

**Comments Due Date**

(a) We must receive comments by August 15, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) The Boeing Company Model MD-11 and MD-11F airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin MD11-55-027, dated March 17, 2011.

**Subject**

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 5510: Tail Fuel Tank Access Door.

**Unsafe Condition**

(e) This AD was prompted by a report that the rub strips of the tail fuel tank access door were manufactured improperly. We are issuing this AD to prevent inadequate electrical bonding between the rub strips and the fuel access door, which can contribute to possible ignition of flammable fuel vapor in the tail fuel tank as a result of a lightning strike.

**Compliance**

(f) Comply with this AD within the compliance times specified, unless already done.

**Installation**

(g) Within 60 months after the effective date of this AD, replace the rub strips of the tail fuel tank access door with new rub strips, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin MD11-55-027, dated March 17, 2011.

**Alternative Methods of Compliance (AMOCs)**

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

**Related Information**

(i) For more information about this AD, contact Philip Kush, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712-4137; phone: 562-627-5263; fax: 562-627-5210; e-mail: [philip.kush@faa.gov](mailto:philip.kush@faa.gov).

(j) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800-0019, Long

Beach, California 90846-0001; telephone 206-544-5000, extension 2; fax 206-766-5683; e-mail [dse.boecom@boeing.com](mailto:dse.boecom@boeing.com); Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on June 22, 2011.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**BILLING CODE 4910-13-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

**EPA-R03-OAR-2010-0475; FRL-9426-3J**

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the District of Columbia, the State of Maryland, and the Commonwealth of Virginia (the States). These revisions pertain to the 2002 base year emissions inventory, the reasonable further progress (RFP) plan, RFP contingency measure, and reasonably available control measure (RACM) requirements of the Clean Air Act (CAA) for the Washington, DC area moderate 1997 8-hour ozone nonattainment area (Washington Area). EPA is also proposing to approve the transportation conformity motor vehicle emissions budgets (MVEBs) associated with this revision. EPA is proposing to approve the SIP revisions because they satisfy the emission inventory, RFP, RACM, RFP contingency measures, and transportation conformity requirements for areas classified as moderate nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS) and demonstrate further progress in reducing ozone precursors. This action is being taken under the CAA.

**DATES:** Written comments must be received on or before August 1, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2010-0475 by one of the following methods:

A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.

B. *E-mail:*

[fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov).

C. *Mail:* EPA-R03-OAR-2010-0475, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2010-0475. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 51 N Street, NE., Fifth Floor, Washington, DC 20002; the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

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

**SUPPLEMENTARY INFORMATION:** The following is provided to aid in locating information in this document.

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### I. What is the background of this action?

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

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Among those nonattainment areas is the Washington

Area. The Washington Area includes the District of Columbia (the District); Arlington, Fairfax, Loudoun, and Prince William Counties and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia (the Northern Virginia area) and Calvert, Charles, Frederick, Montgomery, and Prince George's Counties in Maryland. Pursuant to Phase 1 of the 1997 8-hour ozone implementation rule (Phase 1 rule), published on April 30, 2004 (69 FR 23951), an area was classified under Subpart 2 of the CAA based on its 8-hour design value if that area had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of Subpart 2). Based on this criterion, the Washington Area was classified under Subpart 2 as a moderate nonattainment area. See 40 CFR 81.309, 81.321, and 81.347.

These designations triggered the CAA's section 110(a)(1) requirement that states must submit attainment demonstrations for their nonattainment areas to EPA by no later than three years after the promulgation of a NAAQS. Accordingly, EPA's Phase 1 specifies that states must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007.

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

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

Section 182(b)(1) of the CAA and EPA's 1997 8-hour ozone implementation rule (40 CFR 51.910) require each 8-hour ozone nonattainment area designated moderate and above to submit an emissions inventory and RFP Plan for review and approval into its SIP.

