Percentage (0.0 to 0.9) times Tow 11.
14	2002 NO_X Target Level	Row 1 minus Rows 8, 9, 12 and 13.
15	Adjusted 1990 Base Year Inventory for 2005	1990 ROP inventory less emissions eliminated through 2005 by Tier 0 FMVCP/Phase 2 RVP.
16	FTC for 2005	Row 15 minus Tow 11.
17	Required ROP NO_X Reduction for 2005	ROP Percentage (0.0 to 0.9) times Row 15.
18	2005 NO_X Target Level	Row 14 minus Rows 16 and 17.

2. How Were the 3 Percent per Year Reductions for the Post 1999–2005 ROP Plan Calculated?

TABLE 8.—2002 AND 2005 ROP TARGET LEVELS

Row	Description	VOC tons/day	NO_X tons/day
1	1990 VOC ROP Inventory	578.7	869.3
2	Adjusted 1990 Base Year VOC Inventory for 1996	455.5	N/R *
3	VOC Emissions eliminated through 1996 by Tier 0 FMVCP/Phase 2 RVP Programs	123.2	N/R
4	VOC Reductions from RACT Rule Corrections	0.1	N/A *
5	Required 15 Percent VOC Reduction	68.3	N/R
7	Adjusted 1990 Base Year Inventory for 1999	433.7	778.5
8	Fleet Turnover Correction (FTC) for 1999	21.8	90.8
9	Required ROP Reduction for 1999—1% VOC & 8% NO_X	4.3	62.3
11	Adjusted 1990 Base Year Inventory for 2002	420.5	756.7
12	FTC for 2002	13.2	21.8
13	Required ROP Reduction for 2002—0 % VOC and 9 % NO_X	0.0	68.1
14	2002 Target Level	347.7	626.3
15	Adjusted 1990 Base Year VOC Inventory for 2005	412.1	735.6
16	FTC for 2005	8.4	21.1
17	Required ROP VOC Reduction for 2005—0% VOC & 9 % NO_X	0.0	66.2
18	2005 Target Level	339.3	539.0

* N/R means not required, and N/A means not applicable.

3. What Control Strategies Are the District, Maryland and Virginia Including in the Post 1999–2005 ROP Plan?

The post 1999–2005 ROP plan describes the emission reduction credits that the Washington area jurisdictions are claiming toward their 9 percent reduction requirements. We can credit reductions for the ROP requirement for rules promulgated by the EPA and for state measures we have approved as SIP revisions. The control measures used in the post 1999–2005 ROP plan for the Washington area are listed in Tables 9 and 10 of this document and described in more detail in the TSD for this rulemaking. The control measures include all those in the post 1996–1999 portion of the plan, plus additional measures. Table 9 lists those measures credited in the 1996–1999 ROP that continue to produce benefits in the post-1999 period. There are several reasons why a post 1996–1999 measure can also be credited in the post-1999 period. First, the uncontrolled baseline is computed from the1990 levels, not the 1999 levels. Thus, if a source category emits at a rate of one ton of pollutant per 10 units of activity (*e.g.*, VMT or millions of British Thermal Units heat input) and had a 1990 activity level of 100 units, the source would have baseline emissions of 10 tons. If the source categories activity level was projected to grow to 130 units by 1999 and 140 units by 2002, the projected uncontrolled emissions would be 13 tons in 1999 and 14 tons in 2002. If this source category was controlled at a 50 percent control, that is, required to emit at a rate of a half ton per unit of activity by some date before 1999, then the projected, controlled emissions would be 6.5 tons in 1999 and 7 tons in 2002. The reductions would be the projected uncontrolled emissions minus the controlled emissions. The reductions would be 6.5 tons for 1999 and 7 tons for 2002.

Another way a measure included in the post 1996–1999 ROP plan can produce additional emission reduction benefits after 1999 is when increasing portions of the source category are subject to more stringent standards over time. This is true of mobile source controls under the FMVCP and NLEV programs and for EPA's nonroad mobile source standards. As time passes, more and more of the source category is made of newer vehicles or engines that were manufactured to meet the most recent emission standards. For instance, in the case of on-road mobile sources, the emission factor computed using the MOBILE emission factor model declines for future years. Once again, reductions are computed by subtracting a future controlled projected emissions from uncontrolled emissions. The future year *uncontrolled* emissions assume only the FMVCP in place as of 1990 (termed ''Tier 0 FMVCP''), the ''Phase 2 RVP'' standards issued mandated for 1992, and other programs in place in 1990.

The future year *controlled* programs include all the creditable programs issued or adopted since 1990 such as the Tier 1 and 2 FMVCP standards,[9] federal heavy duty on-road diesel engine standards, reformulated gasoline, the enhanced inspection maintenance programs, and the National Low Emission Vehicle program. Because the same future year VMT is used for both the projected uncontrolled and controlled cases, the reductions are net of growth in VMT.

TABLE 9.—VOC AND NO_X EMISSION REDUCTIONS ELIGIBLE FOR CREDIT IN THE POST 1999–2005 ROP PLAN FROM MEASURES IN THE 1996–1999 ROP PLAN FOR THE WASHINGTON AREA

[Tons/day]

Measure	2002 reductions		2005 reductions	
	VOC	NO_X	VOC	NO_X
Tiers 1 & 2 FMVCP, Reformulated Gasoline (On-road), Federal Heavy Duty Diesel Engines rule, NLEV & Enhanced Inspection and Maintenance	56.0	44.9	80.5	85.8
Reformulated Gasoline (Nonroad/Off-road)	2.7	.....	2.9	
Surface Cleaning/Decreasing	4.1	.....	4.4	
Autobody Refinishing	9.3	.....	9.8	
AIM	16.7	.....	17.5	
Consumer Products	4.1	.....	4.3	
Seasonal Open Burning Ban	7.4	1.6	7.4	1.6
Graphic Arts	3.8	.....	4.0	
Landfill Regulations	2.4	.....	2.5	
Non-CTG RACT to 50 TPD—MD/VA/DC	1.5	.....	1.5	
Stage I Enhancement	1.5	.....	1.6	
Expanded State Point Source Regulation to 25 TPD	2.4	.....	2.5	
Stage II Vapor Recovery Nozzles	15.1	.....	15.1	
RFG refueling benefits	2.6	.....	2.3	
Non-road Gasoline Engines Rule	22.2	.....	26.6	
Non-road Diesel Engines	.....	14.9	.....	22.1
State NO_X RACT/beyond RACT	.....	203.8	.....	279.4
Total Creditable Reductions	151.8	265.2	182.9	388.9