### II. What is EPA's evaluation of the revision?

The District of Columbia Department of the Environment (DDOE), the Maryland Department of the Environment (MDE), and the Virginia Department of Environmental Quality (VADEQ) worked together to develop a joint plan for the Washington Area to address the attainment demonstration, 2002 base year emissions inventory, the RFP plan, RFP contingency measure, and RACM requirements. This plan, entitled "Plan to Improve Air Quality in the Washington, DC-MD-VA Region, State Implementation Plan (SIP) for 8-Hour Ozone Standard, Moderate Area SIP," will be referred to as "the Washington Area 8-hour ozone plan" throughout this document. The Washington Area 8-hour ozone plan was submitted to the EPA as a SIP revision by DDOE on June 12, 2007, by MDE on June 4, 2007, and by VADEQ on June 12, 2007. These SIP revisions also establish a MVEB for 2008 for the Washington Area. These SIP revisions were subject to notice and comment by the public and the States addressed the comments received on the proposed SIPs. All sections of these SIP submittals, with the exception of the attainment demonstration, will be discussed in this rulemaking. The attainment demonstration sections of the SIP submittals will be discussed in a separate rulemaking.

#### A. Base Year Emissions Inventory

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

TABLE 1—WASHINGTON AREA 2002 BASE-YEAR VOC EMISSIONS IN TONS PER DAY (TPD)

Emission source category	VOC	NO <sub>x</sub>
Point .....	12.91	220.6
Stationary Area .....	192.64	24.25
Non-Road Mobile .....	125.79	85.72
On-Road Mobile .....	116.94	266.65

TABLE 1—WASHINGTON AREA 2002 BASE-YEAR VOC EMISSIONS IN TONS PER DAY (TPD)—Continued

Emission source category	VOC	NO <sub>x</sub>
Total (excluding Biogenics) .....	448.28	597.22
Biogenics .....	314.74	3.07

EPA reviewed the 2002 base year inventory for the Washington Area and determined that the procedures, methodologies, and results used to develop the Washington Area 2002 base year inventory are approvable.

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

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

For moderate areas like the Washington Area, the CAA specifies a 15 percent reduction in ozone precursor emissions over an initial 6-year period. In the Phase 2 Rule (70 FR 71612), EPA interpreted this requirement for areas that were also designated nonattainment and classified as moderate or higher for the 1-hour ozone standard. In the Phase 2 Rule, EPA provided that an area classified as moderate or higher that has the same boundaries as an area, or is entirely composed of several areas or portions of areas, for which EPA fully approved a 15 percent plan for the 1-hour NAAQS, is considered to have met the requirements of section 182(b)(1) of the CAA for the 8-hour NAAQS. In this situation, a moderate nonattainment area is subject to RFP under section 172(c)(2) of the CAA and shall submit, no later than 3 years after designation for the 8-hour NAAQS, a SIP revision that meets the requirements of 40 CFR 51.910(b)(2). The RFP SIP revision must provide for a 15 percent emission reduction (either NO<sub>x</sub> and/or VOC) accounting for any growth that occurs during the 6-year period following the baseline emissions inventory year, that is, 2002–2008.

The Washington nonattainment area under the 1-hour ozone standard was classified as severe. For the 1-hour ozone NAAQS, EPA fully approved the 15 percent ROP plans for the Washington, DC 1-hour severe ozone nonattainment area on August 5, 1999 (64 FR 42600), July 44686), and October 6, 2000 (65 FR 59727). Therefore, according to the Phase 2 Rule, the RFP plan for the Washington Area may use either NO<sub>x</sub> or VOC emissions reductions (or both) to achieve the 15 percent emission reduction requirement.

According to section 182(b)(1)(D) of the CAA, emission reductions that resulted from the FMVCP and RVP rules promulgated prior to 1990 are not

creditable for achieving RFP emission reductions. Therefore, the 2002 base year inventory must be adjusted by subtracting the VOC and NO<sub>x</sub> emission reductions that are expected to occur between 2002 and the future milestone years due to the FMVCP and RVP rules.

The States set out the calculations for the adjusted base year inventory and 2008 RFP target levels. The Washington Area 2002 anthropogenic base year inventory is shown in Table 2, below.

TABLE 2—WASHINGTON AREA 2002 ANTHROPOGENIC BASE YEAR INVENTORY

[Ozone season tpd]

Source category	VOC	NO <sub>x</sub>
Point .....	12.91	220.6
Area .....	192.64	24.25
Nonroad .....	125.79	85.72
On-Road .....	116.94	266.65
Total .....	448.28	597.22

The States calculated the non-creditable emission reductions between 2002 and 2008 by modeling its 2002 and 2008 motor vehicle emissions with all post-1990 CAA measures turned off, and calculating the difference, as shown below in Table 3.

TABLE 3—WASHINGTON AREA NON-CREDITABLE EMISSION REDUCTIONS

[Ozone season tpd]

Source category	VOC	NO <sub>x</sub>
(i) 2002 On-Road .....	166.55	308.24
(ii) 2008 On-Road .....	154.10	276.63
Non-creditable Reductions (i)–(ii) .....	12.45	31.61

The State's calculations of the Washington Area 2002 VOC inventory adjusted to 2008 and the VOC target level for 2008 are summarized in Table 4, below.

TABLE 4—WASHINGTON AREA 2008 RFP TARGET LEVEL CALCULATIONS

[Ozone season tpd]

Description	Formula	VOC
A—2002 Rate-Of Progress Base Year Inventory .....	.....	448.28
B—FMVCP/RVP Reductions Between 2002 And 2008 .....	.....	12.45
C—2002 Adjusted Base Year Inventory Relative To 2008 .....	A–B .....	435.83
D—RFP Ratio .....	.....	15%
E—Emissions Reductions Required Between 2002 & 2008 .....	C * D .....	65.37
F—Target Level for 2008 .....	C – E ..	370.45

The States elected to meet RFP in the Washington Area using only VOC reductions. A moderate 8-hour ozone nonattainment area with an approved 15

percent ROP plan under the 1-hour standard can use reductions from VOC or NO<sub>x</sub> or a combination of either.

*C. Projected Inventories and Determination of RFP*

The States described the methods used for developing its 2008 projected

VOC and NO<sub>x</sub> inventories and developed projected uncontrolled and controlled 2008 VOC and NO<sub>x</sub> emissions. EPA reviewed the procedures used to develop the projected inventories and found them to be reasonable.

Projected controlled 2008 emissions for the Washington Area are summarized in Table 5, below.

**TABLE 5—WASHINGTON AREA 2008 PROJECTED CONTROLLED VOC & NO<sub>x</sub> EMISSIONS (TPD)**

Emission source category	VOC emissions (tpd)	NO <sub>x</sub> emissions (tpd)
Point .....	13.98	229.36
Area .....	181.59	26.93
Nonroad .....	92.48	76.91
Mobile .....	70.98	160.30
<b>Total .....</b>	<b>358.84</b>	<b>493.22</b>

To determine if 2008 RFP is met in the Washington Area, the total projected controlled emissions must be compared to the target levels calculated in Section B of this notice. As shown below in Table 6, the total VOC emission projections meet the 2008 RFP emission target. Therefore, the 2008 RFP in the Washington Area is demonstrated.

**TABLE 6—DETERMINATION OF WHETHER RFP IS MET IN 2008 IN THE WASHINGTON AREA**

Description	VOC emissions (tpd)
A—Total 2008 Projected Controlled Emissions .....	358.84
B—Target Level for 2008 .....	370.45
RFP met if A < B .....	Yes

*D. Control Measures and Emission Reductions for RFP*

To meet the RFP requirement for the Washington Area, the States used a combination of area source control, nonroad mobile, and on-road mobile measures.

The area source measures the States used to meet 2008 RFP in the Washington Area include the mobile repair and refinishing rule, phase I of the portable fuel containers rule, the architectural and industrial maintenance (AIM) coatings rule, phase

I of the reformulated consumer products rule, and the solvent cleaning operations rule. Area source 2008 emission reductions are 30.98 tpd VOC and 0 tpd NO<sub>x</sub>.

Nonroad measures include phase I and II emissions standards for gasoline-powered nonroad utility engines, the Federal non-road diesel engines rule, Federal emissions standards for spark ignition marine engines, Federal emissions standards for large spark ignition engines, and Federal reformulated gasoline use in nonroad motor vehicles and equipment. Using EPA's NONROAD model, the States calculated emission reductions from these measures to be 36.91 tpd VOC and 11.68 tpd NO<sub>x</sub>. EPA reviewed the procedures that the State's used to develop its projected inventories, including the use of the NONROAD model, and found them to be reasonable.

On-road mobile measures include high-tech vehicle inspection and maintenance (enhanced I/M), Federal tier I vehicle emission standards and new Federal evaporative test procedures, the national low emission vehicle (NLEV) program, tier 2 vehicle standards, and the heavy duty diesel engine (HDDE) rule. On-road 2008 emission reductions that the States calculated using EPA's MOBILE model are 6.19 tpd VOC and 29.67 tpd NO<sub>x</sub>. EPA reviewed the procedures that the States used to develop the projected inventories, including the use of the MOBILE model, and found them to be reasonable.