The post 1999–2005 ROP plan for the Washington area also includes additional emission reduction measures beyond those included in the post 1996–1999 ROP plan. All the States have adopted limits on certain architectural and industrial maintenance (AIM) coatings that are more stringent than the limits required under the Federal regulations for AIM coatings. The post 1999–2005 ROP plan also includes Virginia's rule for solvent cleaning operations which is based on the Federal maximum achievable control technology (MACT) standard for chlorinated solvent vapor degreasers. The States each have issued rules that regulate VOC emissions from portable fuel containers by setting standards for the design and construction of these containers.

The post 1999–2005 ROP plan also relies upon VOC emission reductions from emissions standards promulgated by EPA for several categories of nonroad mobile sources. These categories are:

(a) Spark ignition outboard, personal water craft and jetboat engines (OB/PWC) and stern drive and inboard engines;

(b) Large spark-ignition engines such as those used in forklifts and airport ground-service equipment;

(c) Recreational vehicles using spark-ignition engines such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and

(d) Recreational marine diesel engines.

The 1999–2005 ROP plan also relies upon additional TCMs which are strategies to both reduce VMT and decrease the amount of emissions per VMT, and are considered an essential element of control strategies for nonattainment areas.

The post 1999–2005 ROP plan also relies upon certain voluntary non-regulatory measures as an alternative to traditional ''command and control'' regulatory approaches. Voluntary emission reduction program measures have the potential to encourage new, untried and cost-effective approaches to reduce emissions. Under EPA's guidance, voluntary emission reduction program measures can be approved if the State retains enforceable responsibility for the amount of emission reductions associated with the voluntary measures and meets certain other obligations.

The post 1999–2005 ROP plan's control measures for the Washington area are listed in Table 10 of this document and described in more detail in the TSD for this rulemaking.

[9] The MOBILE model automatically keeps track of when which program is required and thus does not compute any credit for Tier 2 for the 2002 year but will for a 2005 year which is after the 2004 model year.

TABLE 10.—VOC AND NO_X EMISSION REDUCTIONS FROM MEASURES IN THE 1999–2005 ROP PLAN FOR THE WASHINGTON AREA

[Tons/day]

Line #	Measure	2002 Reductions		2005 Reductions	
		VOC	NO_X	VOC	NO_X
1	Measures in 1996–1999 ROP plan (from Table 9)	151.8	265.2	182.9	388.9
2	State Portable Fuel Container Rules—MD/VA	0.9		2.4	
3	State Solvent Cleaning Rules			9.0	
4	EPA's Non-road Engines and vehicles rule—Large Spark Ignition Engine Rule		0.6		0.5
5	EPA's Non-road Engines and vehicles rule—Spark Ignition Marine Engines	1.3		3.1	
6	TCMs in 2004 SIP Revisions	0.3	0.5	0.3	0.7
7	State AIM Rules			12.3	
8	Voluntary Measures			3.19	.19
9	State Portable Fuel Container Rules—DC			0.2	
Total	Reductions	154.3	266.3	213.39	390.29

4. What Are the Creditable Reductions in the Post 1999–2005 ROP Plan?

EPA can only credit reductions in a ROP plan required by section 182(c)(2) if those reductions meet the creditability requirements of sections 182(b)(1)(C) and (D) of the Act. One restriction for creditability is that the reduction has to result from a rule promulgated by EPA, from a permit issued pursuant to Title V of the Act, or from a rule that EPA has approved into the applicable SIP(s) (*See* 302(q) of the Act).

All of the reductions from national rules (all those in Table 9 as well as those listed on lines 4 and 5 of Table 10) for which the States seek credit in their post 1996–1999 and post 1999-2005 ROP plans have been promulgated by EPA. All of the reductions from State rules included in Table 9 and in lines 2 and 3 of Table 10 for which the States seek credit in their post 1996–1999 and post 1999–2005 ROP plans have been approved into the applicable SIP.

As for the rest of the State measures, EPA can only credit the ROP plan with reductions from a measure approved into the applicable SIP, and, hence, can only issue a final rule approving the ROP plan after or concurrently with our approval of state measures projected to generate sufficient reductions to demonstrate ROP. However, EPA can propose approval of an ROP plan if we have proposed approval of enough measures to generate the reductions needed to demonstrate ROP. EPA has already proposed approval for all the measures listed in Table 10. The TCMs in the 1996–1999 ROP plan and the 2004 SIP revisions are being proposed for approval in this notice of proposed rulemaking. The status of each of the remaining items is as follows:

EPA proposed approval of the Maryland and Virginia State AIM rules on May 25, 2004 (69 FR 29674) and June 7, 2004 (69 FR 31780), respectively. For the measures listed in Table 11, a notice of proposed rulemaking (NPR) has been published in the **Federal Register**.

TABLE 11.—NPR SIGNATURE DATES

Measure	Line number in table 9	Date/Citation of NPR
State AIM Rule—DC	7	12/27/04 (69 FR 77149).
Voluntary Measures	8	12/23/04 (69 FR 76889).
State Portable Fuel Container Rules—DC	9	12/29/04 (69 FR 77970).

5. How Does the Post 1999–2005 ROP Plan Demonstrate ROP?

The post 1999–2005 plan demonstrates that the Washington area meets the post 1999–2005 ROP requirement of the Act by showing that the ROP plan will generate sufficient emission reductions to reduce the projected uncontrolled 2002 or 2005 emissions to less than or equal to a target level of emissions for that year which represents a 9 percent reduction in baseline emissions. The 2002 and 2005 NO_X target levels are 626.3 and 539.0 tons/day of NO_X, respectively. (*See* Table 8 of this document.) These target levels each represent a 9 percent reduction in baseline NO_X emissions.

The 2002 and 2005 uncontrolled NO_X emissions are 880.1 and 880.8 tons/day, respectively. Thus, the required NO_X reductions for 2002 are 880.1 minus the target level of 626.3, that is, 253.8 tons/day of NO_X emissions. The required NO_X reductions for 2005 are 880.8 minus the target level of 539.0, that is, 341.8 tons/day of NO_X emissions. The measures listed in Table 9 achieve sufficient reductions to enable the area to achieve the 2002 and 2005 NO_X target levels. As discussed in section IV. E. of this document, these measures are fully creditable towards ROP.

While not a factor in our evaluation for approval, EPA notes that the post 1999–2005 ROP plan also demonstrates reasonable further progress for VOC emissions for 2002 and 2005 in a more generic manner pursuant to section 172(c)(2) of the Act. This is evidenced by the numerous VOC reduction measures in the plan. With the exception of the voluntary measures (the approval of which has been proposed in a separate proposed rulemaking) and the TCMs (the approval of which is also proposed in this document), the bulk of these measures are part of the measures identified in the contingency plan to address the failure to attain by November 15, 1999. As will be discussed in succeeding sections of this document, the approval of the contingency measure plan and the ROP demonstration required by section 182(c)(2) is contingent upon approval of these measures. The attainment demonstration relies on VOC as well as NO_X emission reductions in both the photochemical modeling and weight of

evidence portions of the demonstration. Therefore, reductions in VOC emissions constitute progress towards attainment. However, EPA believes that the average 3 percent per year ROP requirement of section 182(c)(2) has been demonstrated by NO_X reductions alone.

EPA has approved ROP plans under section 182(c)(2) that relied solely upon NO_X reductions without regard to VOC reductions. See 69 FR 42880, July 19, 2004 (proposed at 69 FR 25348, May 6, 2004) and 64 FR 13348, March 18, 1999 (proposed by 63 FR 45172, August 25, 1998).

EPA concludes that the post 1999–2005 ROP plan in the 2004 SIP revisions does demonstrate ROP of at least a nine (9) percent reduction in NO_X baseline emissions in the Washington area for each of the 1999–2002 and 2002–2005 periods. Therefore, EPA believes that we can approve the post 1999–2005 ROP plans submitted by the States for the Washington area on the basis of the NO_X reductions alone.

F. Do the Post 1996–1999 and Post 1999–2005 ROP Plans for the Washington Area Meet the Requirements for NO_X Substitution?

1. Relationship to the Attainment Demonstration

In order to determine whether the post 1996–1999 and post 1999–2005 ROP plans satisfy EPA's guidance and the Act regarding NO_X substitution, we had to examine and evaluate certain aspects of the attainment demonstration plan that the States have also submitted for the Washington area. For purposes of proposing approval of the post 1996–1999 and post 1999–2005 ROP plans, EPA's review of the attainment demonstration was limited to whether the photochemical grid modeling showed that NO_X reductions are useful in reducing ozone concentrations, that the ROP plan substitutes no more NO_X reductions than assumed in the attainment demonstration, and whether the attainment demonstration attained within time periods mandated by the Act. EPA also examined the attainment demonstration to ensure that the attainment demonstration did not rely upon the measures identified in the contingency plan in the event the Washington area fails to attain by November 15, 2005 or fails to achieve post 1996 ROP or a post 1996 ROP milestone. As discussed in Section V. of this document, the continency plan relies upon early implementation of contingency measures. EPA had to ensure that the attainment demonstration did not rely upon these measures in order to propose approval of the contingency plan for failure to attain by November 15, 2005. The attainment demonstration SIPs submitted by the States for the Washington area are the subject of a separate rulemaking that does address all of the required elements.

EPA concludes that the 2004 SIP revisions demonstrate that the relative reduction in ozone precursor emissions from the entire inventory is greater than that used in the photochemical grid modeling for the Washington area and that the weight of evidence shows that the measures creditable towards the 2005 milestone year will result in attainment by no later than November 15, 2005. Furthermore, we have determined that this demonstration does not depend upon any measures in the contingency measure plan, and that the States have used the latest planning assumptions for emissions estimates for all source categories. EPA also concludes that the attainment demonstration modeling shows that NO_X reductions are beneficial towards reducing ozone in the Washington area and that with all the measures in the ROP plan the Washington area will attain by November 15, 2005. EPA further finds that the post 1996–1999 and post 1999–2005 ROP plans substitute fewer NO_X reductions than those needed for attainment by November 15, 2005. EPA, therefore, concludes that the post 1996–1999 and post 1999–2005 ROP plans for the Washington area meet EPA's guidance and the Act for NO_X substitution, and can be approved. A detailed description of our analysis of the local modeling and weight of evidence and its relationship to NO_X substitution is provided in the TSD prepared in support of this rulemaking action. That TSD also includes our detailed evaluation of how the post 1996–1999 and post 1999–2005 ROP plans satisfy the Act's and our guidance for NO_X substitution. A copy of the TSD is available in the E-Docket for this rulemaking and upon request from the EPA Regional Office listed in the Addresses section of this document.

V. Contingency Measure Plan

Sections 172(c)(9) and 182(c)(9) of the Act require that SIPs contain additional contingency measures that will take effect without further action by the state or EPA if an area fails to attain the standard by the applicable date, or fails to meet ROP deadlines. The Act does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. However, EPA provided our initial guidance interpreting the contingency measure requirements of 172(c)(9) and 182(c)(9) in the April 16, 1992, General Preamble for Implementation of the Act (*See* 57 FR 13498 at 13510, April 16, 1992). Our interpretation is based upon the language in sections 1872(c)(9) and 1829(c)(9) in conjunction with the control measures requirements of sections 172(c), 182(b) and 182(c)(2)(B), the reclassification and failure to attain provisions of section 181(b) and other provisions. In the April 16, 1992 initial guidance EPA indicated that states with moderate and above ozone nonattainment areas should include sufficient contingency measures so that, upon implementation of such measures, additional emission reductions of up to 3 percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been identified. The State must show that the contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions. In subsequent guidance, EPA opined that contingency measures could be implemented early, that is, be implemented prior to the milestone or attainment date.[10]

A. What Are the Contingency Measures Implemented To Address the Failure To Attain by November 15, 1999 and for the 1996–1999 ROP Plan?