Additional measures include national standards for locomotives, transportation control measures (TCMs) and vehicle technology, fuel, or maintenance measures, and a voluntary bundle. Table 7 summarizes the VOC emission reductions that the States claimed in the Washington Area 8-hour ozone plan to meet RFP in the Washington Area. While many of the emission control measures used to meet RFP also resulted in NO<sub>x</sub> emission reductions, the States elected to meet RFP in the Washington Area using only VOC reductions.

**TABLE 7—VOC CONTROL MEASURES AND 2008 EMISSION REDUCTIONS IN THE WASHINGTON AREA**

Control measure	VOC (tpd)
Area Sources Measures .....	30.98
Nonroad Measures (NONROAD Model) .....	36.91
Onroad Measures (MOBILE Model) .....	6.19
Locomotive Standards .....	0.05
Transportation Control Measures	0.19
Voluntary Bundle .....	0.19
<b>Total .....</b>	<b>74.51</b>

*E. Contingency Measures for Failure To Meet RFP*

Section 172(c)(9) of the CAA requires a state with a moderate or above ozone nonattainment area to include sufficient additional contingency measures in its RFP plan in case the area fails to meet RFP. The same provision of the CAA also requires that the contingency measures must be fully adopted control measures or rules. Upon failure to meet an RFP milestone requirement, the state must be able to implement the contingency measures without any further rulemaking activities. Upon implementation of such measures, additional emission reductions of at least 3 percent of the adjusted 2002 baseline emissions must be achieved. For more information on contingency measures, see the April 16, 1992 General Preamble (57 FR 13512) and the November 29, 2005 Phase 2 8-hour ozone implementation rule (70 FR 71612).

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

**TABLE 8—WASHINGTON AREA 2008 RFP CONTINGENCY MEASURE TARGET LEVEL CALCULATIONS**

Description	Formula	VOC	NO <sub>x</sub>
A—2002 Rate-Of Progress Base Year Inventory .....	.....	448.28	597.22
B—FMVCP/RVP Reductions Between 2002 and 2008 .....	.....	12.45	31.61

TABLE 8—WASHINGTON AREA 2008 RFP CONTINGENCY MEASURE TARGET LEVEL CALCULATIONS—Continued

Description	Formula	VOC	NO <sub>x</sub>
C—2002 Adjusted Base Year Inventory Relative To 2008	A - B	435.83	565.61
D—RFP Ratio	.....	15%	0
E—RFP Emissions Reductions Required Between 2002 & 2008	C * D	65.37	0
F—Contingency Percentage	.....	0.3%	2.7%
G—Contingency Emission Reduction Requirements	C * F	1.31	15.27
H—Contingency Measure Target Level for 2008	C - E - G	369.15	550.34

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

TABLE 9—EVALUATION OF THE WASHINGTON AREA 2008 RFP CONTINGENCY MEASURE REQUIREMENT

Description	VOC (tpd)	NO <sub>x</sub> (tpd)
A—Total 2008 Projected Controlled Emissions	358.84	493.22
B—Contingency Measure Target Level for 2008	369.15	550.34
Contingency measure requirement met if A < B	Yes	Yes

F. RACM Analysis and Determination

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

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

- The control measure is technologically feasible;
- The control measure is economically feasible;
- The control measure does not cause “substantial widespread and long-term adverse impacts;”
- The control measure is not “absurd, unenforceable, or impracticable;” and
- The control measure can advance the attainment date by at least one year.

The States evaluated 322 potential stationary, area, nonroad, and mobile source control measures against the RACM criteria. Several measures would have provided some emission reductions. However, the States determined that none of the mandatory measures would achieve reductions in the 2008 ozone season. Therefore, the States concluded that there are no RACM appropriate to advance the Washington Area’s attainment date.

EPA has reviewed the States’ analysis. To meet the RACM requirement, the States must demonstrate that it has adopted all RACM necessary to move the Washington Area toward attainment as expeditiously as practicable and to meet all RFP requirements. As demonstrated above in section IV of this document, the States have met the RFP requirements for the Washington Area.

The States evaluated all source categories that could contribute meaningful emission reductions, and compiled an extensive list of potential control measures. Furthermore, the States considered the time needed to develop and adopt regulations and the time it would take to see the benefit from these measures. While the States found that the measures could not be used to advance the Washington Area’s attainment date, the State’s determined that many of the measures were useful and would be considered for future SIPs

for the Washington Area. Therefore, EPA concurs with the States’ conclusion that there are no RACM that would have advanced the 2010 attainment date for the Washington Area.