The 2004 SIP revisions identify two groups of measures that have been implemented since November 15, 1999. The first of these measures is phase 2 of the RFG program. By opting into the reformulated gasoline program, the States ensured that the further benefits of the program would be implemented on January 1, 2000. Such implementation would be earlier than what would have occurred had RFG been implemented in the area due to reclassification. Under section 181 of the Act, EPA has no enforceable duty to reclassify an area sooner than 6 months after the attainment date.

EPA bases the determination of failure to attain upon air quality monitoring data and thus must have ozone season data for the attainment year in hand. States are required to report air quality data at least quarterly and each report is due no later than 90 days after the end of the quarterly reporting period (40

[10] See Memorandum dated August 13, 1993, From G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, to Air Branch Chief, Regions I–X, entitled ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas.''

CFR 58.35). Thus the earliest EPA would be assured to have data for the first portion (April–June) of the Washington Area's April to October ozone season would have been September 1999. Under section 211(k) of the Act, the RFG program becomes effective in an area one year after the effective date of the reclassification to severe. At the earliest, the RFG program would have been required in the fall of 2000, and at the latest spring of 2001. By opting into the RFG program, the Washington Area States assured that the additional benefits of the second phase of the RFP program would be implemented without any further action by the States or EPA on January 1, 2000. EPA believes it is illogical to penalize nonattainment areas that are taking extra steps, such as implementing contingency measures prior to a deadline, to comport with the CAA's mandate that such states achieve NAAQS compliance as ''expeditiously as practicable.'' EPA has applied this guideline to situations where the reductions occurred prior to the attainment deadline. *See*, e.g., 67 FR 61786, October 2, 2002.

The second phase of the RFG program was implemented prior to EPA's January 24, 2003 rule which determined that the Washington area failed to attain the 1-hour ozone NAAQS by November 15, 1999 and which reclassified it to severe nonattainment. EPA believes, however, the fact that the measure was implemented prior to the effective date of the reclassification should not render it ineligible for use as a contingency measure. After all, if a measure implemented prior to the attainment date can count towards the failure-to-attain contingency requirement, then surely this measure, which was implemented shortly after the attainment deadline, can count towards the failure-to-attain by November 15, 1999 contingency requirement.

The second group of measures are additional measures implemented after November 15, 1999, but before November 15, 2005. These additional measures are the States AIM coatings, portable fuel container (PFC) and solvent cleaning rules discussed in Section IV. E. of this document. A summary of the expected benefits from these measures is presented in Table 12.

TABLE 12.—CONTINGENCY MEASURES

Measure	VOC reductions (tons/day)	Implementation date
Solvent Cleaning Operations—VA	9.0	January 1, 2005.
Portable fuel containers rule—MD	1.7	January 1, 2004.
Portable fuel containers rule—VA	0.7	January 1, 2005.
AIM coatings rule—DC	1.1	January 1, 2005.
AIM coatings rule—MD	6.2	January 1, 2005.
AIM coatings rule—VA	5.0	January 1, 2005.
Total	23.7	
3 percent of 1999 baseline emissions	13.0	3 percent of 433.7 TPD VOC.

While these additional measures were not adopted as contingency measures before the Washington area was reclassified to severe nonattainment (or before November 15, 1999) and then implemented to take effect without any further action by the States or EPA after the area failed to attain, EPA believes that the adoption of these additional measures also fulfill the contingency measure requirement for a serious area. The SIPs applicable to the Washington area did not identify contingency measures prior to the reclassification, and, the ultimate remedy for such a defect would be to implement additional measures over and above those in the applicable SIP. These measures were adopted and made enforceable after the March 1, 2003 effective date that of EPA final rule reclassifying the Washington area to severe nonattainment for failing to attain the ozone NAAQS. (*See*, 68 FR 3410, January 24, 2003.) The adopted rules implementing the measures require compliance before the severe area attainment date of November 15, 2005.

In the General Preamble (57 FR 13498 at 13510, April 16, 1992), we stated that the contingency measure would need to achieve reductions in the year following the year in which the failure has been identified. In the January 24, 2003 final rule, EPA issued the determination that the Washington area had failed to attain by November 15, 1999. Thus, under the guidance in the General Preamble the measures should have been implemented no later than one year from March 1, 2003, the effective date of the January 24, 2003 final rule. However, the States have adopted the additional rules to fulfill the contingency measure requirement, these measures have been implemented on the dates shown in Table 12, and the measures have been submitted as SIP revisions. EPA believes that it would serve no purpose to disapprove the contingency measure plan simply because the measures were not implemented by March 1, 2004, since the remedy would require yet another rule adoption process which cannot cure the problem of having missed a deadline that is nearly two years in the past.

As discussed in Section IV. E. of this document, EPA has not yet approved all these contingency measures. The States have calculated the amount of VOC or NO_X reductions that are required to meet the 3 percent contingency requirement relative to the 1999 adjusted base year inventory. The amount of VOC reduction needed is 13.0 tons per day (433.7 x 0.03). EPA has already approved the first three measures listed in Table 12 into the Maryland or Virginia SIP. The reductions from these three measures total 11.4 of the needed 13 tons per day. However, we can propose approval of the contingency plan if EPA has proposed approval of the measures in that plan. As indicated in Section IV. E. of this document, EPA has already proposed approval of all these measures.

EPA is proposing to approve the contingency plan as containing adopted and implemented measures to address the Washington area's failure to attain by November 15, 1999 and for the 1996–1999 ROP plan. Any final action to approve the contingency plan can only occur concurrently with or after approval of all the measures as SIP revisions.

B. What Measures Are in the Contingency Measures Plan for the Post 1999–2005 ROP Plans and for Failure To Attain by November 15, 2005?

1. Measures in the Plan

The States have identified a number of fully adopted measures which can be implemented with minimal further action on their part and with no additional rulemaking actions to fill the contingency plan in the event the Washington area has a failure to make ROP or fails to attain by November 15, 2005. These measures include:

(a) The District's rule for solvent cleaning operations rules which are based on the Federal maximum achievable control technology (MACT) standard for chlorinated solvent vapor degreasers and thus require higher levels of technology than required previous District requirements;

(b) The District's and Maryland's rules for consumer products that set more stringent limits than the otherwise applicable Federal rules;

(c) The District's and Virginia's rules covering refinishing operations of motor vehicles. These rules set more stringent VOC control standards for these operations than otherwise applicable Federal regulations. The main difference in the state rules versus the federal rule is that the federal rule regulates only the VOC content of the repair coatings whereas the state rules also require the use of high transfer-efficiency painting methods (*e.g.*, high volume low pressure spray guns), and controls on emissions from equipment (*e.g.*, spray gun) cleaning, housekeeping activities (*e.g.*, use of sealed containers for clean-up rags), and operator training; and

(d) Post 2005 reductions from the portable fuel containers rules in all three States. The reductions from Virginia's, Maryland's and the District's rules are credited towards the ROP and attainment plans only to the extent the measure produces benefits by January 1, 2005 and November 15, 2005. The measure will accrue additional benefits after November 15, 2005 as additional old containers are replaced by ones meeting the new requirements. These additional benefits are credited towards the contingency plan.

2. Early Implementation Schedule

The measures in the contingency measure plan will be implemented upon a fixed schedule whether or not EPA issued a finding of failure that the Washington area failed achieve a post 1999 ROP milestone or fails to attain by November 15, 2005. All of the rules except Maryland's portable fuel containers regulation will take effect January 1, 2005. Maryland's portable fuel containers regulation took effect January 1, 2003. Thus, all of the rules can be implemented without further action by the State or EPA.

In guidance issued in 1993, we allow the use of surplus reductions that have already been achieved before the failure has been identified to serve as contingency measures in the year after the failure for attainment and ROP plans. If an area then fails to meet a milestone which triggers the implementation of contingency measures, the state would have one year to backfill the contingency measure. (*See* 57 FR 13498, 13511, April 16, 1992).

The States have not used the VOC reductions on which the contingency measure plan relies in either the attainment demonstration or post 1996–1999 and post 1999–2005 ROP plans. The attainment demonstration relies upon a total of over 210 TPD reduction in VOC emissions. Given that the contingency measures are about 6 percent of the total number of reductions and given that the implementation date of January 1, 2005, EPA believes that these contingency measures are not reasonably available control measures (RACM) because they would not advance the attainment date from the 2005 ozone season to the 2004 ozone season. Therefore, the early implemented contingency measures are surplus to the attainment demonstration. A summary of the expected benefits from these measures is presented in Table 13.

TABLE 13.—CONTINGENCY MEASURES

Measure	VOC Reductions (tons/day)	Implementation date/remark
Solvent Cleaning Operations—DC	2.7	January 1, 2005.
Motor Vehicle Refinishing—DC	0.6	January 1, 2005.
Motor Vehicle Refinishing—VA	2.0	January 1, 2005.
Consumer Products—MD	2.9	January 1, 2005.
Consumer Products—DC	1.1	January 1, 2005.
Portable fuel containers rule—DC	0.3	Post 2005 benefits only.
Portable fuel containers rule—MD	1.5	Post 2005 benefits only.
Portable fuel containers rule—VA	1.7	Post 2005 benefits only.
Total	12.8	
3 percent of 2002 baseline emissions	12.6	3 percent of 420.5 TPD VOC

3. Approval Status

EPA can only approve the contingency plan after or concurrently with EPA's approval of any State contingency measures rules into the applicable SIP. However, we can propose approval of the contingency measure plan once EPA has proposed approval of the state contingency measures into the applicable SIP.

EPA has already published final or proposed rules in the **Federal Register** to approve all of the measures in the contingency plan for the Washington area. The status of each measure in the contingency plan is briefly described in the following table.

TABLE 14.—CONTINGENCY MEASURE APPROVAL STATUS

Measures Approved into SIPs:	
Consumer Products—MD	Approved—12/09/03, 68 FR 68523.
State Portable Fuel Containers—VA	Approved—07/08/04, 69 FR 31893.

TABLE 14.—CONTINGENCY MEASURE APPROVAL STATUS—Continued

State Portable Fuel Containers—MD	Approved—06/29/04, 69 FR 38848.
Motor Vehicle Refinishing—VA	Approved—06/24/04, 69 FR 35253.
Measures Proposed for Approval into SIPs:	
Motor Vehicle Refinishing—DC	12/23/04, 69 FR 77688.
Solvent Cleaning—DC	12/29/04, 69 FR 77971.
Consumer Products—DC	12/28/04, 69 FR 77688.
State Portable Fuel Container Rules—DC	12/29/04, 69 FR 77970.

4. Conclusion

EPA is proposing to approve the contingency plan as containing adopted and implemented measures to address the contingency measure requirements in the event the Washington area fails to attain the 1-hour ozone NAAQS by November 15, 2005 and for any future failures to achieve ROP or a ROP milestone. Any final approval is contingent upon approval of sufficient State measures to achieve the 3 percent of baseline emission requirement. To have sufficient measures to achieve the 3 percent of baseline emission requirement, EPA will have promulgate final rules approving all of the measures listed in Tables 12 and 13.

VI. Vehicle Miles Traveled (VMT) Offset SIP and Transportation Control Measures (TCMs)

A. What Is a VMT Offset SIP?

Section 182(d)(1)(A) of the Act requires states containing ozone nonattainment areas classified as severe, pursuant to section 181(a) of the Act, to adopt transportation control strategies and TCMs to offset increases in emissions resulting from growth in VMT or numbers of vehicle trips and to obtain reductions in motor vehicle emissions as necessary (in combination with other emission reduction requirements) to comply with the Act's ROP milestones and attainment demonstration requirements. Our interpretation of section 182(d)(1)(A) is discussed in the April 16, 1992, General Preamble (57 FR 13498). Section 182(d)(1)(A) of the Act specifies submission of the VMT Offset SIP by November 15, 1992, for any severe and above ozone nonattainment area. However, EPA has concluded that section 182(i) of the Act authorizes EPA to adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions of new requirements applicable to an area which has been reclassified. In the final rule reclassifying the Washington area to severe nonattainment, EPA established the submission deadline of March 1, 2004 for the section 182(d)(1) SIP revision as EPA set for all the other new SIP revision elements applicable to reclassified area. *See* 68 FR 3410 at 3422, January 24, 2004.