G. Transportation Conformity Budgets

Transportation conformity is required by CAA section 176(c). EPA’s conformity rule requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedure for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. The criteria by which EPA determines whether a SIP’s MVEBs are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). The process for determining the adequacy of submitted SIP budgets is described in 40 CFR 93.118(f).

States must establish VOC and NO<sub>x</sub> MVEBs for each of the milestone years up to the attainment year and submit the mobile budgets to EPA for approval. Upon adequacy determination or approval by EPA, states must conduct transportation conformity analysis for their Transportation Improvement Programs (TIPs) and long range transportation plans to ensure highway vehicle emissions will not exceed relevant MVEBs. Failure to demonstrate such transportation conformity lapses results in freezing of Federal highway funds and all Federal highway projects in the lapsed area.

The States discuss transportation conformity in Section 8.0 of the Washington Area 8-hour ozone plan. The States describe their methods and provide detailed input parameters used in modeling the inventories in Appendices E1 and E2 of the Washington Area 8-hour ozone plan. In the Washington Area, the Metropolitan Washington Air Quality Committee (MWAQC) consults with the Transportation Planning Board (TPB) to establish mobile source emissions

budgets. The Washington Area MVEB for the 2008 RFP is based on the projected 2008 mobile source emissions, accounting for all mobile control measures. The budgets are equal to the projected 2008 on-road mobile source emission inventories minus reductions from transportation control measures. The MVEBs for the 2008 RFP are shown in Table 10, below.

TABLE 10—WASHINGTON AREA 2008 RFP MVEBS

	VOC (tpd)	NO <sub>x</sub> (tpd)
(A) Projected Controlled Mobile Emissions .....	70.98	160.30
(B) Transportation Control Measures ..	0.19	0.49
(A)–(B) .....	70.79	159.81
MVEB (rounded to nearest 0.1 tpd) .....	70.8	159.8

For budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria (40 CFR 93.118(e)(4)). In a September 4, 2009 **Federal Register** notice, EPA notified the public that EPA found that the 2008 RFP MVEBs in the Washington Area 8-hour ozone plan are adequate for transportation conformity purposes (74 FR 45853). As a result of EPA's finding, the States must use the MVEBs from the Washington Area 8-hour ozone plan for future conformity determinations for the 1997 8-hour ozone standard.

In addition to the budgets being adequate for transportation conformity purposes, EPA found the procedures the States used to develop the MVEBs to be reasonable. Because the 2008 RFP MVEBs are adequate for transportation conformity purposes and the methods the States used to develop them are correct, the 2008 RFP budgets are approvable.

### III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary

compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts \* \* \*." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the

Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

### IV. What action is EPA proposing?

EPA has reviewed the 2002 base year emissions inventory; the 2008 ozone projected emission inventory; the 2008 RFP plan; RFP contingency measures; RACM analysis; and 2008 transportation conformity budgets contained in the Washington Area 8-hour ozone plan, and found that those elements fully addressed the CAA's requirements. Therefore, EPA is proposing approval of those elements, which were submitted to EPA as a SIP revision by DDOE on June 12, 2007, by MDE on June 4, 2007, and by VADEQ on June 12, 2007. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### V. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule pertaining to the 2002 base year emissions inventory, the 2008 ozone projected emission inventory, the 2008 RFP plan; RFP contingency measures, RACM analysis, and 2008 transportation conformity budgets for the Washington Area does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

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

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

Dated: June 15, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2011-16376 Filed 6-29-11; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2011-0463; FRL-9427-3]

**Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD)**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the SJVUAPCD portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) and particulate matter (PM) emissions from commercial charbroiling. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by August 1, 2011.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2011-0463, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.
2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an “anonymous access” system, and EPA will not know your identity or contact information

unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

**Docket:** Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** David Grounds, EPA Region IX, (415) 972-3019, [grounds.david@epa.gov](mailto:grounds.david@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to EPA.

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**I. The State’s Submittal**

*A. What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board.

**TABLE 1—SUBMITTED RULE**

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD .....	4692	Commercial Charbroiling .....	09/17/09	05/17/10

On June 8, 2010, EPA determined that the submittal for SJVUAPCD Rule 4692

met the completeness criteria in 40 CFR

Part 51, Appendix V, which must be met before formal EPA review.