B. EPA's Analysis of VMT Offset SIP in the 2004 SIP Revisions

In the ''General Preamble'' EPA explained how States are to demonstrate that the VMT requirement is satisfied. Sufficient measures must be adopted so projected motor vehicle VOC emissions will stay beneath a ''ceiling level'' established through modeling of mandated transportation-related controls. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented, or offset, by TCMs. If projected total motor vehicle emissions during the ozone season in one year are not higher than during the previous ozone season due to the control measures in the SIP, the VMT Offset requirement is satisfied. In order to make these projections, a curve of vehicle emissions is modeled to represent the effects of required reductions from the following mandatory programs: an enhanced performance standard vehicle I/M program, Phase 2 RVP, RFG, and the FMVCP. (*See* 57 FR 13498 at 13521–13523, April 16, 1992.) As described in the General Preamble, the purpose of section 182(d)(1)(A) of the Act is to prevent growth in motor vehicle emissions from negating the emissions reduction benefits of the federally mandated programs in the Act. EPA believes it is appropriate to interpret the VMT Offset SIP provisions of the Act to account for how States can practicably comply with each of the provision's elements.

A detailed description of the States' VMT offset SIPs for the Washington area and our evaluation of how those SIPs satisfy the applicable requirements of the Act and EPA's guidance is provided in the TSD prepared in support of this rulemaking. That TSD is available in the E-Docket of this rulemaking and from the EPA Regional Office listed in Addresses section of this document.

The States' plans show, and EPA's evaluation confirms, that the modeled curve for the Washington area does not turn upward (indicating the control programs are offsetting increases in emission from growth in VMT). Therefore, no TCMs would be necessary to offset emissions from growth in VMT under section 182(d)(1)(A). However, the District, Maryland and Virginia have chosen to include certain TCMs as measures to help meet the ROP and attainment requirements.

C. What TCMs Are Part of the SIP?

Typical TCMs included in the plans are bicycle racks on buses and at transit stations, park-and-ride lots, additional bus shelters, additional bicycle lanes, purchase of compressed natural gas buses to replace diesel fueled buses, and additional/improved side walks to encourage walking. The TCMs also include outfitting 866 buses with continuously regenerating filters and the use of ultra-low sulfur diesel fuel. The TCMs are described in more detail in Appendix H of the revised plan document, entitled, ''Revised State Implementation Plan (SIP) Revision, Phase I Attainment Plan for the Washington DC-MD-VA Nonattainment Area'' dated April 16, 1999 (''April 1999 Post-1996 Plan''). This plan was submitted as a SIP revision on May 25, 1999, May 20, 1999, and on May 25, 1999 by the District, Maryland and Virginia, respectively. Further TCMs in the February 19, 2004 plan, are described in section 7.5 and Appendix G of that document. The February 19, 2004 plan was submitted as a SIP revision on February 24, 2004 by Maryland, and on February 25, 2004 by the District and Virginia.

EPA concludes that the States have submitted sufficient TCMs to meet the requirement of section 182(d)(1)(A) of the Act. EPA is proposing to approve the VMT Offset SIP submitted by the States on the dates listed in Table 2 of this document.

VII. Motor Vehicle Emissions Budgets (MVEBs)

A. Background on Transportation Conformity

1. What Is Transportation Conformity?

Transportation conformity is a CAA requirement for metropolitan planning organizations and the U.S. Department of Transportation to ensure that federally supported highway and transit activities are consistent with (''conform to'') the SIP. Conformity to a SIP means that an action will not cause or contribute to new violations; worsen existing violations; or delay timely attainment. The conformity requirements are established by CAA section 176(c). We issued the transportation conformity rule (40 CFR part 93) to implement this CAA requirement.

2. What Are Motor Vehicle Emissions Budgets?

As described in the CAA and our conformity rule, control strategy SIPs such as ROP plans and attainment demonstrations, and maintenance plan SIPs, must establish and identify MVEBs to ensure areas continue to demonstrate ROP and reach attainment. These MVEBs are ''ceilings'' for emissions from motor vehicles, and are used in conformity analyses to determine whether transportation plans and projects conform to the attainment, ROP, and maintenance SIPs. In order for transportation plans and projects to conform, estimated emissions from transportation plans and projects must not exceed the applicable MVEBs contained in attainment demonstration, ROP or maintenance plans.

3. Which Motor Vehicle Emissions Budgets Usually Apply?

According to the transportation conformity rule, MVEBs in a submitted SIP may apply for conformity purposes even before we have approved the SIP, under certain circumstances. The MVEBs in a submitted SIP cannot be used before we have approved the SIP *or* until and unless we have found the MVEBs of the submitted SIP adequate for conformity purposes. Our process for determining adequacy is explained at 40 CFR 93.118(e) and the EPA's May 14, 1999 memo entitled, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision'' as amended by 69 FR 40004, July 1, 2004. (*See* 61 FR 36117, July 9, 1996; 62 FR at 43783–43784, August 15, 1997; and 69 FR 40004 at 400038, July 1, 2004 for more details about the applicability of submitted and approved budgets.)

B. What Motor Vehicle Emissions Budgets Currently Apply in the Washington Area?

As stated elsewhere in this document, EPA's approvals of the 1996–1999 ROP plan and the earlier versions (those submitted during 1998 and 2000) of the attainment demonstration SIP revisions were vacated by the court. Therefore, the MVEBs in these SIP revisions are not currently in the approved SIP. EPA had issued adequacy findings for the MVEBs in the post 1996–1999 ROP plan and the earlier versions of the attainment demonstration SIP revisions (those submitted during 1998 and 2000) prior to our January 3, 2001 final approval (66 FR 586) of those SIPs. (*See* 64 FR 43698, August 11, 1999, and 65 FR 36439, June 8, 2000.) Even though EPA issued findings of adequacy on these budgets, EPA has always interpreted the transportation conformity rule such that a final rulemaking action approving a control strategy or maintenance plan SIP renders any prior adequacy determination made for budgets related to that particular control strategy or maintenance plan SIP of no further force or effect. Instead, the final rulemaking on the SIPs governs which budgets apply for conformity purposes. We also interpret our transportation conformity rule to mean that once a SIP approval is vacated the prior adequacy determination on the vacated budgets is not resurrected.

Therefore, the only MVEBs in the approved SIPs for the Washington area are those for VOC in the approved 15% ROP plan for 1996. (*See* 64 FR 42629, August 5, 1999; 65 FR 44686, July 19, 2000; and 65 FR 59727, October 6, 2000.) However, on December 16, 2003 (68 FR 70012), EPA made a finding of adequacy for the 2005 ROP motor vehicle emission budgets in the SIP revisions submitted by Virginia, Maryland and the District of Columbia on August 19, 2003, September 2, 2003, and September 5, 2003, respectively (the December 16, 2003 finding of adequacy). In accordance with the transportation conformity rule, once found adequate, these 2005 MVEBs superseded the motor vehicle emissions budgets in the 15 percent ROP plan because these 2005 budgets cover a later year and are more stringent. (*See* 40 CFR 93.118)

C. What Effect Will This Action Have on Motor Vehicle Emissions Budgets for the Washington Area?

This action proposes to approve the post 1996–1999 ROP plan for the Washington area and its 1999 MVEBs into the District of Columbia, Maryland and Virginia SIPs. This action also proposes to approve the 1999–2005 ROP plan and its 2002 and 2005 MVEBs as revisions to the District of Columbia, Maryland and Virginia SIPs. A subsequent final action to approve of the 2005 budgets in the 1999–2005 ROP plan will supersede the December 16, 2003 finding of adequacy.

Likewise, by this proposed rulemaking, EPA is also initiating the adequacy process under 40 CFR 93.118(f) for the 2005 budgets in the 1999–2005 ROP plan submitted by Maryland on February 24, 2004 and by the District and Virginia on February 25, 2004. Should EPA make a final adequacy finding on these 2005 ROP budgets, prior to taking a final action to approve them as SIP revisions, that adequacy finding would supersede the December 16, 2003 adequacy finding, and thus make the 2005 budgets in the 1999–2005 ROP plans submitted by Maryland on February 24, 2004 and by the District and Virginia on February 25, 2004 the applicable 2005 ROP budgets.

D. What Are the NVEBs Identified in the ROP Plan for the Washington Area?

The motor vehicle emissions budgets for 1999 in the 1996–1999 ROP plan are 128.5 tons per day of VOC and 196.4 tons per day of NO_X. The motor vehicle emissions budgets in the 1999–2005 ROP plan are:

(1) For 2002, 125.2 tons per day for VOC and 290.3 tons per day of NO_X; and

(2) For 2005, 97.4 tons per day for VOC and 234.7 tons per day of NO_X.

VIII. Prerequisites for Approval of the Post 1996–1999 and Post 1999–2005 ROP Plans

Approval of the ROP plans for the Washington area also requires approval of the associated contingency plans. Therefore, EPA is proposing to approve the post 1996–1999 ROP plans, the post 1999–2005 ROP plans and the contingency measures plans submitted by the District, Maryland and Virginia for the Washington area. Approval of the ROP plans requires previous or concurrent SIP-approval of all the emission reduction measures upon which the ROP demonstrations rely. Likewise, approval of the contingency measure plans requires prior or concurrent SIP approval of the measures in those plans. With respect to other ROP plans, all of the measures are either Federal measures that have been promulgated by EPA or state measures that have been approved by EPA as SIP revisions into the District's, Maryland's and Virginia's SIPs. However, as

discussed in section V. of this document, not all of the contingency measures have been finally approved at this time. EPA has, however, at least proposed approval of all of these measures. Final approval of the post 1996–1999 ROP plans, the post 1999–2005 ROP plans and the contingency measures plan cannot be granted unless and until EPA has fully approved these contingency measures into the applicable SIPs.

IX. Proposed Actions

A. The District of Columbia—Post 1996–1999 Rate-of-Progress Plan and TCMs

EPA is proposing approval of the District of Columbia's 1996–1999 ROP plan SIP revision for the Washington area which was submitted on November 3, 1997, as supplemented on May 25, 1999, and the TCMs in Appendix H of the May 25, 1999 submittal. Final approval is contingent upon final approval of the contingency measure plan in the 2004 SIP revisions.

B. The District of Columbia—1990 Base Year Inventory Revisions

EPA is proposing approval of the revision to the 1990 Base Year Emissions Inventory submitted by the District of Columbia on September 5, 2003 as supplemented on February 25, 2004.

C. The District of Columbia—Post 1999–2005 Rate-of-Progress Plan and TCMs

EPA is proposing approval of the District of Columbia's post 1999–2005 ROP plan SIP revision for the Washington area which was submitted on September 5, 2003 as supplemented on February 25, 2004 and the TCMs in Appendix J of the February 25, 2004 submittal. Final approval is contingent upon final approval of the contingency measure plan in the 2004 SIP revisions.

D. The District of Columbia—VMT Offset SIP

EPA is proposing to determine that the District of Columbia has adopted sufficient TCMs to address growth in VMT and number of vehicle trips as required under section 182(d)(1)(A).

E. The District of Columbia—Contingency Measure Plan

EPA is proposing approval of the District of Columbia's contingency measure plan SIP revision for the Washington area which was submitted on September 5, 2003, as supplemented on February 25, 2004. Final approval is contingent upon final approval of enough measures in the contingency measure plan to represent a 3 percent reduction of the 2002 baseline emissions and final approval of the following measures identified by the District of Columbia as measures in the plan: The District's rules for consumer products, motor vehicle refinishing, AIM, solvent cleaning and portable fuel containers.

F. Maryland—Post 1996–1999 Rate-of-Progress Plan and TCMs

EPA is proposing approval of Maryland's post 1996–1999 ROP plan SIP revision for the Washington area which was submitted on December 24, 1997, as supplemented on May 20, 1999, and the TCMs in Appendix H of the May 20, 1999 submittal. Final approval is contingent upon final approval of the contingency measure plan in the 2004 SIP revision.

G. Maryland—1990 Base Year Inventory Revisions

EPA is proposing approval of the revision to the 1990 Base Year Emissions Inventory submitted by Maryland on September 2, 2003 as supplemented on February 24, 2004.

H. Maryland—Post 1999–2005 Rate-of-Progress Plan and TCMs

EPA is proposing approval of Maryland's post 1999–2005 ROP plan SIP revision for the Washington area which was submitted on September 2, 2003 as supplemented on February 24, 2004 and the TCMs in Appendix J of the February 24, 2004 submittal. Final approval is contingent upon final approval of the contingency measure plan in the 2004 SIP revisions.

I. Maryland—VMT Offset SIP

EPA is proposing to determine that Maryland has adopted sufficient TCMs to address growth in VMT and number of vehicle trips as required under section 182(d)(1)(A).

J. Maryland—Contingency Measure Plan

EPA is proposing approval of Maryland's contingency measure plan SIP revision for the Washington area which was submitted on September 3, 2003, as supplemented on February 24, 2004. Final approval is contingent upon final approval of enough measures in the contingency measure plan to represent the 3 percent reduction of the 2002 baseline emissions and of the following measures identified by Maryland as measures in the plan: Maryland's rules for consumer products, AIM, and portable fuel containers.

K. Virginia—Post 1996–1999 Rate-of-Progress Plan and TCMs

EPA is proposing approval of Virginia's post 1996–1999 ROP plan SIP revision for the Washington area which was submitted on December 29, 1997, as supplemented on May 25, 1999, and the TCMs in Appendix H of the May 25, 1999 submittal. Final approval is contingent upon final approval of the contingency measure plan in the 2004 SIP revisions.

L. Virginia—1990 Base Year Inventory Revisions

EPA is proposing approval of the revision to the 1990 Base Year Emissions Inventory submitted by Virginia on August 19, 2003 as supplemented on February 25, 2004.

M. Virginia—Post 1999–2005 Rate-of-Progress Plan and TCMs

EPA is proposing approval of Virginia's post 1999–2005 ROP plan SIP revision for the Washington area which was submitted on August 19, 2003 as supplemented on February 25, 2004 and the TCMs in Appendix J of the February 25, 2004 submittal. Final approval is contingent upon final approval of the contingency measure plan in the 2004 SIP revisions.

N. Virginia—VMT Offset SIP

EPA is proposing to determine that Virginia has adopted sufficient transportation control measures necessary to address growth in VMT and number of vehicle trips as required under section 182(d)(1)(A).

O. Virginia—Contingency Measure Plan

EPA is proposing approval of Virginia's contingency measure plan SIP revision for the Washington area which was submitted on August 19, 2003, as supplemented on February 25, 2004. Final approval is contingent upon final approval of enough measures in the contingency measure plan to represent the 3 percent reduction of the 2002 baseline emissions and of the following measures identified by Virginia as measures in the plan: Virginia's rules for motor vehicle refinishing, AIM, solvent cleaning and portable fuel containers.

P. Motor Vehicle Emissions Budgets

EPA is proposing to approve the MVEBs established and identified in the Post 1996–1999 and Post 1999–2005 ROP Plans for the Washington area submitted by the District, Maryland and Virginia on the dates as provided in this document. The MVEBs for 1999 in the 1996–1999 ROP plan are 128.5 tons per day of VOC and 196.4 tons per day of NO_X. The MVEBs in the 1999–2005 ROP plan are:

(1) For 2002, 125.2 tons per day for VOC and 290.3 tons per day of NO_X; and

(2) For 2005, 97.4 tons per day for VOC and 234.7 tons per day of NO_X.

EPA is also initiating the adequacy process under 40 CFR 93.118(f) for the 2005 budgets in the 1999–2005 ROP plans. EPA will not be initiating a separate adequacy process. Persons wishing to comment on the adequacy of these MVEBs should do so at this time.

EPA is soliciting public comments on all these proposed actions and the associated issues discussed in this document. These comments will be considered before taking final actions.

X. Statutory and Executive Order Reviews

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 (15 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 (Pub. L. 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 District of Columbia's, Maryland's and Virginia's post 1996–1999 and post 1999–2005 ROP plans, changes to the 1990 base year inventory, a contingency measures plan, certain transportation control measures (TCMs), and a demonstration that each SIP contains sufficient transportation control measures to offset growth in vehicle miles traveled (VMT) as necessary to demonstrate ROP and attainment of the 1-hour national ambient air quality standard (NAAQS) for the Metropolitan Washington, DC area 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: January 5, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–617 Filed 1–11–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL 7860–2]

Proposed Approval of Waste Characterization Activities at the Hanford Central Characterization Project for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, we, or Agency) is announcing, and soliciting public comment for 45 days on, EPA's proposed approval of the Hanford Central Characterization Project (CCP) to characterize retrievably-stored, contact-handled, transuranic (TRU) debris waste for disposal at the Waste Isolation Pilot Plant (WIPP). EPA is also proposing to designate any changes or expansions to this waste characterization approval as Tier 1, according to EPA's recently effective procedures for approval of WIPP waste generator sites. A Tier 1 designation means that DOE must first obtain written approval from EPA prior to disposing of waste characterized using new or revised processes, equipment, or waste streams. The documents related to this proposed approval are available for review in the public dockets listed in **SUPPLEMENTARY INFORMATION**. In accordance with our 40 CFR 194.8(b) approval process, the EPA conducted an inspection of the Hanford CCP from September 8–12, 2003. The purpose of the inspection was to determine the technical adequacy of the CCP as implemented at Hanford for the characterization of transuranic waste from the Plutonium Finishing Plant (PFP) to be disposed of at the WIPP in New Mexico. During the EPA inspection, EPA evaluated several waste characterization (WC) activities used to characterize retrievably-stored, contact-handled debris waste. EPA evaluated the equipment, procedures and personnel training/experience for acceptable knowledge (AK), nondestructive assay (NDA), nondestructive examination (NDE) and data transfer for the WIPP Waste Information System (WWIS).

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before February 28, 2005.

ADDRESSES: Comments may be submitted by mail to: EPA Docket